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Problems of enforcement of judgments of the European Court of Human Rights in Ukraine

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Abstract. The research relevance was determined by the need to create an effective mechanism for enforcing judgments of the European Court of Human Rights (ECHR) in the context of their systematic non-enforcement by Ukraine and the existing threat of weakening the guarantees of observance and safeguarding the fundamental freedoms and rights. Consequently, the research endeavour focused on examining the challenges and barriers present within the mechanisms responsible for implementing to the rulings issued by the ECHR as well as the judgments rendered by domestic courts operating at the national level. The methods used in the study include historical, statistical, legal hermeneutics and others. The core findings and central conclusions drawn from the research investigation are to reveal the prerequisites for Ukraine's integration to the European supranational judicial protection system, the impact of this event in the context of guaranteeing basic human entitlements; focus on data regarding Ukraine's participation as a defending party in international legal disputes. The author examined which rights are most often violated in the context of lawsuits against the Ukrainian state before the ECHR, in particular, the right to free movement and personal integrity, as well as facts related to the duration of proceedings, fair trial, etc. The author also pointed to two major pilot judgments delivered by the Court – Case No. 40450/04 and Case No. 46852/13, which point to a systematic and structural issue of inaction to properly implement the judgments of the ECHR and national courts. This analysis delved into the underlying factors that contribute to the challenges in enforcing judgments, which include imperfect legislation and insufficient funding. The author pointed out the need for a comprehensive approach to improving this area through the development of effective remedies and alternative ways of paying compensation. This study's outcomes serve as a springboard for further research by sociologists, legal professionals, political scientists, and policymakers, paving the way for a more dependable court enforcement framework

Keywords: systematic violation; remedies; enforcement proceedings; just satisfaction; guarantees; legality

Introduction

Ukraine's membership in the European Convention on Human Rights (ECHR) system, established in 1950, necessitates compliance with Article 46, which compels the nation to implement judgments from the ECHR. Such enforcement does not depend on the will of the person in whose favour the judgment was delivered but rather creates an obligation for the state to comply with it. The ECHR is preeminent and highly influential judicial institution operating at the global level that safeguard and uphold fundamental human rights and liberties across the European continent, and the enforcement of judgments of this institution is a tool for restoring violated rights and performs a preventive function to prevent further violations. Given this provision, the research relevance is determined by the significance of guaranteeing inalienable human liberties in the conditions of the highest risk of their violation, and thus, the development of a robust system to ensure court orders are upheld. The problem of this research is the risks of deterioration of Ukraine's image in the international arena, a growing caseload for the ECHR and undermining public confidence in the national system and government.

Ukraine's legal framework, with the 1996 Constitution at its core, outlines procedures for enforcing judgments from the ECHR. It also recognises Ukraine's various international obligations and the significance of incorporating the ECHR's case law. The Constitution provides the possibility for complainants who have fully utilised available national remedies to apply to international human rights institutions or organisations to which Ukraine is a party for the protection of their liberties and obligations (Kubarieva, 2023). Putting into effect the ECHR judgments involves the introduction of measures of both individual and general nature. N.V. Mishina (2023) notes that general measures include, for example, legislative changes, changes in administrative practice, additional review, and analysis of legal acts for constitutionality, creation of conditions for in-depth study of the provisions of the Convention and the Court's case law, as well as other measures aimed at ensuring respect for the inherent rights of

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all individuals. The study of A. Belikova (2023), who identified individual measures of enforcement of ECHR judgments, is noteworthy. First of all, such measures consist of compensation for moral or physical consequences, namely just satisfaction, termination of the violation and its negative impact, as well as restoration of the victim's previous position before the offence.

Following the I. Sichkovska (2021), the implementation of ECHR judgments is a lengthy process. A decision is considered to be satisfied when national reports detail the actions undertaken by the government, after which the Committee of Ministers of the Council of Europe issues a resolution certifying that the decision is considered to be officially implemented. The author also points out that the hurdle of ensuring court verdicts in Ukraine may be the insufficient level of funding in this area due to the high level of costs for just satisfaction. Thus, according to the author, in 2018 alone, almost 33 million hryvnias were paid in respect of the conclusions of the ECHR on applications. It is also worth mentioning the enforcement of ECHR judgments, which, as noted by D. Minchenko (2023), is a procedure involving representatives of the state executive service. Enforcement applies to cases of recovery of compensation with a penalty. The author also noted the difference between the enforcement of decision both domestically and globally, which is that the initiator of the proceedings is not the person affected by the offence, but the state.

Despite considerable research into the institution of ECHR judgments, the problem of their systematic non-enforcement and its consequences for democracy and human rights protection requires a deeper study. Thus, the study aimed to analyse the main problems that exist in the area of enforcement of ECHR judgments.

Materials and methods

The study used a number of methods of scientific cognition. In particular, the historical method, which, through the study of the formation of objects in chronological order, clarified the processes and patterns of development and establishment of the ECHR and the process of accession of the Ukrainian state to this structure, the European Convention on Human Rights as the main document in the field of human liberties protection, as well as their impact on the state of human entitlements in the modern period.

It is also worth highlighting the method of legal hermeneutics, which was used to interpret and understand the legal aspects of the research object, their context, objectives, and significance, and to determine the content of legal provisions and the specifics of their application within the institution of enforcement of ECHR judgments by Ukraine. As such, the study object, adjusted for this method, included European Convention on the Protection of Human Rights and Fundamental Freedoms (1950), Law of Ukraine No. 1404-VIII "On Enforcement Proceedings" (2016), Law of Ukraine No. 3477-IV "On Execution of Judgments and Application of the Practice of the European Court of Human Rights" (2006), case of "Yuriy Ivanov v. Ukraine" (Application No. 40450/04) (2010), case of "Burmych and Others v. Ukraine" (2017), case of "Maymulakhin and Markiv v. Ukraine" (Application No. 75135/14) (2023), case of "Mayboroda v. Ukraine" (Application No. 14709/07) (2023), case of "Bogdan v. Ukraine" (Application No. 3016/16) (2024), Law of Ukraine No. 4901-VI "On State Guarantees for the Execution of Court Decisions" (2012).

It is also worth mentioning the systemic-structural approach, which was used to characterise the mechanism of execution of ECHR judgments in Ukraine as an integral system and to point out the interrelationships between its elements, as well as to identify the range of entities that have powers in this area on a domestic and global scale. The systemic-structural method was also used to study what measures the state should take for the final judgment of the ECHR to be considered executed, as well as which Council of Europe (CoE) bodies are authorised to control and monitor the process. The statistical method, based on the collection and interpretation of statistical data, was used in the study of the human rights situation in Ukraine by examining the number of applications filed with the ECHR in 2022. The source of the relevant data was the ECHR website (Violations by Article…, 2022).

The analysis method was employed to identify the main issues related to a range of challenges and roadblocks of a legal, financial, and political nature in the area of implementation of rulings issued by domestic courts and the ECHR. The method was also used to describe the repercussions of failing to uphold judgments of ECHR judgments and the risks that arise in this case for the human liberties sphere and the guarantee of basic human entitlements by the state. The analysis method was also used to develop ways and means of solving the problem of non-enforcement of judgments in an extraordinary situation. Along with the method of analysis, the induction method was used to study the opinions of various authors and scholars on the general issues of ECHR functioning, which formed the study conclusions.

Results

The history of the establishment of the ECHR and the Convention for the Protection of Human Rights and Fundamental Freedoms is closely linked to the post-war development of Europe. After the Second World War, Europe faced a need to ensure the security of the legal status of citizens from the arbitrariness of state authorities. In this context, the leaders of European states decided to establish an international body that would be responsible for ensuring the observance of these rights and freedoms. In 1949, the Council of Europe was founded in London, which ystablished itself as the leading international body to protect inherent rights and individual freedoms in Europe. In 1952, the Convention was signed, coming into legal effect in 1953 and contains a list of fundamental liberties and entitlements guarantee to the state's parties to the Convention.

In 1959, the European Commission of Human Rights (EC) emerged as the foremost institution tasked with reviewing claims of human rights violations guaranteed by the Convention. In 1998, following ratification of Protocol No. 11 to the Convention, the EC and the ECHR were merged into a single body – ECHR (Schmahl, 2022). The ECHR is a cornerstone institution for safeguarding fundamental rights, considering applications filed by both individuals and organisations of various forms of ownership who believe that the fundamental entitlements enshrined in the Convention have been breached by the state parties (Tyss *et al.*, 2023). If the Court finds a violation of the Convention, it may order that the respondent state must take measures to restore the violated rights.

Ukraine's accession to the European Convention was a significant step towards the development of a system based on the supremacy of law in Ukraine, in particular due to the availability of additional guarantees for Ukrainians in the area of ensuring adherence to the principles of justice and equality, and the fact of accession also determines the development of national legislation and court practice, as ECHR judgments must be considered in national courts. However, it should be noted that Ukraine has a problem of non-enforcement of judgments, as evidenced by the statistical data (Fig. 1).

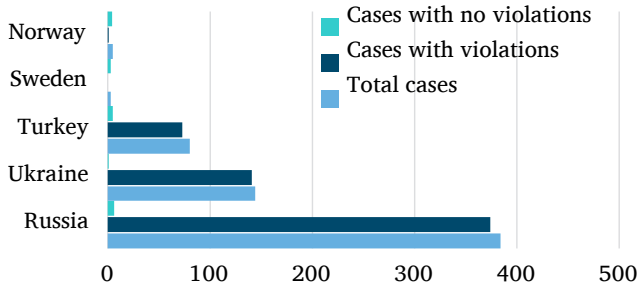

Figure 1. Number of open ECHR proceedings as of 2022
Source: Violations by Article and by State (2022)

The data indicate that the predominant amount of applications processed by the ECHR are from applicants from Russia, Ukraine, and Turkey; in comparison with other countries, the figures are much higher. It is also advisable to outline the violations of which rights Ukrainian applicants complain about following the provisions of the Convention: cruel, inhuman, or humiliating treatment (Article 3) – 51 open proceedings, the fundamental right to freedom and personal security (Article 5) – 114 open proceedings, the right to a fair trial (Article 6) – 21, lengthy proceedings (Article 6) – 45, the guarantee of legal recourse for rights violations (Article 13) – 64 (Violations by Article..., 2022). Thus, it is worth investigating the mechanism of enforcement of ECHR judgments in Ukraine. In particular, the Law of Ukraine No. 1404-VIII "On Enforcement Proceedings" (2016) states in Article 3 that ECHR judgments are subject to enforcement. The intricacies of this process are explored in greater detail in the Law of Ukraine No. 3477-IV "On Execution of Judgments and Application of the Practice of the European Court of Human Rights" (2006), Article 7 of which states that within ten days after receiving a notification from the ECHR on the final status of the case, the authorised body must send the plaintiff an information letter with a list of basic rights, including the right to apply to the executive service for compensation. In addition, it must also forward the translation and text of the final judgment to the state enforcement service, which, in turn, must initiate enforcement proceedings within ten days of receiving these documents. Compensation under the final judgment is paid within three months, but in case of violation of this period, interest is charged on the amount of compensation.

The provision of financial compensation is the most common measure of an individual nature. It aims to provide the applicant with financial recompense for the losses incurred as a result of the violation of rights. The amount of pecuniary compensation is determined by the Court (Madsen *et al.*, 2022). Along with the payment of compensation, an important measure is the restoration of rights, which can be carried out through the invalidation of a decision of a public authority that violated the applicant's rights, or by amending administrative procedures that violated the applicant's rights. While compensation is determined by the Court, the state has the obligation to apply general measures. Such measures are necessary to establish safeguards that prohibit future violations of citizens' rights and freedoms, as well as to reduce the number of applications to the ECHR (Rosas, 2022). Thus, such measures may include changes in the regulatory framework, the practice of activities and responses of public authorities, and educational activities, in particular for civil servants and law enforcement agencies, on the importance of observing the human and civil rights guaranteed by law.

Here's a noteworthy point that the statistical data indicate not only the imperfection of the mechanism of execution of ECHR judgments in Ukraine but also the insufficient effectiveness of national legislation that forms and determines the procedure for material and procedural actions. The ECHR also highlighted this in its pilot judgements of the case of "Yuriy Ivanov v. Ukraine" (2010) and the case of "Burmych and Others v. Ukraine" (2017). The pilot decision contains a statement of the underlying causes that contribute to the persistent issue and the steps that the respondent State should take. Among the most recent judgments, it is worth analysing the case of "Maymulakhin and Markiv v. Ukraine" (2023), where the applicants complained of discrimination by public authorities, as well as violations of privacy rights and lack of adequate remedies. The case of "Mayboroda v. Ukraine" (2023) emphasises the state's failure to take necessary steps to guarantee and protect the population within the healthcare sector, as well as the lack of a regulatory framework that would eliminate both material and procedural gaps in these issues. The case of "Bogdan v. Ukraine" (2024) emphasises unfair trials and lack of access to effective remedies.

In general, both in pilot judgments and in individual complaints, the ECHR emphasises and identifies several systemic problems: unacceptably long consideration of cases; lack of an effective system of investigation of offences; violation of the inherent right to life; inadequate conditions of detention; restrictions on access to medical care; lack of effective mechanisms of legal protection. The ECHR's position on these issues is that the state bears the ultimate responsibility for ensuring final judgments are enforced, as well as the obligations under the Convention, and that non-enforcement cannot be justified by lack of funds, resources, or neglect of duty by those entrusted with execution, and that gaps in domestic law are the sole responsibility of the respondent state. However, it is also worth mentioning additional factors that create obstacles in the system of enforcement of the Court's judgments. Thus, according to the Order of the Cabinet of Ministers of Ukraine No. 1218-p "On Approval of the National Strategy for Addressing the Problem of Non-Compliance with Court Decisions, Debtors of which are State Bodies or State-Owned Enterprises, Institutions, Organisations, for the Period up to 2025" (2020), the primary drivers for non-enforcement of ECHR judgments are legal gaps and prohibitions that impede the enforcement of debts, insufficient regulation of the system of social benefits, low level of automation of the enforcement process, insufficient efficiency of the regulatory framework for bankruptcy proceedings for state institutions, ineffective judicial control over enforcement proceedings, lack of available remedies for individuals, and insufficient financial security (Creamer & Godzimirska, 2023).

In general, as a result of the pilot judgement in the case of "Yuriy Ivanov v. Ukraine" (2010), the state took several measures involving the enactment of a series of legislative instruments: Law of Ukraine No. 4901-VI "On State Guarantees for the Execution of Court Decisions" (2012), which establishes guarantees for the execution of court decisions by the state, and Resolution of the Cabinet of Ministers of Ukraine No. 440-2014-p "On Approval of the Procedure for Repayment of Debts under Court Decisions Enforced by the State" (2014), which approves the procedure and mechanism for the execution of court decisions, as well as the inventory and repayment of debts under the relevant decisions. Although these legal acts were intended to improve the procedural component of the enforcement of judgments, the issues of moratorium and insufficient funding remained unresolved.

The further inefficiency of Ukraine's judgment enforcement system is also evidenced by the case of "Burmych and Others v. Ukraine" (2017), which consolidates about 12 thousand cases filed with the ECHR in 2013-2017. All cases concern the non-enforcement of national court decisions, in particular regarding the payment of social security. The ECHR decided that all similar cases that will be decided after this judgment will be removed from the register and transferred to the Committee of Ministers of the Council of Europe for monitoring of implementation.

The Court also pointed out that a persistent issue of unenforced judgments in Ukraine revealed a need for more comprehensive solutions. Also, the ECHR noted that it is not part of the national justice system in Ukraine, but only a subsidiary international remedy. However, the Ukrainian state did not stop fulfilling allocated duties under Article 46 of the European Convention. In particular, the Government of Ukraine provided the Committee of Ministers with information on the functioning of the judicial system, the situation in penal and pre-trial detention facilities, as well as changes in criminal procedure legislation (Mirkalaei & Mohammadzadeh, 2023). In 2022, there were also developments in the execution of some important cases, including the case of "Bochan v. Ukraine No. 2" (2015), which resulted in the creation of an effective remedy by applying for review of final decisions of national courts in civil and criminal matters based on a violation established by the ECHR. Supervision of the implementation of more than 60 ECHR judgments was also suspended, 16 of which had systemic or structural problems, mostly related to pre-trial detention, administrative matters and procedural issues of investigation and investigative actions, border crossing (Furramani & Bushati, 2022; Supervision of the execution …, 2022).

It should be noted that despite certain progress in the enforcement of court orders, the Committee of Ministers of the Council of Europe still has about 700 cases against Ukraine under its control, some of which are key or guiding cases, the implementation of which depends on judicial reform, improvement of the mechanism of effective judicial review of cases and ensuring proper conditions of detention. Given this, the implementation of such decisions by Ukraine is impossible without comprehensive measures. For example, Ukraine should conduct a comprehensive assessment of its legislation for compliance with the Convention for the Protection of Human Rights and Fundamental Freedoms and gradually make the necessary changes in case of inconsistencies (Popović & Zdravković, 2020; Escobar Veas, 2023). Another important measure to be taken by Ukraine is to improve judicial practice. Ukraine should ensure that its domestic courts properly consider the ECHR judgments in their practice. To this end, it is necessary to train judges and other judicial officers through the involvement of, for example, international experts and human rights defenders, and to develop appropriate methodological guidelines. It is also important to calculate the amount of debt that has arisen due to the lack of execution of domestic court orders in Ukraine. Given that the amount may be significant, steps should be taken to establish a system of payments that would allow for gradual compensation of damages, as well as to offer alternatives to proposals for ensuring the enforcement of a particular decision. The legal framework necessitates revision in order to determine the state budget of the country, in particular through fair distribution and enforcement of payments.

To ensure the effectiveness of these measures, Ukraine should adhere to the following principles: involvement of all stakeholders in the process of implementing the ECHR judgments, including representatives of the authorities, human rights organisations, and the public; consistency and systematic implementation of measures; monitoring the implementation of measures and making necessary adjustments if necessary. After all, the implementation of ECHR judgments is an important condition for ensuring human rights and freedoms in Ukraine.

Discussion

Ukraine ranks among countries with a high number of outstanding judgments from the ECHR, which indicates the systemic nature of the problem. Insufficient funding is only one of the factors that lead to the non-enforcement of ECHR judgments. However, other aspects must also be considered, including imperfections in national legislation and insufficient knowledge of ECHR case law and the main provisions of the European Convention by judges and law enforcement officers, which undermines confidence in the national judicial system as a whole and hinders the development of democracy and the rule of law.

To form a general vision and understanding of the peculiarities in this area, and to find additional ways to solve the problem it is beneficial to examine relevant academic literature. Thus, the affirmative duties of states under the Convention were aptly expressed by N. Mavronicola (2021). Traditionally, human rights protection has focused on negative obligations, preventing state interference with rights. The authors focus on positive obligations, which, on the contrary, require states to take active measures and intervene in human rights, including the use of criminal law to deter and punish violators. Thus, the concept of positive obligations of the state was formulated by the ECHR in the judgment in the case of "Osman v. the United Kingdom" (1998). In this judgment, the Court found that the state must not only refrain from situations that might lead to a deprivation of the right to life but also take measures to protect it, in particular: establish effective legal norms that ensure the protection of life; create effective mechanisms for investigating and prosecuting violations of the right to life; take measures to prevent violations of the right to life. Later, the ECHR introduced the principle of positive obligations in its judgments in the context of other rights guaranteed by the ECHR. Although the authors' findings only partially confirm the results of this paper, it is advisable to take them into account and add the importance of positive obligations of the state in the context

of the implementation of ECHR judgments, which are manifested in general measures to prevent the recurrence of similar violations in the future. They may include amendments to legislation, development of judicial practice.

The so-called "structural rights" are interrelated with positive obligations, the concept of which was considered by M. Leloup (2020). The author identifies several rights under the ECHR that can be interpreted through a structural lens, in particular, the right to life (e.g., addressing systemic problems that lead to preventable death); the right to an effective remedy (ensuring access to justice for systemic violations); the right to education (combating systemic discrimination in access to education); the right to freedom of expression (overcoming structural obstacles to freedom of expression). Thus, the obligations arising from structural rights, if interpreted through the structural prism of the ECHR, are positive. They may consist of investing in resources to overcome social and economic inequality, addressing the root causes of human rights violations, ensuring effective and fair trials, guaranteeing protection from human rights violations (Shevchuk *et al.*, 2022). It is worth adding that the authors' findings are a valuable contribution to understanding the importance of observing and guaranteeing human rights and freedoms, in particular in the context of the implementation of ECHR judgments. Thus, this contributes to ensuring the rule of law, setting precedents and minimum guarantees for the protection of human rights and freedoms, increasing the authority of the judiciary, and promoting democracy and development (Çifligu, 2023).

The ECHR judgments are based on several principles, among which the principle of proportionality is an important one. K. Trykhlib (2020) points out that the principle of proportionality, in the light of which the Court's proceedings are conducted, ensures a fair balance between the rights of the individual and the legitimate interests of the state. The principle is a safeguard against arbitrary interference by the state with the rights of the individual enshrined in the ECHR. The ECHR assesses proportionality using several criteria: legitimacy of purpose, assessing whether the grounds for the state's restriction of a right fall within the permitted grounds under the ECHR; necessity of the restriction, i.e. examining whether less restrictive measures have been considered and found insufficient; and fair balance, weighing whether the restriction is proportionate to the necessary aim of the state (Saliu, 2021). The author's findings do not correspond to the results of this paper but reveal some aspects of the final judgment of the ECHR. However, it is worth noting that this may create grounds for abuse of the extraordinary situation and level the importance of solving the systemic problem of non-enforcement of judgments of national courts and the ECHR, so the Committee of Ministers of the Council of Europe should monitor the state's activities in the enforcement of court decisions.

The issue of non-enforcement of ECHR judgments was discussed in more detail by D. Panke (2020). The STUDY identifies several factors that influence the failure of states to comply with ECHR judgments, including the domestic political context (low level of democracy), the nature of the violation, an imperfect enforcement mechanism, and the lack of strict measures by the ECHR in response to the systematic failure to comply with judgments. The author proposes improving the monitoring of the State's activities in this area, as well as introducing reliable mechanisms of coercion or sanctions in case of failure to fulfil its obligations. The author's findings confirm the results of this paper, but it should also be added that the reasons for non-enforcement of judgments may include the financial aspect, i.e., insufficient funds to compensate for the damage caused or to pay fair satisfaction under the court decision, and non-enforcement of ECHR judgments may also be since the country's legislation contains significant gaps or conflict of laws, which leads, for example, to an unfair trial or ineffective remedies. The issues of the general impact of the ECHR on legal practice and doctrine were considered by A. Donald and A.K. Speck (2019). The effectiveness of the ECHR depends not only on the issuance of judgments establishing violations but also on ensuring their proper implementation by member states. Although the Court may order just satisfaction as an individual measure, general measures and their adoption are left to the discretion of the state, which gives states a certain degree of discretion in choosing how to achieve the desired result. At the same time, factors such as political will, limited capacity, and entrenched systemic problems may hinder the achievement of the main goal of guaranteeing a safe space and protecting human rights and freedoms (Shkuratenko *et al.*, 2023).

Similar reasoning is present in a study of S. Cassella (2020). Thus, the ECHR has a significant impact on national legal systems, as the ECHR protects a wide range of rights, including the right to life, the right to liberty and security, the right to a fair trial, the right to privacy and the right to freedom of expression. The ECHR also has a significant impact on the way national courts operate, as many of them refer to ECHR case law in their judgments or change legislation as a result of the impact of a final judgment, such as the legalisation of aid in dying in France for people with terminal illnesses or the legalisation of same-gender marriage in the United Kingdom (Abdrasulov *et al.*, 2023). The authors' findings partially correspond to the results of this study. Indeed, although the ECHR's case law in the field of legal protection plays a crucial role in the promotion of human rights, the path from judgment to effective implementation depends not only on the Court but also on the respondent state. Continued efforts to remove constraints, promote dialogue and strengthen enforcement mechanisms are essential to ensure that the Court's judgments are fully implemented.

Conclusions

The conducted study revealed a deeper analysis of the issues related to the problems that exist in the field of implementation of ECHR judgments by Ukraine. Despite Ukraine's accession to the system of international protection and the ECHR, the country is one of those against which most applications are filed by citizens with the ECHR. In particular, as of 2022, Ukraine was ranked third in terms of the number of registered claims. Citizens of Ukraine most often file applications with the ECHR concerning the length of court proceedings, inhuman treatment, torture, lack of effective remedies, violation of the right to liberty and security of person.

The ECHR issued a pilot judgment in "Ivanov v. Ukraine", identifying a systemic problem of non-enforcement of judgments of national courts and the ECHR, and pointing to several factors that affect this situation: imperfect legislation, procedural issues, lack of sufficient funding. The pilot judgement resulted in the adoption of several legal acts by Ukraine that did not solve the problem and led to the

adoption of the "Burmych v. Ukraine" judgement, which combined 12 thousand applications relating to the non-enforcement of national court judgements. Ukraine should gradually take comprehensive measures to create an effective mechanism for the implementation of ECHR judgments, in particular through the provision of proper training for civil servants and judges, the development of legislation that complies with the provisions of the ECHR, and the creation of an effective system of enforcement proceedings.

For further research on related topics, it is proposed to clarify the following issues: the role of the Committee of Ministers of the Council of Europe in ensuring the enforcement of ECHR judgments; the practice of enforcement of ECHR judgments in other countries; the impact of the political situation on the enforcement of ECHR judgments; the role of civil society in ensuring the enforcement of ECHR judgments.

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Conflict of interest

None.

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Проблеми виконання рішень Європейського суду з прав людини в Україні

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Анотація. Актуальність дослідження зумовлена необхідністю створення ефективного механізму приведення рішень Європейського суду з прав людини (ЄСПЛ) у дію в умовах їх систематичного невиконання Україною та існуючої загрози послаблення гарантій дотримання та захисту прав людини. Зважаючи на це, метою даної науково-дослідної роботи постав аналіз перешкод, які існують в системі виконання рішень ЄСПЛ та національних судів. Методами, котрі були використані у дослідженні були наступні: історичний, статистичний, юридичної герменевтики та інші. Основні результати науково-дослідної роботи полягають у розкритті передумов приєднання України до системи європейського наднаціонального судового захисту, впливу даної події в контексті гарантування прав та свобод людини; виокремленні статистичних даних щодо кількості справ, в яких Україна виступає державою-відповідачем. Досліджено, які права найчастіше порушуються в межах позовів проти української держави до ЄСПЛ, зокрема це право на вільне пересування та особисту недоторканість, а також факти, що пов'язані із тривалістю провадження, справедливого судового розгляду тощо. Вказувались також і два основних пілотних рішення, котрі були винесені Судом – справа No. 40450/04 та справа No. 46852/13, в яких зазначено про систематичну та структурну проблему, котра полягає у невиконанні рішень ЄСПЛ, а також національних судів. Увага приділена і першопричинам такого стану у сфері виконання рішень, які полягають у недосконалості законодавства та недостатньому фінансуванні. Зазначається щодо необхідності комплексного підходу до вдосконалення сфери через розробку ефективних засобів правового захисту, а також альтернативних способів сплати відшкодування. Результати дослідження можуть бути використані для подальших робіт на дотичну тематику соціологами, правознавцями, а також політологами й законодавцями для формування нового підходу щодо створення надійного механізму виконання судових рішень

Ключові слова: систематичне порушення; засоби юридичного захисту; виконавче провадження; справедлива сатисфакція; гарантії; законність

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The influence and consequence of contract discharge in China's Civil Code

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Abstract. With the rapid development of the world economy, China is becoming a key player in global trade and investment processes. Developing and updating legal rules governing contractual relations plays an important role in ensuring transparency, stability, and fairness in the business environment. Thus, the main purpose of this study was to identify the existing problems in the laws governing the process of contract cancellation and to make recommendations to improve the relevant aspects. In the course of the research, the legal method and the method of comparison were applied. As a result, the main procedures and grounds provided by the Civil Code of the People's Republic of China for the termination of contractual obligations were identified. It was learnt that parties can terminate a contract in case of material breach of the terms of the agreement, which includes default, exceeding deadlines or changing circumstances that significantly affect the performance of the contract. The study also identified specific challenges that actors face when terminating contracts. Such as the unpredictability of the legal consequences of excluding a party from a contractual relationship, which can pose serious economic risks. The impact of factors such as economic crises on the termination of contractual obligations was also emphasised in the findings of the study. An important conclusion was the need to improve the legislation in the field of contract termination. The results of the study can be used to improve the law on contract termination in China, which can be the basis for developing clearer and more adaptive rules, thereby reducing possible legal risks for the business community

Keywords: changes in legislation; legal practice; risks and challenges; recommendations; entrepreneurship

Introduction

In a rapidly changing global market, where business transactions are becoming increasingly complex and large-scale, it is important for entrepreneurs to quickly adapt to new legal requirements. Also, in the context of global economic challenges, threats of crises and uncertainty, a proper understanding of the procedures and grounds for termination

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of contractual obligations is a key factor in managing risks and ensuring business stability. Thus, the study of the termination of contractual obligations under the Civil Code of the People's Republic of China (2020) now represents an important contribution to the practical field and provides relevant information for the business community operating in the Chinese market. The problematic aspect of this study is the need to analyse and clarify the mechanisms for the termination of contractual obligations that are enshrined in the new rules of the Civil Code of the People's Republic of China. The introduction of these changes creates significant legal uncertainty, raising questions about the procedures, grounds, and possible consequences of contract termination.

Scientific research on the problem of termination of contractual obligations under the Civil Code of the People's Republic of China has been conducted by lawyers and researchers focusing on analysing the legislative changes. For example, the Article by C. Valcke (2023) provides an overview and analysis of the changes in Chinese law related to the consent of the parties when entering into contracts. The author elaborates on the innovations in the Civil Code of the People's Republic of China, highlighting aspects of the parties' free will, including trade practices and mutual consent rules. The researcher focuses on how these changes may affect contractual relations and the protection of interests of parties to transactions. But at the same time, some important aspects related to the problems of application of innovations in the Civil Code of the People's Republic of China have not been considered in detail in the paper. In particular, there is no analysis of the practical difficulties faced by the parties in implementing the new rules on consent in the conclusion of contracts. The Article also overlooks the issues of legal clarity and predictability in the context of the new legislative rules, which may have a significant impact on legal practice and the business environment. These unaddressed aspects may be key in applying the changes in actual practice and require further research to better understand their impact on the business environment and jurisprudence in China.

The work by R.J. Tuibaev and A.K. Egeshova (2021) examines the problems and prospects of civil procedure in Kyrgyzstan. In the context of this study, the authors touch upon the problems of contract law and discuss the challenges associated with resolving disputes over breaches of contractual obligations. However, despite the extensive research, there are still some unresolved issues in the work. In particular, it has not considered what specific legal mechanisms are provided to protect the interests of the offending party in contract termination. An examination of these mechanisms could help in understanding the effectiveness of the legal defence and possible improvements.

N.S. Semenov (2022) describes in his study the difficulties encountered in establishing information relations in e-justice in the Kyrgyz Republic and examines them in the context of contractual relations. The author considers the problems arising in the conclusion and execution of contracts in Kyrgyzstan, as well as legislative initiatives to improve contractual relations. The author also makes a comparison with the contract law of China, including an analysis of the effectiveness of normative and practical recommendations aimed at improving contractual relations and improving their legal regulation. However, at the same time, the paper lacks a detailed examination of the changes in the Civil Code of the People's Republic of China, the norms of which are compared with the contract law of Kyrgyzstan, as well as cases from court practice or specific scenarios, which leaves room for a deeper understanding of how the new legal norms may affect real business situations and what challenges may arise in the process of their application.

In the Article by H. Jiang and A. Appen (2022), the authors examine the new rules on the validity of contracts in the Civil Code of the People's Republic of China and their impact on the freedom of contracting of state-owned enterprises. The Article examines the changes in the legislation, focusing on issues related to restrictions and freedom of contracting by state-owned enterprises. However, the paper did not sufficiently consider the implications and effects of the new rules on the overall business environment and investment climate in China. The lack of a more detailed analysis of the impact of these changes on different sectors of the economy and possible challenges for foreign investors leaves room for additional research in this area.

B. Ling (2021) explores new contract law norms in the Civil Code of the People's Republic of China. The author analyses in detail the changes and amendments made to the legislation and describes their impact on the regulation of contractual relations. The Article focuses on key aspects such as the form of the contract, performance of obligations, liability of the parties and other issues related to the conclusion and performance of contracts. Despite this, the paper did not fully consider the topic of alternative ways of dispute resolution in contractual relations, such as mediation or arbitration. Also, the author leaves without due attention the issues related to the application of new rules in international contracts and their compliance with international standards.

X. Chao (2022) explores in his Article the relationship between contract law and financial regulation in China, with the focus on the perspective of illegality. Analysing the impact of legal aspects on the financial sphere, the author highlights which aspects of contract law may be considered illegal in the context of financial transactions. The paper highlights key legal provisions and their impact on the conclusion and execution of contracts in the financial sphere. However, the paper did not address the problems associated with the practical aspects of applying these principles in practice, as well as the possible challenges faced by parties in financial transactions under contract law. Also, an important addition could be the consideration of recent changes in legislation and their impact on the area of contractual relations in the financial sector.

Thus, the purpose of this study was to conduct a comprehensive analysis of the Civil Code of the People's Republic of China regulations to identify the problematic issues in the contract termination process, and to assess the possible impacts of this process on the business environment.

Materials and methods

To achieve the objective, the study used methods such as the legal method, including the analysis of jurisprudence, as well as the comparative method. The legal method that was applied during the research involved analysing the texts of the Civil Code of the People's Republic of China (2020) related to the termination of contractual obligations. Articles, paragraphs, and changes in the law were carefully analysed. Particular attention was paid to the identification and detailed examination of key terms and concepts used in the legislation to fully understand their context and meaning.

In doing so, analysing case law was an effective method for examining the rules of the Anglo-Saxon legal system and their reflection in the Civil Code of the People's Republic of China. The court decision in "Davis Contractors Ltd v. Fareham Urban District Council" (2023) was analysed in the study to examine precedents and dissect legal aspects related to contract termination by the breaching party. This approach allowed for a more detailed understanding of the principles embedded in the laws and their specific application in court judgements, which in turn contributes to a deeper understanding of how the Anglo-Saxon legal system influences the development and interpretation of law in China.

The comparative method within the study was key to identifying the characteristics and unique features of the law on the termination of contractual obligations in the Civil Code of the People's Republic of China. The Civil Code of the People's Republic of China covers a wide range of issues, including property, contracts, inheritance, obligations, and much more, including norms defining the process of concluding, executing, and terminating contracts. Firstly, the statutory provisions governing the termination of contracts were compared with similar provisions in the laws of other countries. For comparison of legal norms between China and the norms of the Romano-Germanic legal system, the German Civil Code (2002) was analysed. The German Civil Code is the primary legislative act defining civil law in Germany, including norms regulating the procedure and conditions for contract termination, as well as the obligations of parties and the consequences of breaching contractual obligations. For comparison with the Anglo-Saxon legal system, the law of the United Kingdom was analysed. The Contracts (Applicable Law) Act (1990) is UK legislation that establishes rules for determining the applicable law in contracts, including provisions for choice of law, governing law determination, and resolution of conflicts of laws, aiming to ensure clarity, predictability, and consistency in cross-border contractual relations.

This method involved analysing differences and similarities in legal approaches to the termination of contractual obligations, identifying trends and basic principles applied in different jurisdictions. Particular attention was paid to the context and interpretations of key terms to understand how similar or different the legal concepts and their application are in different parts of the world.

Results and discussion

Grounds for termination of the contract. A contract, according to the Book III, Chapter I, Article 464 of the Civil Code of the People's Republic of China (2020), is a formal agreement between the parties aimed at establishing, modifying, or terminating civil law relations. This agreement regulates the interaction of individuals or legal entities within the framework of civil law and establishes their mutual rights and obligations. When analysing this norm in detail, it is important to note that the contract can be concluded both in writing and orally, depending on the specific circumstances. It is based on the principle of freedom of contract, provided that the legitimate rights and interests of the parties are respected. Contracts can relate to various spheres, including transactions, services, labour relations. This formulation allows for a wide range of contractual relations to be taken into account, giving the parties flexibility to regulate them in accordance with the law. It also emphasizes the importance of transparency and legality in the conclusion, execution, and termination of contracts to ensure fairness and stability of civil law relations.

The Civil Code of the People's Republic of China (2020) contains rules governing the cancellation of a contract. Firstly, the Book III, Chapter VII, Article 557 of the Civil Code, notes that the termination of a contract entails the end of the relationship under this agreement and the termination of the rights and obligations associated with it. This means that the parties are no longer obliged to fulfil the terms of the contract, and their mutual influence within the framework of civil-law relations ceases. Analysing this norm, it is important to note that the termination of the contract may occur on various grounds. The Book III, Chapter VII, Article 563 of the Civil Code of the People's Republic of China provides that the parties have the right to terminate the contract in case of breach of obligations, which is expressed in several circumstances. Firstly, if there is a force majeure that makes it impossible to achieve the purpose of the contract. Secondly, if one of the parties declares failure to fulfil the main obligation before the expiry of the fixed term. The third circumstance is related to the delay in the fulfilment of the obligation and its failure to be fulfilled within a reasonable time after notification.

Also, the Book III, Chapter VII, Article 563 notes the possibility of cancellation of the contract in case of delay in fulfilment of obligations or violation of its essential conditions. In a situation where the performance of obligations becomes problematic due to long delays or significant breaches by one of the contractual parties, the right of termination becomes an important tool to restore a fair balance between the parties. It allows the aggrieved party to terminate the agreement free of further obligations and, if necessary, to claim damages. For example, if a supplier regularly fails to deliver goods on time or the quality of services does not meet the agreed standards, the other party has the right to terminate the contract. This mechanism balances long-term relationships and emphasizes the importance of good faith performance. It also provides an incentive for parties to honour the terms of the contract, as breach may result in the loss of the contract. This principle ensures fairness and efficient functioning of civil law relationships in the context of the Civil Code of the People's Republic of China. The Book III, Chapter VII, Article 566 of the Civil Code of the People's Republic of China (2020) also provides that in the event of termination of a contract due to default, the party with the right to terminate is entitled to claim damages from the breaching party, unless the parties have agreed on other liability. This guarantees compensation to the party whose interests have been violated due to the default of the other party.

Despite the importance of this rule, it has some shortcomings. According to the Book III, Chapter VII, Article 563, relying on an abstract notion of "failure to achieve the objective" without clear criteria and definitions can be a source of uncertainty and unfairness in the context of contract termination. The subjective assessment of the parties may differ significantly, creating the potential for ambiguous interpretations and disputes whether the breaches are indeed so serious as to justify termination. This undermines the basic principle of predictability and clarity in contractual relations. The lack of specific timeframes and procedures for identifying and resolving breaches can also lead to delays and confusion in the termination process. Parties may find it difficult to determine when delays begin and how

quickly or efficiently disputes should be resolved. This increases risks to the business environment, where clear and expeditious cancellation mechanisms can be essential. To improve the situation and ensure a fairer and more efficient termination process, clear, concise, and specific rules should be introduced that are defined by criteria, procedures, and timeframes, providing parties with clear guidance and predictability in contractual relationships.

To avoid such shortcomings, the introduction of clear and specific criteria is recommended, such as setting clear deadlines or standards that define "impossibility to achieve the objective". This will reduce uncertainty, lower the risk of possible conflicts, and ensure a better application of the norm in practice. It is also important to introduce time limits within which a party must remedy a breach to avoid cancellation. Additionally, it is proposed to use standards of professional responsibility, to assess the weight of each breach and to introduce prior warnings before termination of the contract. These specific criteria would help reduce uncertainty, provide clear guidance to the parties, and ensure a more transparent application of the rule, which would ultimately reduce the risk of potential conflicts and increase the efficiency of the termination process.

Other authors have also studied this issue. For example, S. ZeHua (2020) analyses in his work the right of a party to terminate a contract in case of breach of obligations and methods of resolving the arising difficulties in the context of contractual relations. The author examines court and arbitration decisions concerning cases of default by parties to a contract and offers a reflexive view of effective strategies for resolving the arising controversies. As well as the conducted research, the author's study reveals the problems in the Chinese legislation that regulates the cancellation of contractual obligations. Analysing the main conclusions of the work of S. ZeHua (2020) it is worth agreeing that the Chinese legislation has some inaccuracies and requires amendments to the rules governing both the grounds for the cancellation of contracts and the procedures for such cancellation. However, the author has examined the issue in more detail and noted that in addition to amending the code, it is also important to pay attention to the efficiency and accessibility of the judicial and arbitration system to ensure fairness and effective resolution of disputes. Analysing and supporting this conclusion, it should be emphasised that unclear wording of laws can lead to legal uncertainty in resolving disputes both in everyday life and in court.

The study by J. Herbots (2021) takes a detailed look at Civil Code of the People's Republic of China and its impact on the law of contracts. In contrast to the study conducted, the author highlights the positive changes in China's contract law since the adoption of the new code. He focuses on the fact that the wording of the norms in the code provides the parties with wide opportunities to consider a variety of contractual relations, providing flexibility in their regulation in accordance with the law. However, one cannot fully agree with the author because, despite the positive aspects of the flexibility of the new Civil Code of the People's Republic of China that he highlights, he overlooks the potential negative consequences of this flexibility. The author fails to consider that uncertainty in the wording of the law may lead to legal disputes and conflicts, which will create a risk to predictability and fairness in law enforcement. Nor does the author analyse specific measures to mitigate these risks or to balance legal flexibility with predictability. Consequently, the study leaves some aspects of the problem without proper attention and analysis, which makes its conclusions partially incomplete and insufficiently substantiated.

T. Yao (2023) analyses the innovations introduced in the Civil Code of the People's Republic of China and assesses their contemporary value. Unlike previous studies, this paper presents more reasoned conclusions, highlighting the changes in the code and their impact on modern society. Similarly to the conducted research, the author highlights the problems related to the ambiguity of the wording of the code norms. Analysing the work of T. Yao allows agreeing with the conclusion that despite the improvements and adjustments in the new code, some norms still do not ensure proper fairness and effective functioning of civil-law relations in the context of the Civil Code of the People's Republic of China. However, it is worth noting that the author's study does not provide concrete suggestions for improving the unclear language, nor does it indicate possible methods of implementation. This would enhance the practical relevance of the work and provide more concrete recommendations for legislators and legal practitioners.

Thus, the norms granting parties the right of termination require clarity, specificity, and predictability. Adjusting the rules to clarify terms, establish clear criteria and define specific procedures promotes fairness, reduces the risks of disputes, and ensures more effective regulation of contractual relations.

Procedure for terminating contracts. An important component is to follow the statutory procedures for the termination of a contract. This process includes mandatory steps such as prior notification to the other party of the intention to terminate the contract, adherence to specified terms and conditions, and clear regulation of the consequences of termination. This method aims to ensure fairness and justice in the termination process and effectively protects the interests of both parties. Well-established termination procedures serve as a guarantee that the parties' actions comply with the law, which helps to prevent conflicts and ensures a balance of interests in the termination of the contract (Rowan, 2022). This structured approach creates transparency in the termination process and helps to ensure that any disputes that may arise are resolved fairly.

The first and one of the most important elements of the termination procedure is the observance of deadlines. According to Book III, Chapter VII, Article 564 of the Civil Code of the People's Republic of China (2020), if the time limit for exercising the right to terminate a contract is fixed by law or agreed by the parties, and the parties have not exercised this right after the expiry of the time limit, this right lapses. Where no time limit is specified, such a right of termination is forfeited if the party with the right has not exercised it within one year from the time when it became aware or should have become aware of the reasons for termination, or within a reasonable time after the other party has made a claim. This rule helps to ensure the temporal validity of the decision on termination, as well as to prevent abuse of this right. However, it should be noted that the definition of "reasonable period of time" provides subjective interpretative possibilities, which may lead to disagreements and disputes in court practice. The concept of "reasonableness" (Chapter VII, Article 564) leaves room for individual interpretations based on the subjective views

and interests of the parties. This uncertainty may become a source of discrepancies in determining specific time limits for the cancellation of a contract. In practice, such situations may give rise to disputes as to how quickly or how long a party must respond to a breach to consider its actions reasonable. Additional clarity and specificity in the law, by providing clear criteria for defining a "reasonable period", would help prevent potential disputes and establish more unambiguous standards in regulating the time aspects of contractual termination procedures (Berdar, 2023). This in turn would contribute to the fairness and efficiency of the termination process, providing a more predictable and stable basis for the resolution of disputes in this area.

Notice to the other party is also a mandatory element. If either party expresses a desire to terminate the contract in accordance with the law, the other party must be duly notified (Kasianenko *et al.*, 2020). The cancellation of the contract takes place at the time of receipt of the notice by the other party. If the notice specifies that the contract is to be terminated automatically upon the debtor's failure to perform the obligation within a certain period, the contract is cancelled upon the expiration of the specified period (Chapter VII, Article 565). This rule, which allows automatic termination of the contract upon default within a certain period, may face the problem of not taking into account circumstances beyond the control of the parties. Situations such as force majeure or unforeseen problems may be a reason for failure to fulfil an obligation, and yet automatic termination without consideration of the context may lead to unfair consequences. For example, if a supplier was unable to fulfil an obligation due to a natural disaster such as a flood, automatic termination does not consider objective circumstances. In addition, ambiguity in the concept of "adequate notice", in Chapter VII, Article 564 of the Civil Code of the People's Republic of China (2020), can create problems as parties may interpret the term differently, leading to potential disagreements and disputes. The lack of clear criteria and standards for determining what is considered "proper notice" makes the termination process less predictable and more susceptible to subjective perceptions. It is important to consider that the standards for "proper notice" may vary depending on the nature of the contract and the circumstances of the case. A detailed definition of criteria, such as the timing, form of notice and means of delivery, would help to eliminate uncertainty, and prevent potential conflicts. Such an approach would contribute to a fairer and more efficient contract termination process by providing clarity and unambiguity in understanding the notice requirements for termination.

The Civil Code of the People's Republic of China (2020) also contains provisions that regulate the consequences of cancellation. If a contract is terminated due to default, the party entitled to terminate the contract is entitled to claim damages from the breaching party, unless the parties have agreed otherwise (Chapter VII, Article 566). According to Book III, Chapter VIII, Article 584, 591of the Civil Code of the People's Republic of China, in the event of default or non-conformity of performance with the agreement, which results in loss to the other party, the compensation shall correspond to the loss, including the expected benefit that the party could have obtained in the performance of the contract. However, the compensation shall not exceed the losses that the breaching party could have foreseen or should have foreseen at the time the contract was entered into. Following a breach of duty by the other party, the party suffering the loss is obliged to take reasonable steps to prevent further loss. If the loss is aggravated by the failure to take appropriate measures, no compensation shall be granted for losses that could have been prevented (Adanbekova *et al.*, 2022). Reasonable expenses incurred to prevent an increase in loss must be compensated by the breaching party.

It should be noted that these norms enshrine clear legal standards to protect the interests of the parties. Firstly, the code establishes the principle of proportionality, limiting the compensation for damages so that it does not exceed those damages that could have been foreseen or should have been foreseen by the breaching party at the time of contracting. This favours a fair and balanced apportionment of liability for default. In addition, an important aspect is the duty of the party suffering the loss to take reasonable steps to prevent further loss. This encourages parties to actively participate in minimizing losses and promotes the principle of good faith in the performance of contracts. The norms also emphasize that the costs aimed at preventing an increase in losses should be reimbursed by the breaching party, providing an incentive for the breaching party to respond promptly and effectively to the actions of the injured party (Alter & Li, 2024). Thus, these norms provide balance and fairness in the process of compensation for damages in the cancellation of a contract.

Despite the overall effectiveness, the rules of the Civil Code of the People's Republic of China regarding the compensation of damages for contract cancellation due to non-performance of obligations have some shortcomings. The lack of a clear definition of what are considered "reasonable measures" (Chapter VIII, Article 584) to prevent further losses may lead to disagreements and disputes between the parties. Also, the lack of specific criteria for assessing what costs are "reasonable" may create uncertainty and contribute to potential conflicts of interest. One of the potential shortcomings of these rules is also the lack of a clear standard for defining "expected benefits", which can lead to interpretations and disagreements in determining compensation for losses (Taylor & Taylor, 2023). In addition, the wording that compensation should not exceed the losses that could have been foreseen by the party may cause difficulties in practical application. The determination of the degree of foreseeability of losses may be subjective and involve a wide range of interpretations, which in turn may make it difficult to determine fair and adequate compensation. It is important to clarify and further elaborate these aspects in the law to ensure that parties have a clearer and more unambiguous understanding of their obligations and rights in these situations.

The same conclusions are drawn by S. Wei (2022) covering in his paper the doctrine of mistake and the gross misunderstanding rule in Chinese contract law. The author identifies the problems associated with misunderstanding of the parties when concluding contracts and draws attention to the shortcomings in the regulation of these issues in Chinese law. The analysis of the work of S. Wei emphasises that clarity and predictability in Chinese contract law are necessary to prevent errors and misunderstandings when concluding contracts. Taking into account the general conclusions of the conducted and analysed research, it is worth agreeing with the author's thesis that uncertainty in the law can cause disputes and damage to business, as the parties may have different interpretations of the contract terms. Thus, both

works stimulate not only the development of more effective legislation, but also the improvement of practical implementation of contractual relations in modern China.

The work of J. Jastrzębski (2023) presents an extensive analysis of the concept of breach of contract in civil law, covering similarities and differences in this concept among different civil legal systems. The author not only highlights key aspects of breach of contract, but also attempts to trace the future development of this concept. This study provides a valuable contextual element by placing breach of contract issues in a more general global context. However, in analysing the findings of this study, it should be noted that by relying solely on general principles and standards, the author misses important details related to the cultural, historical, and institutional contexts inherent in different legal systems. Some legal norms and principles are rooted in a long history or derive from unique institutional aspects. Therefore, paying attention to the neglect of these aspects, the author's conclusions can be agreed with only partially, namely in the context of the existence of problems of regulating the consequences of breach of contractual obligations.

Analysing the above, it can be noted that the rules on contract termination in the Civil Code of the People's Republic of China, although it provides a framework for regulating the procedures and grounds for termination, is subject to some shortcomings. The need for more specific standards and criteria, as well as a clear definition of procedures and timelines, would help to eliminate such shortcomings and ensure a more effective and fair application of the termination rules in China's business environment.

The influence of legal systems on the provisions of the Civil Code of the People's Republic of China. When analysing the rules of the Civil Code of the People's Republic of China on the termination of contracts, it is important to identify the essential differences, peculiarities, and influence of the continental (Romano-Germanic) and common (Anglo-Saxon) legal systems on these rules. Considering the unique features of each system, it was possible to identify which basic principles and approaches prevail in China, as well as which elements are adapted from other legal traditions. In this context, the Romano-Germanic system, represented for example by German law, is characterized by stricter formalism and attention to detail, while the Anglo-Saxon system, as in the case of English law, tends to be flexible and influenced by extensive jurisprudence. This comparison highlights key differences and peculiarities in the approaches to the regulation of contractual termination in different legal systems (Table 1).

Table 1. Comparative analysis of the provisions of the Civil Code of the People's Republic of China with legal systems

Aspect	Civil Code of the People's Republic of China	Romano-Germanic system	Anglo-Saxon system
Principles of termination of contracts	The principles of fairness and reasonableness are considered, along with clear cases of termination.	Strict formalism, predominance of explicit contract terms.	Flexibility and focus on the circumstances of the case.
Criteria for termination of contracts	Include clear cases and general principles, leaving room for consideration of circumstances.	Depends on the explicit terms of the contract and its form.	Focused on circumstances, for example, "frustration of contract".
Classification of grounds for termination	Flexible, considering circumstances and general principles.	Strict, clear classification of grounds for termination.	Flexible, situation-oriented classification.
Interpretation of key terms	Flexibility in interpretation, considering Chinese legal culture.	Precise form and clarity of key terms.	Flexibility and consideration of circumstances in interpretation.

Source: created by the author based on the analysis of the Contracts (Applicable Law) Act (1990), German Civil Code (2002), Civil Code of the People's Republic of China (2020)

A detailed comparison of the rules of the Civil Code of the People's Republic of China on contract cancellation with the Romano-Germanic (continental) legal system reveals notable differences in approach. In the Romano-Germanic system, for example, the principle of strict formalism and contractual freedom prevails, which implies a strong emphasis on the precise form and clarity of contractual terms. In the context of contractual termination, this is reflected in strict procedures and a clear categorization of grounds for terminating an agreement (Mingyang, 2023). For example, according to Chapter IV Article 314 of the German Civil Code (2002), provides for certain cases, such as a material breach of obligations or a change in circumstances affecting the performance of the contract. These principles, characteristic of the Romano-Germanic system, emphasise the need for precision and clarity in contractual relations, which may affect the termination of contracts and the legal consequences in case of breaches.

Unlike the Romano-Germanic system, which emphasises formalism and strict classification of grounds for termination, Chinese law is more flexible in regulating the process (Kanaryk, 2023). The Civil Code of the People's Republic of China pays attention to the principle of fairness, reasonableness, and the protection of the interests of the parties in contractual relations. This is reflected in the fact that, in addition to explicitly providing for cases of termination, the law leaves room for circumstances that may be considered by the court within the framework of general principles. For example, according to the Book III, Chapter VII, Article 563, the concept of "material breach" in the Civil Code of the People's Republic of China can be interpreted more flexibly, which takes into account the specificity of Chinese legal culture, where the principles of fairness and reasonableness are more important. These differences emphasize the specificity and flexibility of the Chinese system in the context of contract termination.

In the Anglo-Saxon legal system, particularly within English law, the doctrine of "frustration of contract" is an important tool for dealing with situations where circumstances make it impossible to fulfil a contract or significantly alter its nature (Tymoshenko *et al.*, 2023). This doctrine recognises that there is a limit to the parties' exposure to circumstances and in the event of extremely unforeseeable and altering material circumstances, the contract may be frustrated.

The principle of frustration expresses the concept of honesty and fairness, allowing the courts to adapt to the particular circumstances (Al Majed & Al Majed, 2023). An example is the case of "Davis Contractors Ltd v. Fareham Urban District Council". In this case, hostilities caused a building ban which significantly changed the nature of the contract between the company and the city council. The court found that the new circumstances made performance of the contract effectively impossible and altered its material terms. As a result, the court decided to frustrate the contract despite the absence of express termination provisions in the contract itself. This principle means that the court has the power to terminate a contract if extremely unforeseeable and altering material circumstances arise that render the contract useless or materially change its nature. This approach emphasizes the flexibility and adaptability of the Anglo-Saxon system of law in dealing with contractual termination disputes, and the Davis Contractors decision has become a precedent establishing the principle of contract frustration in English jurisprudence (Davis Contractors Ltd…, 2013).

In contrast to the Romano-Germanic system, where the termination of contracts often depends on the express terms of the contract, the Anglo-Saxon legal system provides courts with a more flexible and contextualized toolkit when deciding questions of termination. The Anglo-Saxon system emphasizes fairness in particular circumstances, allowing a wide range of factors to be taken into account when making decisions. The principle of 'frustration of contract' in English law is a prime example of this flexible approach. Rather than strictly following the law, courts in Anglo-Saxon jurisdictions consider the circumstances of a particular case on the basis of the principle of fairness (Filatova, 2020). This allows them to consider unforeseen events or changes that may significantly affect the fulfilment of the contract.

It is also worth noting the common features of the rules of the Civil Code of the People's Republic of China on contract termination with Romano-Germanic and Anglo-Saxon law, which are expressed in the desire to ensure fairness and protection of the interests of the parties. The Chinese legislative approach to contract termination, like the Romano-Germanic system, defines certain criteria for the termination of contracts. However, unlike the more strictly formalized continental approach, characterized by rigid procedures and clear grounds, the Chinese system leaves more room for considering circumstances in accordance with general legal principles (Mammadli, 2022). This allows for more flexibility in the treatment of termination cases, considering the context and specific circumstances. This approach promotes a more personalized treatment of situations, providing flexibility in resolving termination disputes in the context of general legal principles and fairness.

The similarities between Chinese law and the Anglo-Saxon system can be seen in their shared emphasis on flexibility in dealing with the specifics of each case. Both systems strive for a balance between clarity of contractual terms and consideration of unexpected circumstances, thus providing a flexible and fair mechanism for the cancellation of contracts depending on specific situations. In the Anglo-Saxon system, for example, the doctrine of "frustration of contract" gives courts wide latitude to terminate a contract in the event of impossibility of performance or a material change in circumstances. Similarly, the Civil Code of the People's Republic of China focuses on the principles of fairness, reasonableness, and the protection of the parties' interests, allowing courts to take into account the circumstances of the case (Asatryan, 2023). This approach in both systems promotes a more personalized and fair treatment of contract termination disputes, which expresses their common interest in balanced justice.

Other authors have also considered the influence of legal systems on Chinese civil law norms. For example, the work of Z. Wu and L. Chen (2022) presents a review of the theory of property transfer in the context of English and Chinese law. The authors focus on key aspects of the theory of transfer of ownership, such as the formalities of transactions, the requirements for the transfer of ownership and the impact of changes in the law on this process. As a result, the authors identify similarities and differences between English and Chinese law in relation to contractual obligations, emphasizing the influence of the cultural, historical, and legal characteristics of each system. Analysing the authors' main conclusions, it is worth agreeing that historical, cultural, and legal peculiarities have a significant impact on the process of property transfer in both English and Chinese law. These factors determine the basic principles and requirements for property transfer transactions, including transaction formalities and requirements for the transfer of ownership. Thus, it can be concluded that analysing the similarities and differences between English and Chinese contract law provides a better understanding of the relationship between legal norms and the cultural/historical factors that shape those norms.

N. Kornet (2011) conducts in his study a comparative analysis of contracting aspects in China, focusing on freedom of contract, contract formation, and contract termination. The author draws attention to the unique features of Chinese law, highlighting issues such as the level of freedom of contract, the process of contract formation, and the resolution of conflicts of form. The work also makes a comparison with similar aspects in other legal systems, identifying similarities and differences in approaches to the regulation of contractual relations. However, it should be noted that the author's results do not take into account the influence of cultural and societal factors on contractual relations in China. As the results of this study have shown, the cultural context plays a significant role in the formation of legal norms and principles in China, and its consideration is necessary for a full understanding of the legal environment. Thus, the author's neglect of this aspect may lead to misinterpretation of the results and misunderstanding of the real impact of legal norms on the practice of contract formation and cancellation in China.

Thus, by comparing the regulations with similar regulations in other countries, significant differences in the approach to contract termination procedures were found, reflecting the peculiarities of the legal systems. However, common trends were also identified, such as an increasing emphasis on protecting the interests of the parties and a desire to eliminate ambiguity in the interpretation of legal terms. These results provide an important basis for understanding the unique features of the Chinese system in comparison to global practice, and highlight possible areas of legislative improvement to improve the clarity and effectiveness of contract termination procedures.

In the light of the study, detailed amendments to the norms of the Civil Code of the People's Republic of China are proposed to improve the mechanisms of contract termination. One of the key aspects is the expansion of the list of grounds for termination, accompanied by the introduction

of specific criteria for their application. For example, terms such as "failure to achieve the objective" and "reasonable time" can be clarified by introducing clear and uniform standards, which will ensure consistent and predictable application of these grounds.

In addition, it is proposed to introduce specific time limits for the various stages of the termination procedure, ranging from notification to completion of the process. This will provide clearer timeframes and streamline the course of contractual termination, providing the parties with a clear picture of the course of events and timeframes. Such changes promote not only clarity but also predictability during termination proceedings, which is important to ensure fairness and protect the interests of all parties to a contract.

In the context of further improvements, it is strongly recommended that specific standards be developed for "adequate notice" and "reasonable measures" in contract termination proceedings. An example would be the introduction of clear requirements for the form of notices, defining what aspects and information the parties' notices should include. This would not only harmonize notification procedures, but also ensure clarity and accessibility for all participants in the process.

It is suggested that standards for "reasonable measures" be developed, namely specific parameters and criteria defining what may be considered reasonable measures in particular circumstances. These parameters may include resource constraints, time limits and the adequacy of the action taken. Supported by judicial and practical examples, these standards will become more specific and adapted to a variety of situations, thereby increasing their effectiveness and real-world applicability.

Conclusions

The research has identified the main circumstances under which the parties have the right to terminate a contract, including cases of non-performance of obligations, breach of material terms and changes in circumstances. However, some norms have identified shortcomings, such as ambiguity in the wording, for example, of the terms "impossibility of achieving the goal" and "reasonable time". This uncertainty may lead to ambiguities and disputes in the interpretation of these concepts. Such misunderstandings can hinder the application of norms and leave room for subjective interpretations, which emphasizes the need for a clearer and more precise formulation of norms in order to prevent possible ambiguities and strengthen the resilience of the legal system to potential disputes.

The paper highlights the importance of clear procedures and the establishment of clear timeframes for the termination of contracts, including strict notice requirements and automatic termination in case of breach of obligations. However, the potential difficulties arising from objective circumstances and different interpretations of the concept of "adequate notice" are noted. This can lead to variation and disagreement in the interpretation of the notice requirements, creating risks for the parties to the contract. Such complexities underscore the need to carefully define and specify procedures and notification requirements to avoid potential misunderstandings and to ensure that contract termination mechanisms function more effectively in practice.

The analysis of the consequences of contract termination has focused on damages and the obligations of the parties. The need for clearer and more specific standards to define "reasonable measures" to prevent loss in the context of termination has been identified. For example, terms such as "reasonable measures" in the context of compensation can be interpreted subjectively, leading to potential disputes between the parties. Establishing clear and binding standards will help to eliminate uncertainties and ensure a more effective and fair mechanism for compensation of losses in contractual termination. This is an important aspect to ensure stability and predictability in contractual relationships and to protect the interests of the parties in the event of a breakdown of the agreement.

The comparative analysis with the regulations of other countries was an important step in the study to determine the extent to which the Romano-Germanic and Anglo-Saxon legal systems have influenced Chinese law in the context of contract termination. A detailed comparison of the statutory provisions governing contract termination procedures with similar provisions in other countries' legal systems revealed similarities, differences, and common trends. As a result of this analysis, it became clear to what extent elements of the Romano-Germanic and Anglo-Saxon systems were reflected in Chinese law, and which features were adapted or modified by China's own legal traditions. This approach has not only deepened the understanding of the peculiarities of Chinese contract cancellation law, but also revealed the degree of flexibility and openness to external legal influences in the context of the formation of the Chinese legal system.

Continued research in this direction can greatly enhance the understanding of the mechanisms for regulating contract termination and make constructive contributions to the improvement of the law. It can also help to identify new trends and challenges faced by parties in contract termination and suggest innovative approaches to address them.

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Conflict of interest

None.

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Вплив та наслідки невиконання договору в Цивільному кодексі Китаю

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Анотація. В умовах стрімкого розвитку світової економіки Китай стає ключовим гравцем у глобальних торговельних та інвестиційних процесах. Розвиток та оновлення правових норм, що регулюють договірні відносини, відіграє важливу роль у забезпеченні прозорості, стабільності та справедливості в бізнес-середовищі. Таким чином, основною метою цього дослідження було виявлення існуючих проблем у законодавстві, що регулює процес розірвання договорів, та надання рекомендацій щодо вдосконалення відповідних аспектів. В ході дослідження було застосовано правовий метод та метод порівняння. У результаті було визначено основні процедури та підстави, передбачені Цивільним кодексом Китаю для припинення договірних зобов'язань. З'ясовано, що сторони можуть розірвати договір у разі істотного порушення умов договору, що включає в себе невиконання зобов'язань, перевищення строків або зміну обставин, які істотно впливають на виконання договору. Дослідження також виявило специфічні виклики, з якими стикаються суб'єкти при розірванні контрактів. Наприклад, непередбачуваність правових наслідків виключення сторони з договірних відносин, що може створювати серйозні економічні ризики. Вплив таких факторів, як економічні кризи, на припинення договірних зобов'язань також підкреслюється у висновках дослідження. Важливим висновком стала необхідність удосконалення законодавства у сфері розірвання договорів. Результати дослідження можуть бути використані для вдосконалення законодавства про розірвання договорів у Китаї, що може стати основою для розробки більш чітких та адаптивних правил, тим самим зменшивши можливі юридичні ризики для бізнес-спільноти

Ключові слова: зміни в законодавстві; юридична практика; ризики та виклики; рекомендації; підприємництво

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Constitutional and legal responsibility of state bodies and senior officials

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Abstract. Kyrgyzstan, with increased political activity and dynamic changes in the governance system, faces problems with the constitutional and legal responsibility of state bodies and their officials, which require the development of effective forms of governance for sustainable strategic development to address them. Therefore, the study aimed to identify problematic aspects of constitutional and legal responsibility in Kyrgyzstan. Statistical analysis, formal logical and comparative methods, and legal and comparative methods were used in the study. The main problems in the system of constitutional and legal liability in Kyrgyzstan were identified, which include insufficient clarity and application of regulations, incomplete implementation of mechanisms for supervision and control over the activities of state bodies and their officials, and limited access of citizens to judicial protection in cases of violation of their constitutional rights. In addition, the study identified problems in the court practice of considering cases of constitutional and legal liability, including delays in the process of consideration and insufficient effectiveness of the measures taken. Based on these findings, specific recommendations were developed containing proposals for improving the legislation, namely, defining the mechanisms of constitutional and legal liability and eliminating contradictions in regulations, strengthening verification mechanisms and mandatory introduction of a reporting system, expanding the possibility of going to court,

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including reducing barriers to access to legal aid. Thus, the practical significance of this study is that its findings provide a basis for the development of specific measures and reforms aimed at improving the system of constitutional and legal liability in Kyrgyzstan and ensuring the protection of the constitutional rights of citizens

Keywords: legislation; control mechanisms; management functions; judicial protection; political responsibilities; transparency and openness

Introduction

The constitutional and legal responsibility of state bodies and top officials remains relevant due to dynamic political and legal changes, which impose new requirements on the functioning of state institutions. In the context of the constant endeavour to strengthen democratic values and the rule of law, the creation of an effective system of responsibility becomes a necessity to ensure the observance of stability and legal order, on the one hand, and the other hand, the protection of the rights and legitimate interests of citizens. Moreover, in a society where transparency, openness and accountability play a key role in building trust in state institutions, the constitutional and legal accountability system needs to be carefully analysed and improved. It serves as a necessary mechanism to ensure control over the actions of state bodies and their representatives, as well as to guarantee the possibility of protecting the rights of citizens in case of violation. In this regard, in-depth analysis and development of appropriate measures and recommendations to improve the system of constitutional and legal liability become an urgent task to ensure legal order and the development of a democratic society.

In the context of constant changes in the political and legal environment, the problem in this area is the inefficiency of the existing system of constitutional and legal responsibility, which requires increased attention. This is necessary to identify the main shortcomings and problems in its functioning, which may hinder the rule of law, the protection of citizens' rights and the effective functioning of state bodies.

Other authors addressed this issue in their studies as well. For instance, D. Asanbekova *et al.* (2021) investigated the issue of constitutional and legal responsibility of local government employees in sovereign Kyrgyzstan. The authors analysed the main aspects of liability, including legal norms, mechanisms and procedures for applying liability to municipal employees. They also discussed the role of the constitution and legislation in determining the responsibility of local-level employees and its significance for the observance of legal order and legality in the regions.

A. Akmataliev and D. Nurjan (2021) highlighted different ways to increase the accountability of local governments. The authors analysed possible measures to increase control over the activities of local authorities, including legislative changes, the introduction of effective oversight mechanisms and ensuring transparency in decision-making at the local level. They also addressed the importance of increasing local accountability to ensure good governance and meet the needs of the population.

In their paper A. Bazarbayev and A. Atai (2023) addressed the impact of decisions made by senior officials on the observance and protection of human rights in the context of the criminal legal sphere in Kyrgyzstan. They noted the importance of ensuring constitutional and legal accountability to protect the fundamental rights and freedoms of citizens.

A.D. Urmatova *et al.* (2022) explore the use of cross-sectoral legal terminology in the process of improving legislation and legislative innovations on legal liability in the context of Kyrgyzstan's sovereignty. The authors analysed the issues of interrelation between different sectors of law and the use of terminology in new legislative initiatives. The study covers both theoretical and practical aspects of the use of cross-sector terminology in legal documents.

In research of R. Anisov *et al.* (2021) addressed a range of democratic institutions in the context of their role and functioning in Kyrgyzstan. The authors analysed how these institutions affect the rule of law and the protection of citizens' rights. Key institutions such as parliament, the judiciary, the presidency and other organs of state administration are examined. Particular emphasis is devoted to how these institutions respect the principles of constitutional and legal accountability and their impact on ensuring justice, equality before the law and the protection of the fundamental rights of citizens.

S. Gabbay (2024) addressed the current state of Kyrgyzstan in the context of the struggle for democracy and human rights. The author analysed the political, social and legal aspects of this struggle, and considers the challenges faced by the country on its way to establishing a stable democratic system and protecting the rights of citizens. The study also addressed the institution of legal accountability of state bodies in the context of the protection of human rights. The author concluded that the effective functioning of this institution contributes to the protection of fundamental rights and freedoms of citizens in Kyrgyzstan.

The analysis of the conducted studies reveals certain problematic issues not covered by the authors. The studies did not analyse the effectiveness of legislative measures to regulate responsibility in the context of the constitutional-legal system of Kyrgyzstan, as well as issues related to normative regulation and the mechanism of implementation of control and supervision over the activities of senior officials. The analysis also indicates insufficient attention to the application of the institute of constitutional-legal responsibility to various subjects, such as the President, deputies, members of the Cabinet of Ministers and other senior officials.

Therefore, the study aimed to investigate the shortcomings and problems in the field of constitutional and legal liability in Kyrgyzstan. The main objectives of the study were to analyse the existing norms and mechanisms of constitutional and legal responsibility in Kyrgyzstan; identify the main shortcomings in bringing officials to responsibility in practice; study international experience in ensuring constitutional and legal responsibility; based on the identified shortcomings and problems, develop recommendations for their elimination and improvement of the system of governance and ensuring the rights of citizens.

Materials and methods

The formal logical method included a detailed study and analysis of key legal documents that regulate constitutional and legal liability in Kyrgyzstan. The norms of not only the Constitution of the Kyrgyz Republic (2021) were analysed, but also the main normative acts directly related to

the issues of responsibility of state bodies and senior officials for violations of constitutional norms on the protection of the rights and legitimate interests of citizens, namely the norms of the Law of the Kyrgyz Republic No. 152 "On Guarantees of the Activity of the President of the Kyrgyz Republic and the Status of the Ex-President of the Kyrgyz Republic" (2003), Law of the Kyrgyz Republic No. 267 "On the Status of a Deputy of the Jogorku Kenesh of the Kyrgyz Republic" (2008), Constitutional Law of the Kyrgyz Republic No. 122 "On the Cabinet of Ministers of the Kyrgyz Republic" (2021). The analysis addressed not only the main norms defining the procedure and conditions of liability but also analysed where and how these norms are applied. This covered the examination of the competence of various bodies and instances in the process of bringing constitutional and legal liability, as well as the establishment of procedures and mechanisms used in the consideration of cases of violations. Another important aspect was an identification of the obligations and rights of state bodies and officials, as well as determining the measures of liability provided for violations. This method analysed in detail the degree of clarity, precision and applicability of the legislation in constitutional and legal liability, as well as identified some contradictions and gaps in the existing normative framework.

The statistical analysis method was used to systematise, analyse and evaluate the data on the prosecution of senior officials in the Kyrgyz Republic. First, statistical information was collected on cases when senior officials were subjected to constitutional and legal liability for the period from 2021 to 2024 (VII Convocation of Deputies of Jogorku Kenesh). This data was then analysed to identify dynamics and trends in accountability, as well as to identify possible regularities or peculiarities in this process. This was followed by an assessment of the effectiveness of the current system of constitutional and legal liability based on the results of the statistical analysis. This included identifying the condition of frequency and grounds for bringing to account, as well as determining the causes and consequences of such actions.

The comparative method was used to analyse the systems of constitutional and legal responsibility in various countries and their comparison with the system in force in Kyrgyzstan. Namely, normative provisions such as the Constitution of Italy (1947) and the Basic Law for the Federal Republic of Germany (1949) were analysed. This included analysing such aspects as the procedure for prosecution, mechanisms of control over the implementation of laws, sanctions for violations, and accessibility of judicial protection for citizens. This method highlighted the strengths and weaknesses of the existing system of constitutional and legal liability in Kyrgyzstan, as well as recommendations for improving the system of governance and protection based on the practices of other countries.

Thus, this set of methods was used to conduct a comprehensive and in-depth study of the system of constitutional and legal responsibility in Kyrgyzstan, identify its existing problems and shortcomings, and develop the main directions of strategy to improve the management of the system, which is designed to ensure the rights and legitimate interests of citizens.

Results

In the modern world, where transparency, openness and responsibility are becoming more and more important factors, improvement of the system of constitutional and legal responsibility is a necessity. This is related to the strengthening of democratic institutions, increasing requirements for a state based on the rule of law and ensuring the observance of legality in the activities of state structures. To improve it, first, it is necessary to identify the shortcomings of the existing system of constitutional and legal responsibility of state bodies and top officials. The formal-logical method revealed the main normative provisions regulating the procedure of bringing to responsibility and identified the main categories of violations and types of responsibility provided for by the legislation.

Firstly, it is worth noting the norms of the Constitution of the Kyrgyz Republic (2021). Article 4 of the Constitution reflects the principles of constitutional, legal and other responsibilities of state bodies, local self-government bodies and their officials to the people. This principle is fundamental to the observance of the rule of law and the protection of citizens' rights, ensuring transparency and accountability in the activities of State bodies. Concerning the President of the Kyrgyz Republic, Article 73 of the Constitution of the Kyrgyz Republic (2021) contains the procedure for bringing the President to criminal responsibility and removal from office. An analysis of this provision indicates that the President can be held criminally liable only after removal from office, and the removal itself can occur on several grounds, such as violation of the Constitution and laws; illegal interference in the powers of the Jogorku Kenesh, i.e. the Parliament, and the judiciary. The procedure for removal includes a decision of the Jogorku Kenesh to press charges, confirmed by the conclusions of the General Prosecutor's Office and the Constitutional Court, and requires a majority of at least two-thirds of the Jogorku Kenesh deputies. This norm emphasises the importance of respect for the rule of law and the principles of constitutional order and establishes procedures and requirements for holding the President accountable and removing from office in case of violations of laws and the Constitution (Ponthoreau, 2017). Of such content is Article 3 Law of the Kyrgyz Republic No. 152 (2003).

Despite certain control mechanisms and procedures established to hold the President accountable, these norms also have their shortcomings. First of all, there are problems with the interpretation of concepts, for example, what exactly is considered unlawful interference in the powers of the Jogorku Kenesh and the judiciary. This leaves room for various interpretations and manipulations. Lack of clarity in the formulation of the criteria for removal may lead to politicisation of the process and external interference, which threatens the independence and objectivity of the decisions made. In addition, it is worth noting that the requirement of removal from office to hold the President criminally liable weakens the control and punishment of criminal acts, as criminal liability can only be applied after the President is no longer in office. This may create certain gaps in the system of accountability and raise doubts about its effectiveness and fairness. In addition to these shortcomings, the timing of the process of removing the President from office in case of criminal liability is an important aspect, as the procedure involves several stages, such as bringing charges, obtaining opinions from the General Prosecutor's Office and the Constitutional Court, as well as the adoption of a decision by the Jogorku Kenesh, which will eventually lead to an indefinite delay in the process. A lengthy process of removing the President from office may lead to uncertainty in the administration of the state and disruption of the functioning of state institutions.

It is also necessary to analyse the normative regulation of bringing deputies of the Kyrgyz Republic to responsibility. Article 78 of the Constitution of the Kyrgyz Republic (2021) contains important norms on the constitutional and legal responsibility of deputies of the Jogorku Kenesh. According to this provision, deputies cannot be prosecuted for their statements or voting results in the Jogorku Kenesh related to their parliamentary activities. This guarantee ensures freedom of expression and the independence of deputies in the fulfilment of their duties. However, the Article also establishes an exception, according to which a deputy may be held criminally liable without the consent of most deputies of the Jogorku Kenesh if one is caught in the act of committing an offence. This means that a deputy does not have immunity if criminal act was recorded at the scene. In addition, Article 3 of Law of the Kyrgyz Republic No. 267 (2008) regulates the early termination of the powers of a deputy of the Jogorku Kenesh in case of entry into force of a court conviction against him/her. According to this provision, the powers of a Jogorku Kenesh deputy may be terminated early by a decision of the Central Election Commission of the Kyrgyz Republic, adopted within thirty calendar days from the date on which the grounds for termination arose. This ensures a timely and effective response to violations on the part of the deputy, expressed in a court conviction.

While these norms recognise important rights and guarantees for deputies of the Jogorku Kenesh, they also have some shortcomings. One such shortcoming is the potential for abuse of the exception, which allows a deputy to be prosecuted without the consent of the majority of Jogorku Kenesh deputies in the event of an offence. This could lead to political manipulation and the use of criminal prosecution as a tool to discredit opposition deputies or those who express unpopular views. Another disadvantage of this prosecution procedure is that it does not involve other bodies such as the Constitutional Court or the Supreme Court. This means that the process of deciding on the liability of a deputy can be carried out solely by the Jogorku Kenesh, which does not always guarantee the objectivity and fairness of the decision. As a result of this approach, situations may arise where the decision on the responsibility of a deputy is based on political motives or subjective assessments, without due consideration of legal norms and principles.

Regarding the Cabinet of Ministers of the Kyrgyz Republic, Article 92 of the Constitution provides that the President may, on initiative, dismiss an incumbent or a member of the Cabinet of Ministers. However, this norm does not specify the procedures and grounds for liability. This means that there is no clear regulation of what actions or circumstances can serve as grounds for resignation and what procedures should be followed when making such a decision (Ponthoreau, 2017). Analysing Constitutional Law of the Kyrgyz Republic No. 122 (2021), it is worth noting that it contains a norm according to which the President has the right to impose disciplinary sanctions on the Chairman of the Cabinet of Ministers, members of the Cabinet of Ministers and heads of other executive bodies, as well as to apply measures of encouragement to them. However, this norm requires clear and balanced regulation of the procedures for applying disciplinary measures and rewards. It is necessary to establish clear criteria and grounds for imposing disciplinary penalties and applying incentives. Thus, despite the existing norms that provide guarantees of the rights and freedoms of deputies, as well as determine the procedures for bringing to responsibility for the President and members of the Cabinet of Ministers, there are certain shortcomings of these norms. Therefore, the improvement of normative regulation of constitutional and legal liability is an important step to ensure the effective functioning of state bodies, to protect the rights of citizens and to maintain stability in the country.

The results of the statistical analysis revealed problems in the effectiveness of the system of bringing top officials to constitutional and legal responsibility in the Kyrgyz Republic. In the context of using this method, the data on bringing to responsibility deputies for the period from 2021 to 2024, namely the VII convocation of deputies of Jogorku Kenesh (Fig. 1), was analysed.

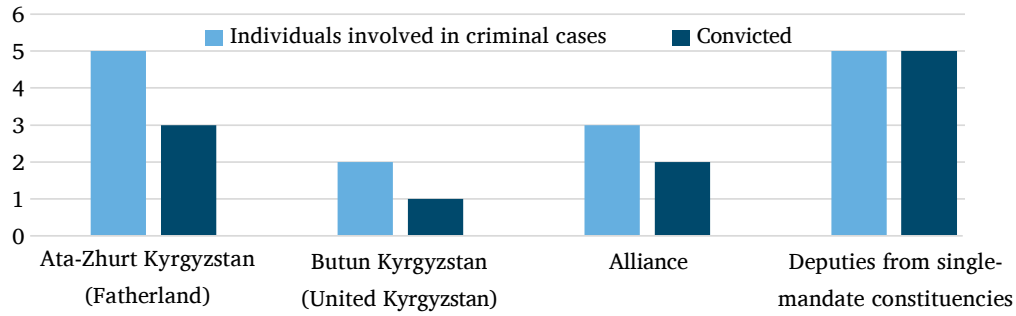

Figure 1. Bringing deputies of the seventh convocation of the Jogorku Kenesh to responsibility
Source: compiled by the authors based on News.com.kg (2024)

Since the beginning of the VII convocation of the Jogorku Kenesh, a total of 15 deputies of the Parliament of the country have been prosecuted, with the most frequent defendants of criminal cases being deputies from the faction "Ata-Zhurt Kyrgyzstan" (5 people), as well as from single-mandate constituencies (5 people). However, it is worth noting that not all the deputies investigated were convicted. In particular, the deputies of "Ata-Zhurt Kyrgyzstan", "Alliance" and "Butun Kyrgyzstan", as most deputies of Jogorku Kenesh did not give their consent to prosecute these officials. This demonstrates the need to change the system of holding senior officials accountable to provide a more effective mechanism for preventing corruption and other criminal acts in the Kyrgyz authorities. Such data emphasise the importance of tightening control and oversight over the activities of deputies from various political

factions, thus ensuring honesty, transparency and legality in the functioning of Parliament and other state bodies.

As a result of a comparative analysis of constitutional and legal liability systems in various countries and their comparison with the system in force in Kyrgyzstan, it was noted that the procedure for bringing responsibility in different countries has significant differences. For example, the rule stipulated in Article 68 (2) of the Constitution of Italy (1947) that no member of parliament may be criminally prosecuted without the permission of the chamber to which belonging and that the member may not be subjected to a personal or house search, arrested or otherwise deprived of liberty, is important for ensuring the independence of parliamentarians and protecting their rights. This norm is aimed at preventing the possible abuse of deputies by law enforcement agencies, which contributes to the strengthening of democratic principles and the balance of power. However, despite this, such guarantees raise debates about the privileged position of deputies before the law and need to be balanced between protecting the rights of parliamentarians and ensuring the rule of law and justice in society. Similarly, the rule described in Article 46 (2) and (3) of the Basic Law for the Federal Republic of Germany (1949), which sets out important principles and limitations on the prosecution of MPs and the restriction of their freedom, is also relevant. Under this provision, a deputy may only be prosecuted or arrested with the consent of the Bundestag, which is an important mechanism for protecting the independence and authority of parliamentarians. This strikes a balance between the need to prosecute criminal offences and the protection of MPs' rights and freedoms.

The procedures for lifting such immunity from deputies vary from country to country. For example, in Germany, the mechanism for lifting the immunity of deputies is done through the Attorney General, while in Poland it is done at the request of another deputy (Ciepły, 2019). Other countries, such as Denmark and Sweden, have stricter conditions for lifting the immunity of deputies. However, a particularly important aspect is the principle of absolute majority for decisions on lifting immunity, which is applied in many countries. This differs from the practice in Kyrgyzstan, where more flexible mechanisms are in place (Manafova, 2022). Analysing the norms of other countries, it is possible to note that in all democratic countries, legal norms are ensuring the immunity of deputies of the highest legislative and representative bodies of power. At the same time, these countries also have procedures to remove this status from parliamentarians if necessary (Peters, 2021). Thus, more stringent conditions for lifting immunity may ensure greater accountability of deputies to the law and society, but it may also make it more difficult for them to work in the interests of citizens. Thus, analysing the results of the conducted research it is necessary to highlight the main problems in the system of constitutional and legal responsibility of the highest officials of the Kyrgyz Republic, as well as to develop the main recommendations for their elimination.

Insufficient clarity and application of normative acts, as well as incomplete implementation of mechanisms of supervision and control over the activities of state bodies and officials in the system of constitutional and legal responsibility of Kyrgyzstan, are serious problems that significantly affect the effectiveness and fairness of the legal process. There are several gaps in the control mechanisms and procedures for holding the President accountable in Kyrgyzstan. Ambiguity and vagueness of concepts such as "unlawful interference with powers" create room for different interpretations and manipulations, which threatens the objectivity and independence of decisions. The lack of clarity on the criteria for removal from office in cases of criminal liability of the President leads to the risk of politicisation of the process and external interference, which undermines confidence in the justice system. There are also problems in the procedure of bringing deputies of the Jogorku Kenesh to criminal liability. The first problem is related to the possibility of abuse of the exception, which allows a deputy to be responsible without the necessary consent of most deputies. This opens the door for political manipulation and the use of criminal prosecution to achieve political goals. The second problem is the limited involvement of other bodies, such as the Constitutional Court or the Supreme Court, in deciding on the liability of a deputy. This can lead to unfair and biased decisions based on political motives, without due regard for legal norms and principles (Artemenko & Yerosova, 2024).

Recommendations to address these problems include, first and foremost, a comprehensive analysis and revision of normative acts, including the Constitution and laws, to clearly define the concepts, criteria and procedures for holding the President accountable. This includes clarifying the definitions of "unlawful interference with authority", "insufficient fulfilment of duties" and other key terms to eliminate ambiguity and possible interpretative differences. To strengthen control and oversight of the process of holding the President to account, mechanisms of external independent monitoring should be introduced. This could include the establishment of specialised commissions or bodies comprised of independent experts and representatives of public organisations to oversee the procedure and ensure its fairness and transparency. To reduce the timeframe of the procedure for the removal of the President from office in cases of criminal liability, the process should be streamlined, and cases should be expedited. Time limits for each stage of the procedure should be defined, and a mechanism for expediting cases in case of urgent need, for example, in case of a threat to public or national security, should be envisaged.

To address the problems in the procedure of bringing deputies of the Jogorku Kenesh to criminal liability, the introduction of mandatory examination and confirmation of the facts preceding the bringing of deputies to criminal liability is recommended, for example, by establishing an independent commission or body that will verify and evaluate the evidence and grounds for the decision to bring them to liability. In addition, the participation of the Constitutional Court or the Supreme Court in the decision-making process on the liability of deputies should be expanded by giving them the right to conduct a mandatory expert review of the legal validity and fairness of the charges, as well as the right to make a final judgement on the matter. It is also recommended to establish a specialised independent body or commission to monitor and supervise the process of holding deputies accountable, which would ensure compliance with procedural norms, prevent political influence on judicial decisions and ensure the objectivity and fairness of the entire process.

The implementation of these measures will eliminate deficiencies in the system of constitutional and legal liability, increase its effectiveness and fairness, and ensure the stability and reliability of state institutions.

Discussion

Analysing the results of this study, it is worth noting that in the system of constitutional and legal responsibility in Kyrgyzstan, there are problems both at the normative level of regulation and insufficient attention to the mechanisms of control and supervision over the process of bringing to responsibility, which creates an opportunity for political manipulation and subjective decisions. Thus, this system of bringing top officials to responsibility needs to be reformed.

Other authors also studied the problems in the liability system both in their own countries and analysed the world experience. For instance, A. Kržalić and F. Purišević (2023) addressed the forms of legal liability of politicians and officials of executive and administrative power in Bosnia and Herzegovina. They discussed the existing norms of liability and proposed changes in the legislation. The authors concluded that the liability system needs improvements and clearer criteria, especially concerning the liability of high-ranking officials. They proposed to tighten the norms and expand liability to better control the actions of political and administrative figures. It is worth noting that the current system of accountability may not be sufficiently effective and needs to be improved, especially at the legislative level, to ensure stricter compliance with the law and prevent abuse. However, it is also necessary to consider that the tightening of liability norms should be accompanied by a guarantee of respect for the rights of officials and enable them to fulfil their duties effectively without disproportionate pressure or restrictions (Yara, 2024).

J. Xu (2024) addressed the problems of oversight and enforcement of constitutional normativity in a legal regulation-oriented legal system. The author studied issues related to the effectiveness of constitutional normative oversight and enforcement in a legal system. The study highlighted key aspects of oversight and safeguards aimed at supporting constitutional normativity and analysed ways to improve this system. Indeed, ensuring constitutional normativity are crucial aspect of the legal system. It is necessary to guarantee compliance with basic constitutional principles and to ensure their realisation in practice. However, there are several reasons to disagree with some of the methods and mechanisms proposed by the author to improve the oversight and guarantee of constitutional normativity. For instance, the author suggests simplifying the procedures for guaranteeing constitutional normativity by reducing procedural formalities. However, the simplification of procedures may lead to a decrease in the level of protection of the rights and interests of citizens, and the reduction of the time limits for consideration of complaints or appeals may negatively affect the accessibility and effectiveness of legal protection.

A. Kuratashvili (2014) addressed the theory of balancing the rights and responsibilities of officials as an essential scientific basis for the protection of human rights. The author considered the importance of maintaining a balance between the rights and responsibilities of officials for the effective protection of citizens. He emphasised that violation of this balance can lead to infringement of citizens' rights and create conditions for arbitrariness and corruption in state bodies. The conclusions of the researcher are that the balance of rights and duties of officials is a key aspect of human rights protection and normal functioning of the state are valid. The author also rightly emphasises that this balance ensures fair and legitimate governance, prevents abuse of power and reduces corruption.

V. Mikić (2024) explored the issues of criminal liability of the US president in the context of contemporary challenges and requirements to the legal system. The author analyses historical precedents and court decisions related to the criminal liability of presidents and discusses the influence of the political context on the legal aspects of such prosecution. The author discovered that the president has certain privileges and protections related to the performance of official duties, which complicates the process of bringing him to criminal responsibility. The author concludes that the privileged status of the president may lead to situations where presidential actions or decisions that may be subject to criminal assessment turn out to be difficult to prosecute due to political protection or specific constitutional norms being valid. But at the same time, it is worth noting that in some situations the president (or an official with similar powers) may face political attacks and unfounded accusations, and special status helps him to defend himself against undue attempts to restrict or discredit powers (Spytska, 2023).

Á. Ősze (2023) analysed the responsibility of the President of the Republic in the Hungarian constitutional system. The author examines various aspects of this responsibility, including the powers of the president, the mechanisms of control over actions, and interaction with other authorities. The researcher concluded that the mechanisms of control over the actions of the president can in themselves guarantee the real responsibility of this subject to society. However, it is necessary to disagree with this statement of the author, as the influence of political factors or interests of certain groups can weaken the effectiveness of control and lead to subjective or biased decisions. In addition, there may be problems in the implementation of control mechanisms in practice due to insufficient legal protection or institutional weakness of some bodies responsible for this control.

A. Baidhowah (2022) presented an analysis of decentralisation in Indonesia considering the decisions of parliament, political networks and constitutional amendments. The analysis shows that the decisions made by members of parliament have a direct impact on the decentralisation process in the country. This confirms the importance of members of parliament's constitutional responsibility in ensuring the effectiveness of decentralisation and upholding the rule of law in decisions related to the local government level. Responsible behaviour of members of parliament in making decisions on the division of powers and resource allocation at the local level contributes to more effective and equitable decentralisation, which in turn contributes to the development of local communities and the improvement of the quality of life of the population (Nakonechnyi, 2023). Thus, the author's conclusions about the need to create an effective system of constitutional and legal responsibility to ensure the protection of citizens' rights, as well as in general the development of a democratic state, fully coincide with the conclusions of the conducted research.

K. Inobemhe *et al.* (2023) analysed principles and approaches to understanding and reporting on parliamentary work. The authors discussed the importance of properly understanding the work of parliament and correctly informing the public about its activities. The authors argue that a lack of transparency and inaccurate reporting can create situations where parliament is held accountable for ineffective use of its powers or failure to comply with constitutional norms. Thus, the study emphasises the importance of transparency

and accountability in parliamentary activities. In this aspect, it may be disagreed that transparency and information about the work of parliament automatically guarantees its constitutional accountability. Even with a high degree of openness and awareness of parliamentary activities, there may be cases where its decisions or actions are not in line with constitutional norms or principles. In addition, even when the public is properly informed, there may be mechanisms that allow parliament to avoid real accountability to the public, for example, for ineffective use of powers or insufficient respect for constitutional principles (Bekpayeva & Nikiforova, 2023).

S.G. Barbu and C.M. Florescu (2024) examined the procedures for accepting government responsibility for a draft law. The authors analyse this process in the context of social sciences and law, providing an overview of the main aspects and mechanisms used in decision-making on this issue. The study notes that the procedures and mechanisms that ensure transparency and validity of decisions on accepting the government's responsibility for a draft law are key to respecting constitutional and legal accountability, which can be fully agreed upon. For example, the confidence-building procedure in Parliament may be a good example. If a president or other public body fails to obtain the support of a majority of parliament on its bills or decisions, this may lead to its resignation or to charges of failing to fulfil its responsibilities to the law (Parkhomenko, 2023). Thus, effective procedures in parliament help to ensure the constitutional and legal accountability of senior officials.

A. Giu (2022) addressed the immunity of members of parliament in the Republics of Albania and Bulgaria. The author analysed the normative acts and practice of immunity in these countries and identified the main features and problems of this system. The researcher concluded that the immunity of members of parliament, as an important aspect of the system of constitutional and legal liability, serves as a defence against arbitrary persecution and ensures the independence of the legislature. However, it is worth noting that questions arise about the fair and effective application of immunity. Immunity must not become a barrier to punishment for serious offences or abuses of power. Therefore, mechanisms for lifting immunity should be clearly defined and available when there is sufficient evidence of violations.

T. Botchway and M. Asante (2021) addressed the issue of parliamentary immunity and analysed its importance in protecting deputies from potential political manipulation and harassment that could interfere with their functioning and independence. Unlike the previous analysed work, in this article, the authors do not only point out the positive aspects of immunity but also discuss potential abuses of this status, which may lead to the avoidance of responsibility for wrongdoing. Therefore, the conclusion of the researchers, calls for a more careful and balanced approach to the issue of parliamentary immunity, which would ensure the protection of deputies' rights but would also prevent them from evading legitimate responsibility and control by society and legal institutions.

Conclusions

The results of the conducted research aimed to identify problematic aspects of the system of constitutional and legal responsibility of the highest officials of Kyrgyzstan and confirmed that the effectiveness of this system directly depends on the clarity and balance of normative acts, procedures (order) and control mechanisms. As a result of the application of the legal method of research, certain shortcomings in the existing normative regulation of constitutional-legal liability concerning deputies, the President and members of the Cabinet of Ministers have been identified. These shortcomings imply imperfections in the procedures of bringing to responsibility and ensuring the rights and freedoms of participants of the political system. Therefore, to ensure the effective functioning of state bodies, to protect the rights of citizens and to maintain stability in the country, it is necessary to improve the normative regulation of bringing these subjects to responsibility.

The results of the statistical analysis indicated problems with the effectiveness of the system of bringing top officials to constitutional and legal responsibility in the Kyrgyz Republic. This indicates the need to improve the system of control and oversight over the activities of deputies to effectively combat corruption and other offences in the Kyrgyz authorities. The comparative method was also applied to analyse the systems of constitutional and legal liability in various countries and compare them with the system of Kyrgyzstan. As a result, significant differences were revealed in the mechanisms of protection of deputies from unlawful actions of law enforcement agencies and procedures for lifting immunity. Countries such as Italy and Germany apply strict measures to protect the rights of parliamentarians, including requiring the consent of the authorities, while Kyrgyzstan has more flexible procedures.

Thus, these methods were used to identify the main problems of the system of constitutional and legal liability of Kyrgyzstan, such as insufficient clarity and application of normative acts, incomplete implementation of control and oversight mechanisms, as well as blurred concepts affecting the effectiveness and fairness of the legal process. To address these shortcomings, recommendations have been developed that include conducting a comprehensive analysis of regulatory acts to clearly define concepts and procedures, strengthening control and oversight through independent mechanisms, optimising the timing of procedures, introducing mandatory expertise and increasing judicial participation in decision-making. The implementation of these measures will make it possible to improve the effectiveness of the liability system, ensure its fairness and reliability, and strengthen the stability of State institutions.

One of the main directions for further research in the field of constitutional and legal responsibility of state bodies and officials can be the analysis of modern mechanisms of control and supervision over the fulfilment of constitutional duties, considering the level of their effectiveness and compliance with modern challenges and requirements of legal society.

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Conflict of interest

None.

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Конституційно-правова відповідальність державних органів і вищих посадових осіб

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Анотація. У Киргизстані, за підвищеної політичної активності та динамічних змін у системі управління, виникають проблеми з конституційно-правовою відповідальністю державних органів та їхніх посадовців, які потребують розроблення ефективних форм управління для сталого стратегічного розвитку задля їхнього розв'язання. Тому метою цього дослідження було виявлення проблемних аспектів конституційно-правової відповідальності в Киргизстані. Для досягнення поставленої мети було застосовано методи статистичного аналізу, формально-логічний і компаративний методи, юридичний метод, а також порівняльний метод. У результаті проведеного дослідження було виявлено основні проблеми в системі конституційно-правової відповідальності в Киргизстані, які включають у себе недостатню чіткість і застосування нормативних актів, неповне здійснення механізмів нагляду та контролю за діяльністю державних органів та їхніх посадових осіб, а також обмежений доступ громадян до судового захисту у випадках порушення їхніх конституційних прав. Крім того, було виявлено проблеми судової практики з розгляду справ щодо конституційно-правової відповідальності, включно із затримками в процесі розгляду та недостатньою ефективністю вжитих заходів. На основі цих результатів було розроблено конкретні рекомендації щодо поліпшення законодавства, а саме визначення механізмів конституційно-правової відповідальності та усунення суперечностей у нормативних актах, посилення механізмів перевірки та обов'язкове запровадження системи звітування, розширення можливості для звернення до суду, зокрема зниження бар'єрів для доступу до правничої допомоги. Таким чином, практичне значення цього дослідження полягає в тому, що його результати надають підґрунтя для розроблення конкретних заходів і реформ, спрямованих на поліпшення системи конституційно-правової відповідальності в Киргизстані та забезпечення захисту конституційних прав громадян

Ключові слова: законодавство; механізми контролю; управлінські функції; судовий захист; політичні обов'язки; прозорість і відкритість

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Legal liability for plagiarism of scientific works: How do major publishers protect their content

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Abstract. The increase in the number of scientific publications and the spread of legal liability for plagiarism testify to the high priority and relevance of the issue of content protection for large publishing houses in today's conditions. Thus, the purpose of the study was to establish the main mechanisms and approaches used by large publishers to combat plagiarism, namely in the legal context. To achieve this goal, the study used a number of methodological tools, i.e., functional and systematic approaches, the method of analysis and synthesis, the method of comparison, and the formal legal method. During the research, the concepts of "plagiarism", "scientific work", "content" were defined and their characteristics were described. In addition, various theoretical approaches to solving the problem of plagiarism in scientific works were considered. Based on this, the theoretical principles of copyright protection for scientific works were researched and substantiated. Also, during the research, the specifics of the application of modern legal methods of copyright protection in large publishing houses were revealed. As a result, the effectiveness of practical methods of combating plagiarism was identified and evaluated. It is also worth mentioning the development of practical recommendations for the authors of scientific works regarding the protection of their rights. The results obtained during the research can be used as methodological material for authors who wish to protect their scientific works from plagiarism, as well as for scientific editors, reviewers and other specialists who work with scientific texts

Keywords: scientific articles; copyright; intellectual property; plagiarism; science studies

Introduction

The study of the means of copyright protection is acquiring more and more popularity every day. This phenomenon is influenced by several factors, including the number and dynamics of scientific publications. In addition, the development of education and science pursues the goal of improving the quality of their objects, in particular, one of the main conditions is to avoid plagiarism in scientific papers. It should be determined that such a manifestation of impiety provokes legal liability for persons directly misusing publishers' content. Particular attention needs to be paid to the large organisations involved in scientific publishing, as they are constantly updating their methods and approaches to copyright protection, therefore using the most effective of them.

The most common of these tools are software products of various kinds, as they can provide reliable protection while also checking papers for plagiarism. In addition, this study establishes the technological capabilities of such software, the main features of the plagiarism detection process, and legal analysis of this type of illegal behaviour, as noted M. Zaher *et al.* (2020). Thus, the study of this issue will not only provide an analysis of various factors affecting the classification of types of plagiarism but will also allow forming a clear idea of the entire spectrum of possible plagiarism in scientific publications. In addition, such an approach would best characterise the possible preventive forms and methods for such publishers, which could in turn prevent the occurrence of this type of intellectual property infringement.

In the scientific doctrine, special attention is also devoted to this issue, and therefore researchers are actively studying it in various contexts. E. Ikonomi (2021) studied the mechanism of copyright protection in accordance with the provisions of the Albanian legislation. The conclusion described important court cases related to cases of wrongful attribution of someone else's authorship. At the same time, no recommendations were offered to improve this mechanism and increase its effectiveness in the conditions of digitalization. L. Shkurti *et al.* (2021) devoted their research to the study of the PlagAL system used to detect plagiarism in Albanian texts. In the conclusion, the researchers established that in order to work with such texts, it is necessary to carry out their preliminary processing, as well as normalization to identify text matches. At the same time, the research did not disclose the legal aspect of responsibility for plagiarism. A study by A. Kabashi (2021) partially explored the issue of plagiarism, namely the challenges faced by school librarians in implementing and following policies related to academic

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integrity and the fight against plagiarism. Thus, the conclusion described the specific situation in the international schools of Albania regarding the actual problems related to plagiarism in academic texts. However, this study did not reveal the specifics of copyright protection in large publishing houses. D. Kaçorri *et al.* (2024) investigated the mechanism of agglomerative hierarchical cluster analysis for plagiarism detection. In conclusion, it was proved that the filtering of stop words of the Albanian language is an effective tool to counter the spread of plagiarism among academic texts. At the same time, the specifics of the measures applied to copyright infringers were not revealed. A. Misini *et al.* (2023) conducted research on a model for the attribution of authorship of Albanian texts. In the conclusion, the researchers indicated the priority of using a machine-learning approach for automatic identification of the authorship of Albanian texts based on the analysis of linguistic features of the text. At the same time, the specifics of working with academic texts and content of large publishing houses are not taken into account.

The main purpose of the article was to analyse international intellectual property law, namely academic writings. In addition, it was important to establish effective methods used by large publishers to protect their academic works. For this purpose, the article fulfilled several tasks, namely: characterising the theoretical component of the issue under study, establishing its basic features and properties, examining the various laws and regulations, analysing the experience of well-known publishers, forming recommendations to improve the effectiveness of the tools used to protect copyrights.

Materials and methods

As the issue of how to protect intellectual property rights has become more prevalent in academic circles, the substantive scope of the issue has expanded accordingly. That is why, for its in-depth research, it is necessary to use a number of scientific methodological tools that will allow considering all its aspects. Thus, attention should be paid to the functional approach, as it has defined the purpose and objectives of the study and shaped the research design. In addition, the key aspects to be considered in the implementation of the Article were established through it. A systematic approach was used to ensure that all methods and approaches were interlinked in the study. As a result, the essence of all necessary timeframes was defined, and all set tasks were fulfilled.

As for the method of analysis and synthesis, their role is certainly important in the course of the study. In particular, through the first, the issue under study was divided into different elements, which in turn made it possible to analyse each of them. The synthesis method made it possible to connect them into one whole and establish a connection between them. In addition, the method of analysis and synthesis has uncovered the main legal ways of protecting intellectual property rights worldwide.

Since the field of research is legal, the formal-legal method is the main one, which allows considering various legal aspects of the researched topic. An important feature is that this method allows you to establish certain signs characteristic of this type of copyright infringement, namely plagiarism, which as a result provides a special value. Based on it, the provisions of the regulatory legal acts of foreign countries were studied, which made it possible to characterize their legal experience in the field of copyright protection and anti-plagiarism. Thus, the following acts were analysed: Civil Code of the Republic of Poland (2011), Copyright and Related Rights Act (1965), Copyright, Designs and Patents Act (1988), Copyright Law of the United States (1976), Digital Millennium Copyright Act (1998), Law of Poland No. 1668 "On Higher Education and Science" (2018), Code of Copyright and Related Rights (1985), Federal Act on Copyright and Related Rights (1992), Intellectual Property Code (2020).

One of the main methods used is a comparison as it was the basis for comparing the experiences of different well-known publishers. A comparison also revealed which methods and means are the most effective for copyright protection.

Results

The study of the most commonly used methods of protecting scientific works by well-known publishers is a rather complex phenomenon since it requires in-depth consideration of all its elements. Accordingly, to establish the level of their effectiveness, it is necessary to disclose the essential content of these tools and approaches, to characterise their types. It should be agreed that scientific papers are the object of copyright, therefore their author has non-property personal rights to them. Based on this, it can be established that if a person has certain rights, then, accordingly, they have the right to their protection. That is why persons violating these rights should be brought to legal responsibility, depending on the established norms in the legislation of the country concerned (Wahyudi *et al.*, 2021).

However, to analyse the process of bringing the violator to legal responsibility, it is necessary to consider the essence of the object of the offence, namely plagiarism. Thus, plagiarism should include the presentation of the result of someone else's work or idea as one's own, with or without their consent, by incorporating it into one's scientific work without acknowledging the real author (Ali, 2021). Importantly, regardless of whether all scientific material is subject to copyright, whether it is published or unpublished, whether it is in handwritten, printed, or electronic form, all scientific material is subject to copyright. At the same time, plagiarism can manifest itself in various forms of expression of will, namely, it can be intentional, reckless, or unintentional, but it must be understood that the liability applies in all cases (Singh, 2020). As for the types of such misconduct in the copyright, their classification is extremely broad (Fig. 1).

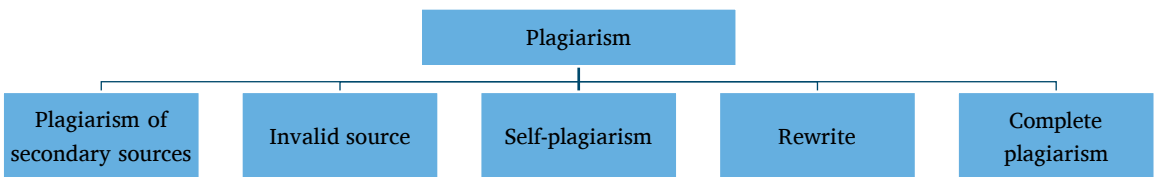

Figure 1. Types of plagiarism

Source: compiled by the author

There are several signs by which types of plagiarism should be distinguished, in particular, one of these is the level of danger, as well as prevalence. Thus, plagiarism of secondary sources is considered the least severe type. Its distinctive feature is that it levels the study while being rather difficult to determine, which accordingly requires the involvement of human labour, namely that of an expert. Another, fairly common, dangerous to the previous type, is Invalid Source, which involves the author listing materials that they have not actually used or that do not exist at all. Not so common is the type of self-plagiarism, which as the name suggests consists of the author not citing their own previous writings, which they use in their new paper. One of the most common types of plagiarism is rewriting, since this approach, as this approach usually allows authors to bypass technical checks on the text (Shymchenko & Levchenko, 2023). At the same time, the primary meaning is identical to the materials used by the author, so it can be established that this approach is creative as opposed to others but is still an offence because the author is publishing someone else's idea. The most dangerous type of plagiarism is Complete Plagiarism as it is direct use of the original source. The author presents the result of someone else's work as their own, without listing the necessary requisites. This type can be established by using websites and special software that checks academic papers for plagiarism (Dipongkor *et al.*, 2021).

Equally dangerous to copyright ownership relations in the context of scientific writings is Verbatim Plagiarism, as it consists in copying the original source in its entirety, i.e., the result of another author's work, without proper citation. Its essence can be revealed by dividing it into two types, namely: absolute copying of the text and the use of a separate quote without reference to the source. In addition, it must be established that the above qualification identifies specific types of plagiarism for which a person who has infringed the copyright of another person is legally liable. Having analysed the theoretical meaning and the main types of plagiarism, it would be useful to look at the phenomenon in a legal context. The concept of plagiarism is therefore to be understood as an arbitrary violation of the rights of the author of the original source, which, depending on the degree of public danger, is grounds for holding the offender liable. As a rule, responsibility for this type of illegal behaviour directly depends on its qualification and is divided into: civil, administrative or criminal (Pun, 2021).

As regards the regulations of different countries governing this area of social relations, their practice somewhat varies. According to the legislation of Poland, namely the Civil Code, one of the grounds for holding a person liable for copyright infringement of another person is the publication of the results of someone else's scientific work under their name without properly quoting the original source. In addition, there is a specific regulation in this country, namely the Higher Education and Science Act of 20 July 2018, which stipulates that there is a disciplinary liability for scientists for this type of illegal behaviour. However, this legislation makes a clear distinction between copyright objects, in particular, it does not consider the use of static data, research ideas, or findings used from another publication as plagiarism (Grudecki, 2021). Interestingly, in the United States of America, there are several important laws and regulations governing intellectual property, in particular rights infringed as a result of plagiarism. These include the Digital Millennium Copyright Act (1998). The act that a person commits in an attempt to circumvent technical means of copyright protection is punishable by imprisonment for up to 5 years or a fine of up to USD 500,000, depending on the qualification of the act (Section 506(a) Copyright Law of the United States (1976)). However, academics may also be subject to disciplinary liability, consisting mainly of violation of ethnic norms. Section 1201 of the Digital Millennium Copyright Act (1998) prohibits the circumvention of technical means of copyright protection and imposes civil and criminal liability for such actions.

In the UK, under the Copyright, Designs and Patents Act (1988), a person who infringes the copyright of another by distributing copies of a scientific work may be liable to imprisonment for a maximum of 6 months or a fine (Article 107(1)). Liability may depend on several types of misconduct, namely reproducing (Article 16(1)) and publishing (Article 17) someone else's scientific work under one's name or pseudonym, either with or without the knowledge or consent of its original author. Another common type of plagiarism in this country is the co-opting of one's own and "borrowed" expressions from other's works without duly citing them in the list of references (Article 21(1)). In addition, under UK law, rewriting by which an author paraphrases the published work of a third party without reference to that person or publication may also be liable. Therefore, it is impossible to establish one type of liability that responds to all unlawful acts relating to copyright, so it is divided into administrative, criminal, and disciplinary (Pupovac, 2021).

In a country such as Germany, there is also a special law called the Copyright and Related Rights Act (1965), which provides for penalties of imprisonment of up to 3 years or a fine, for persons who unlawfully use copyrighted materials in their works (Article 106). Besides, the national legislation pays particular attention to citation, making it a prerequisite to cite the source, even if the material has been used in part or paraphrased (Article 51). At the same time, there are a number of established rules that must be observed by authors and publishers when they use other people's scientific materials, in particular on the citation format. Accordingly, legal liability is imposed for violation of this principle by a person (Min, 2020).

In Switzerland, there are several regulatory legal acts, namely federal laws regulating the area of public relations related to the protection of intellectual property (Federal Act on…, 1992). Therefore, the approach to the regulation of the issue under study in this country can be considered systemic, as it consists of civil law, criminal law, and criminal procedure. Thus, under the provisions of the Copyright and Related Rights Act, a person shall be liable to imprisonment for up to 1 year or a fine for infringement of copyright (Article 67) (Federal Act on Copyright and Related Rights, 1992). It is also stipulated that even the use of material that was necessary for the study or the examination of the subject, i.e., if it was not directly used in the work, is equated to plagiarism without proper acknowledgement in the references list (Yi *et al.*, 2020).

The process of bringing responsibility varies somewhat in these countries, in particular, in the United States of America (section 17) (Copyright Law of the United States, 1976), the case is initiated by the federal government or the state, in Germany (section 6) (Copyright and Related Rights Act, 1965), the case is considered within the framework

of civil law relations. In addition, a distinctive feature that affects the qualification of this type of offence is intent, because if it is present, the person is held criminally liable. The public interest factor has an important impact on the process of bringing a person to legal responsibility. Thus, if a person's wrongdoing does not affect them, the case is usually dealt with on the basis of the principles set out in private prosecution proceedings (Piddubnyi & Deineha, 2023). Consideration should also be given to France since there is a separate regulatory document, the Intellectual Property Code (2020), which fully covers the area of intellectual property and therefore copyright regulation. Thus, this document establishes several types of norms that can be applied to persons who commit plagiarism, including civil law, criminal law, and criminal procedure. This indicates the importance of this area of legal relations for society and the increased danger of such a phenomenon as plagiarism. Having established the main features of legal liability for this type of illegal actions, it would be useful to consider ways in which one can protect one's scientific works and copyright. That is why it is necessary to consider the most prominent publishers and determine their approaches and tools for the protection of scientific developments (Memon & Mavrinac, 2020; Mehregan, 2021). However, it is worth noting that online publishing is now more prevalent, so it would be worth considering the experience of not only text-based but also electronic methods of copyright protection. Accordingly, the output of both types of activities is subject to copyright, therefore books and articles in electronic form are equated in their legal status to text. At the same time, it should be noted that it is somewhat more difficult for electronic publishers to protect their scientific content since the openness and accessibility of such materials is higher than printed ones. This is one of the reasons why major publishers prefer to publish scientific work in print format, thereby protecting it from misuse and manipulation.

Publishers such as Pearson, Thomson Reuters, Penguin Random House, and Random House are certainly well worth reviewing (Perkins *et al.*, 2020). A common feature in their activities aimed at copyright protection is the integration of developed electronic tools and instruments for the successful development and publication of electronic intellectual property. The development of such technologies and tools is motivated by the low cost of duplication, the high speed of distribution and the short time it takes to get a publication to the consumer, especially through the Internet. Thus, it can be established that all the publishers listed above place a significant emphasis on protecting their scientific works from unlawful use by third parties. Accordingly, copyright is an important part of the intellectual property rights that such organisations are in turn vested with, in particular for their scientific content. Analysing the activities of each of these publishers, it can be established that they use various forms of protection of their intellectual property objects, including patent, copyright, trade secret, and trademark.

As for the first form, it mainly protects the invention directly implemented in real life. By comparing it to the publication activities of major publishers, it can be argued that the copyright they are endowed with is directly aimed at protecting original creations in a certain form and is accordingly targeted at its human perception, which is why it is commonly referred to as the written form. Therefore, the publisher represents the written academic work as copyright (Pun, 2021). However, this form of protection is not widespread enough among authors and publishers, since the process of obtaining a patent is quite complex and lengthy, which slows down the publication of materials. Another form of copyright protection is a trade secret, but it does not occur at all among the listed publishers. This is due to its focus on protecting commercial and unknown material to a wide range of people, which in turn is not inherent in academic papers. Also, a trademark is an insufficiently widespread form of protection because it is developed and assigned to protect the originality of goods and services confirmed by the trademark. This instrument is more intrinsic to goods or services because it directly protects the symbolism characteristic of a particular manufacturer (Eisa *et al.*, 2021).

In addition, by exploring approaches that are popular among major publishers, it is possible to highlight approaches such as the cooperation of intellectual objects of protection into comprehensive documents that implement self-protection by analysing not only the content of the material but also information about the actions and rights of users and the relevant rules that are central to the implementation of the object to be protected. Attention should also be paid to an equally important protection tool – a cryptographic transformation of research papers and materials to directly encrypt the content of an electronic publication from unauthorised users. Electronic publishers are now more often using original identification marks as special tools for computer steganography in their practices. Their main purpose in the context of copyright and therefore scientific content protection is to preserve hidden information about the content of materials and their letterheads (Zimba & Gasparyan, 2021). The result of this approach by a publisher is that, in the event of a dispute between several authors, or between an author and an infringer, it is possible to prove the fact of authorship and therefore to disclose the necessary information.

As regards checking scientific papers for plagiarism, it should be noted that such activities of special organisations and portals should be two-stage, including both the technical part and the expert part. In particular, when concluding about the presence of plagiarism in a work, it is necessary to consider not only the constructions of which it consists but also the content. Thus, through primary analysis, it is possible to identify borrowings used in the work of a third party without proper acknowledgement and citation. In turn, secondary analysis allows for additional research of scientific material and determines its originality. Therefore, involving experts, namely scientists from the relevant branch of science, who can verify the content of the scientific work, is a priority during the implementation of scientific content analysis. Furthermore, to increase the efficiency of such activities, which is therefore related to the issue of plagiarism, it would be advisable to improve the review process, i.e., the verification of papers. It is this approach that will allow the idea and value of the material to be fully explored.

Discussion

The study of the issue of legal protection of copyrights for scientific texts is relevant among scientists in connection with the challenges of the digital age. Accordingly, every day more and more tools and mechanisms appear that can contribute to the spread of plagiarism. That is why researchers are trying to determine effective approaches to counteract

this phenomenon, including in the legal sphere. In particular, T. Foltýnek *et al.* (2020) in their research tested and compared 5 different online tools and programs for detecting plagiarism: Turnitin, Ouriginal, Viperplag, Plagiarism Checker X and Plagiarism Detector. At the same time, within the framework of this study, the tools were also evaluated according to various aspects, namely, detection of exact matches, detection of paraphrasing, ease of use, pricing. According to the results of the researchers, Turnitin, Ouriginal and Plagiarism Checker X are the most effective, since these programs detected the most borrowings. This is in common with this study, as it was also found that some instruments may be better at detecting quotations, while others are better at detecting paraphrasing. It has been found that no tool is perfect, and therefore publishing editors must be aware of the limitations of these systems. The common conclusion between the studies is that in order to identify the borrowing of their own content, it is advisable for publishers to combine the use of anti-plagiarism programs with manual expert evaluation.

C.A. Pierson (2021) paid attention to the ethical problems faced by major publishing houses. The researcher studied the specifics of the activities of authors, reviewers and editors in the publication process and analysed the challenges they face. A similar thematic evaluation approach was used within this study to illustrate these problems and discuss their possible solutions. Both studies highlighted plagiarism as a major ethical problem that negatively affects the development of publishing houses. During the course of this research, it was found that it embodies the presentation of someone else's work as one's own without due credit. At the same time, the seriousness of plagiarism and its high risk for authors were emphasised. In this regard, there are common features between the two studies, which are expressed in their classification as research misconduct. It is worth emphasizing that such actions require an investigation for projects, especially those financed from the state budget. The common conclusion is that it is a priority to use software for timely detection of plagiarism and protection of publisher's copyright. At the same time, this tool is useful for both authors and editors to prevent infringement of their copyrights.

A. Ramalho and M.S. Silva (2020) studied the experience of Portugal in the field of combating plagiarism. The researchers found that it is appropriate to use Article 196 of the Code of Copyright and Related Rights (1985) as the legal basis for assessing plagiarism. Within this study, the experience of foreign countries was also analysed, including in the legal field. In this regard, it should be emphasised that the legislative framework provides greater clarity and consistency compared to the current, often subjective and vague approach to plagiarism in many academic institutions and publishing houses. The study also found that the sheer volume of work reviewed by plagiarism software makes it difficult to directly incorporate a legal test into the software itself. The researchers noted that although their research used Portuguese legislation as an example, the legal elements contained in it should be applied in other countries, even if plagiarism is not a crime there. Common to the studies is a rationale for using legal tools as a second step for reviewers to analyse potential plagiarism cases detected by the software. This can help eliminate software-defined false positives.

Reviewing the text after publication is a mandatory step to avoid plagiarism. This conclusion was reached by J.A. da Silva and Q.H. Vuong (2021), who found that flaws can be allowed even after a rigorous review process in authoritative journals. During this study, special attention was also paid not only to the stage of preparation of the text, but also to its publication and distribution. This is because some published studies, even in top journals, contain errors, misconduct or fraud, despite supposedly rigorous peer-review (Basiuk & Dobroskok, 2023). That is why large publishing houses to protect their copyright should monitor the number of text citations, even for retracted articles, which can increase their reputation. Common to the research findings is the view that publishers need to be more transparent about the limitations of peer review. In addition, in case of detection of plagiarism, they must hold the editors and persons who used the text without permission accountable for violating ethical standards and legal norms (Kieliszek, 2023).

The role of peer review in ensuring the credibility of published research was revealed by P. Chaddah (2021). The researcher established that before the research results (the direct text of the article) are accepted as knowledge, reviewers must anonymously check them and confirm their authenticity. Within the framework of this study, it was also emphasised that an important component of determining the level of originality of a text is the discovery of a new question in it, which is unknown to scientific doctrine. At the same time, it is possible to single out errors that can occur in this process, in particular, unintentional flaws in logic, data analysis, or experimental procedures. In addition, they may carry an intention expressed in the falsification of data or results. Common among the results is the identification of threats such as methodology falsification and data manipulation. As a result, both studies found that such actions undermine the integrity of the research and the validity of the knowledge. In addition, they can lead to a waste of publishing resources and hinder scientific progress in general (Sezonov & Sezonova, 2022).

Following C. Yali (2020), the widespread use of big data creates a conflict with copyright protection of databases, especially in the era of active development and spread of digital technologies. The researcher used the "five-star" model to determine the potential and specificity of big data processing, which is typical for publishing houses. During the course of this study, the contradictions between their use and copyright protection were also highlighted. At the same time, one of the most effective tools for combating plagiarism and unfair use of texts is the law itself. It is important to compare the experience and legislation of different countries in order to respond in time to modern challenges, including in the field of databases (Golubei, 2023). The conclusions of both studies indicated the need to balance copyright protection with public use.

Based on the above, it can be stated that the use of specific platforms and software is the most effective way to protect copyright, in particular when publishing electronic scientific works. In addition, this approach allows the publishing house not only to publish, but also to immediately create protected scientific content and, in case of their arbitrary use by third parties, to hold them accountable. At the same time, this approach was also mentioned in the analysed studies, which indicates its effectiveness and promise.

Conclusions

This study has established the main forms of copyright protection most commonly used by well-known publishers. Besides, the very concept of plagiarism has been examined and

its main types have been identified. Based on this classification, the main characteristics and, accordingly, the signs of such an illegal phenomenon were analysed. An important element in the study is the investigation of writings precisely in the context of intellectual property rights. Moreover, it is necessary to establish that the Article distinguished various scientific materials in accordance with their legal status.

A significant part of the study has been devoted to an analysis of the regulations of different countries and has focused on intellectual property rights protection. In particular, the study looked at the experiences of countries such as Poland, the United States of America, the United Kingdom, Germany, and Switzerland. The approaches in these countries somewhat coincide as there is a strong emphasis on the protection of intellectual rights, indicating that they are a priority for society. Various types of legal liability, namely disciplinary, administrative, criminal and even civil liability, are imposed according to the infringement of the rights of the author and the misuse of other people's scientific material. An important factor influencing the qualification of such acts is undoubtedly their intent and the characteristics contained in academic writings.

Regarding the experience of major publishers, the Article mainly focuses on Pearson, Thomson Reuters, Penguin Random House, and Random House. It has been found that they most often use copyright as a form of scientific content protection. This approach makes it possible to defend one's interests such as copyright in court, in the event of its misuse by a third party. Future studies in this area should consider how to integrate the properties of artificial intelligence in countering plagiarism, with reference to tools for the protection of scientific material.

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Юридична відповідальність за плагіат наукових робіт: як великі видавництва захищають свій контент

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Анотація. Збільшення кількості наукових публікацій та поширення юридичної відповідальності за плагіат свідчать про високу пріоритетність та актуальність питання захисту контенту для великих видавництв у сучасних умовах. Таким чином, метою дослідження було встановлення основних механізмів та підходів, що використовуються великими видавництвами для боротьби з плагіатом, зокрема в правовому контексті. Для досягнення поставленої мети в дослідженні використано низку методологічних інструментів, а саме: функціональний та системний підходи, метод аналізу та синтезу, метод порівняння, формально-юридичний метод. Під час дослідження було визначено поняття "плагіат", "науковий твір", "зміст" та описано їхні ознаки. Крім того, розглянуто різні теоретичні підходи до вирішення проблеми плагіату в наукових працях. На основі цього було досліджено та обґрунтовано теоретичні засади охорони авторського права на наукові твори. Також під час дослідження було виявлено специфіку застосування сучасних правових способів захисту авторських прав у великих видавництвах. В результаті було виявлено та оцінено ефективність практичних методів боротьби з плагіатом. Варто також відзначити розробку практичних рекомендацій для авторів наукових робіт щодо захисту своїх прав. Результати, отримані в ході дослідження, можуть бути використані як методичний матеріал для авторів, які бажають захистити свої наукові праці від плагіату, а також для наукових редакторів, рецензентів та інших фахівців, які працюють з науковими текстами

Ключові слова: наукові статті; авторське право; інтелектуальна власність; плагіат; наукознавство

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Legal factors influencing social integration of labour migrants from Central Asia

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Abstract. Investigation of the impact of legal factors on the integration of migrants provides an opportunity to understand how the legal environment in the receiving countries affects their social inclusion and integration into society. The purpose of this study was to analyse the legal aspects that affect the social adaptation and integration of migrants into the labour sphere. The study employed the following methods: structural-functional method, comparative-legal method, theoretical-predictive method, survey method. It was found that integration is a process that migrants must undergo, both as individuals and as a special socially differentiated group. Despite the existence of international and national laws, the migration of labour from Central Asia is often accompanied by various problems and challenges (illegal migration, lack of social protection, discrimination and inequality). It is necessary to create favourable social, legal, and economic conditions for labour migrants to remove obstacles to their social integration and adaptation by the host society. These conditions should include legalisation of their status, adequate housing, paid employment, social security, insurance, and legally guaranteed compensation payments, as well as ensuring social identification. Generally, it is critical to create a mechanism of integration-adaptation at a higher legislative level for effective support of social integration of labour migrants from Central Asia. To create a new culture of relations with migrants in the host society and to remove contradictions arising from socio-cultural and ethno-religious differences, its main components

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and content should have a clearly defined socio-cultural orientation. The practical significance of this study lies in the fact that all the theoretical provisions, conclusions, and recommendations can be used by the authorities responsible for migration processes to improve working conditions, protect rights, maintain social stability, stimulate economic development, and support intercultural understanding

Keywords: labour market; qualified professionals; social identification; employment abroad; mobility of labour force

Introduction

Labour migration is nowadays a fairly common phenomenon all over the world, which is considered in many countries as a serious problem, as it leads not only to an outflow of highly skilled workers and working population, but also to a decrease in national security. However, countries such as the Czech Republic, Japan, Singapore, on the contrary, encourage and accept labour migrants. In today's world, labour migration plays a key role in the economic development of many countries. Central Asian countries with considerable labour resources are among the largest regions of migrant workers. However, migration of workers from Central Asia to other countries is often accompanied by various legal problems.

Both in science and in practice, labour migration has many definitions. According to S. Zhumashbekova *et al.* (2023), there are two schools of thought that represent opposing scientific opinions on this issue. Labour migration can be broadly defined as any movement for the purpose of finding a job, even moving to a permanent place of residence, if the main driving force is the search for employment. The term "labour migration" can refer to movement associated with business ventures. Labour migration in the narrow sense refers to population migrations of short-term and temporary nature, with periodic return to the place of residence; in other words, labour migration does not mean permanent relocation to the area (region, country) of work.

The economic crisis is the main driver of labour migration as it has created labour shortages in Kyrgyzstan and consequently increased unemployment, especially in rural areas. I. Abdulloev *et al.* (2020), R. Ysmailova *et al.* (2020) addressed this problem. Researchers argue that the labour market is not balanced as there is a constant gap between the demand and supply of labour. The population is forced to seek better working conditions abroad to feed themselves and transfer some of their income back home due to low wages and lack of income. G.R. Azimova (2019) notes that the money that migrant workers bring into the country reduces poverty and helps migrant families spend more on goods and services. The researchers note considerable internal migration, especially from rural to urban areas, as well as external migration between Central Asian countries. The main source of labour migration in this case is seasonal trips to Kazakhstan, the Russian Federation, and other countries. Kyrgyzstan, Tajikistan, and Uzbekistan are the source countries of migration flows from Central Asia. These countries are struggling with the challenges of rapid population growth and rural unemployment. Since there are not enough jobs in agriculture, it is the men and women who live in rural areas, and especially the youth, who are forced to migrate. Young people who migrate in search of work and income face particular challenges and risk factors. Furthermore, their departure leaves a demographic void that hinders the country's economic growth.

Migrants are a vital resource for human growth and also play a significant role in all Eastern European countries (Simpson, 2022). Nevertheless, it is the sector that most affects the lives of nations and people. First of all, it concerns labour migration. The main obstacles in this area are the staggering amount of irregular migration, its helplessness, limited migration infrastructure, and informal and illegal activities related to a range of labour immigrant needs. D. Dzhunusova and Zh. Ormokeeva (2023) note that illegal migrants, including labour migrants, lose legal protection in labour relations. As a result, this group of migrants is not subject to taxation and may even engage in criminal activities. Of these, half have purposes other than participation in labour relations. Foreign nationals who overstay their visa often work illegally in the country. It is clear that the uncontrolled entry of foreign nationals leads to more serious problems, in addition to social ones, which threaten the foundations of the economic stability of the state (Novak & Melnyk, 2022).

According to R. Urinboyev and S. Eraliev (2022), the majority of labour migrants from Central Asia are low-skilled workers performing heavy jobs that do not require higher education (construction, transport, catering, retail trade, agriculture, animal husbandry). Both positive and negative effects of labour migration are numerous. Remittances by migrants are crucial for improving the living conditions and quality of life of migrant families. One useful strategy for reducing poverty and impoverishment is labour migration. Large-scale labour migration raises the living standards of important demographic groups while easing pressure on the country's labour market. Labour migrants face many problems at the same time, they desperately need legal and social protection, as well as information and advisory support (Spytska, 2024).

Currently there are problems in studying the issues of contradictions and differences between the national legislation of the successor countries and international norms concerning the rights and protection of labour migrants, as well as how these differences may affect social integration and the legal status of migrants. Aspects of migration policy that could be improved to ensure better social integration are also understudied. According to the above, the purpose of this study was to examine the legal factors that affect the social adaptation and integration of labour migrants.

Materials and methods

The study employed a comprehensive approach, including both general scientific and special methods of research. Using the structural-functional method, the key terms of the topic, namely "labour migrant", "integration of labour migrants" were investigated, and the principal factors of labour migration from Central Asian countries were identified. The study explored what the process of labour migrants' integration implies in practice and identified the primary factors that affect the social integration and adaptation of labour migrants. The main planes in which the integration processes of migrants take place were identified. This stage of the study also considered the international law, national legislation, and

agreements between countries that play a vital role in the integration and adaptation of labour migrants. The opinions of other researchers on this issue were explored, which helped to formulate a unified idea about the legal factors that affect the social integration of migrants from Central Asia.

For an in-depth investigation of the topic, the study was conventionally divided into several parts. The first part investigated the social institutions that influence foreign nationals during their integration. The comparative legal method was used to investigate the structural features of both the countries of origin of migrants and the countries to which migrants arrive, which affect the labour integration of workers. The study identified the main legal problems and challenges in the migration of labour workers from Central Asia, which cause social integration of the studied category of persons. In the second part of this study, the theoretical and predictive method was used to investigate what factors determine the successful social integration of labour migrants, as well as what essential aspects should be considered upon developing migration policy. Recommendations were developed to successfully promote social integration and adaptation of labour migrants from Central Asian countries.

In addition, at this stage of the study, a survey was conducted among citizens of Central Asian countries that have experience of labour migration, namely Uzbekistan, Tajikistan, and Kyrgyzstan. The survey involved 150 people. 70% of respondents were male. 10% were aged 45 years and older, 65% of labour migrants interviewed were aged 30-45 years, and 25% were aged 20-30 years. On average, respondents had labour migration experience in the period from 2021 to 2022. As a result of the survey, information was obtained on the professional education of the respondents, the level of proficiency in the national language of the country where the respondents worked. The survey established whether the interviewed respondents have regular contacts with local residents, as well as how often and under what circumstances the contact takes place, as well as how local residents treated labour migrants. Information was obtained on how workers migrate (with family or alone) and for how long. Widespread violations of labour and social rights of migrant workers were identified. The survey was conducted in March 2024. The sample for the survey of labour migrants from Central Asia, their contact details were obtained using online platforms and social networks. Many migrants actively use social media and online platforms to communicate and obtain information. Advertising the survey through such channels helped to attract participants. The survey involved 32 respondents from Kazakhstan, 49 respondents from Kyrgyzstan, 7 respondents from Tajikistan, 15 respondents from Turkmenistan, and 47 respondents from Uzbekistan. The survey was conducted anonymously in an online form, respecting all research ethics (WMA Declaration of…, 1975).

The investigation of this topic involved a review of the following sources: International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990); Law of Germany "On the Residence, Employment and Integration of Foreigners in Germany" (2008); Law of Turkey No. 6458 "On Foreign Citizens and International Protection" (2013); Canada Labour Code (1985); Enhanced Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Kazakhstan, of the other part (2016); Enhanced Partnership and Cooperation Agreement between the European Union, of the one part, and the Kyrgyz Republic, of the other part (2022), Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Republic of Uzbekistan, of the other part (1998). The analysis of these sources helped to compare the legal status of migrants in different countries.

Results

Labour migration is an important aspect of the world economy and Central Asia plays a significant role in this phenomenon. Countries in this region, such as Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan, are major migrant sending countries and also receive considerable numbers of migrants from other regions (Table 1). However, migration processes are often accompanied by various legal aspects and problems affecting labour migrants from Central Asia.

Table 1. Number of labour migrants from Central Asian countries

Country of departure	Number of migrants abroad (thousand people)	Countries of employment of migrants
Kazakhstan	350-500	Russian Federation, Germany, USA, Canada, Israel, European countries
Kyrgyzstan	620-700	Russian Federation, Republic of Kazakhstan, Turkey, UAE, Qatar, Republic of Korea, USA, European countries
Tajikistan	700-850	Russian Federation, Republic of Kazakhstan, Republic of Uzbekistan, Israel, USA, Canada, European countries
Turkmenistan	200-300	Russian Federation, Republic of Kazakhstan, Azerbaijan, Turkey, Iran
Uzbekistan	1,200-1,500	Russian Federation, Republic of Kazakhstan, Republic of Korea, USA, Middle East countries, European countries

Source: G.T. Alaeva *et al.* (2021)

A regional migration subsystem has emerged in Central Asia (Laruelle, 2013). One of the world's largest migration corridors in terms of population movements and remittances has developed between the Russian Federation and the Republic of Kazakhstan, on the one hand, and the countries of Central Asia, on the other hand. The three countries that are actively involved in migration processes in the region are Kyrgyzstan, Tajikistan, and Uzbekistan; these countries send considerable numbers of migrant workers abroad. Approximately 14% of the economically active population of Central Asian countries, or 3.8 million people, migrate between these countries and their host partners in search of work (Özer, 2022). The socio-economic, demographic, and political implications of large-scale migration processes in the

region are profound for both sending and receiving countries. Notably, labourers are a special type of migrant who cross national borders in search of employment opportunities or to buy or sell small quantities of goods. People migrate primarily for the following reasons: low wages, months-long delays in receiving payments, unemployment, poverty. Most often migrants are individuals with low status in society, representing unskilled or low-skilled workers. However, specialists with academic degrees, rare professions, and even academic titles can also become labour migrants. Three broad categories of labour migrants can be distinguished as follows: persons permanently leaving their country of residence; persons who work abroad for an extended time; so-called labour tourists who come to other countries for a short duration (a few days or months).

Several main categories of labour migrants were identified, including temporary labour migrants, migrant workers involved in project implementation, highly skilled labour migrants, seasonal labour migrants, and contract labour migrants (Şişman & Balun, 2020). Interns and students are two unique types of economically active labour migrants that need to be considered when analysing labour migrants. Moreover, it is important to remember that refugees and people who have chosen permanent residence abroad are entitled to freedom of labour. "Illegal labour market" consists of the vast majority of migrant workers who are also immigrants without documents.

The issue of integration and adaptation of labour migrants is crucial in this topic. By finding a solution, it is possible to improve current legal and socio-economic processes, increase understanding of the legal, economic, social, and cultural framework of modern society and create an effective immigration policy that accommodates the reality of the modern world. Migrant workers adapt to their new environment, making changes that better suit their needs and the needs of their new home, and work to maximise the relationship between the individual and their environment.

According to researchers, the term "integration" rather refers to external (international) migration, as it defines it as "the process of adaptation of an individual or social group (immigrant or group of immigrants) with socio-cultural, religious, and ethnic characteristics. different from the native population" (FitzGerald, 2022). Migrant integration entails two things: on the one hand, a specific set of administrative measures or attempts by the state and its apparatus to integrate a recently arrived population into the country's institutions; on the other hand, migrant integration is an objectively ongoing process of integration or something that takes place without regard to anyone's subjective efforts". Experts believe that the establishment of assistance organisations and the integration and adaptation of migrants should be the main focus of the development of a new regulatory framework for migration policy (Nyberg-Sørensen *et al.*, 2002). The integration processes of migrants are simultaneously taking place on four planes:

1. Labour market and labour relations. The key indicators of integration in this context are employment and income.

2. Administrative legal sphere. It includes legal regulation of migration relations.

3. Social protection system covering all levels of education, medicine. The degree to which labour migrants have access to this system directly affects their integration. Exclusion from social protection is a clear barrier to integration.

4. Cultural sphere. The principal areas of tension arise in the cultural sphere, primarily related to different views on integration within the host country and among migrants. This includes publicly using one's native language, demonstrating one's cultural uniqueness to others, and maintaining behavioural norms associated with one's country of origin (ranging from family relationships to culinary preferences) (Norris & Inglehart, 2012).

The process of migrants' integration into society involves both their acceptance as members of the country's citizens and the creation of favourable conditions, which depend on the host society's willingness to welcome new immigrant groups and use their unique qualities to enrich the country. Upon investigating the integration process, it is crucial to determine whether the migration of skilled professionals is temporary or permanent. The characteristics of countries of origin and the policies pursued in relation to their skilled resources are linked to the temporal aspects of migration. The length of stay in these countries is also determined by analysing the conditions in the destination countries. At the same time, it is crucial to have a clear immigration policy on qualified labour force, chances to enter the qualified labour market, recognised citizenship rights. Structural features of migrants' countries of origin influence the process of labour integration of qualified workers. These features include labour market conditions in the country of origin, the extent to which it responds to the dynamics of migrant flows, and the extent to which international mobility serves as a qualification mechanism within the country of origin. The political conditions of both the country of origin and the country of destination, the social dynamics of the migration process – all these should be factored in upon investigating the integration processes of qualified migration.

Various social institutions influence foreign nationals in their integration. Those who have more influence and help in day-to-day and professional matters will also influence the migrant's motivation and attitudes towards the host country, the local population, and issues related to regularisation. Newly arrived populations isolate themselves in response to hostile interactions with the host community, confrontation with inequalities in labour and housing markets (i.e., discrimination) and hostility based on race, ethnicity, or religion. They alienate themselves from everyone except "their own" small group. "Their own" are willing to help solve problems in this case, but their help is not always gratuitous. Foreign nationals become hostages to their circumstances when faced with a lack of official legal aid, language barriers, and other obstacles. Therefore, experts state that "for migrant integration to be effective, it should not be assigned responsibility" (Gray, 2006). Labour migrants can make every effort for integration and adaptation, but they still have no chance if society rejects their integration.

Labour migrants from Uzbekistan, Tajikistan, and Kyrgyzstan often settle in groups with other citizens working in analogous fields. The language, traditions, customs, and worldview of migrants familiar with their home region stay intact in a closed ethnic homogeneous group. Working in multinational teams forces them to interact more in the local language, which makes them most active in forming social ties with the community. Making social connections with people outside the family and community through work facilitates adaptation to changing life circumstances. Over the last five years, labour migrants from Central Asia have

become less educated: about 40% have no professional education. Foreign language proficiency is one of the key markers of migrant's social adaptation. As a result of the survey, only 6 out of 15 respondents aged 45 years and older, 85 out of 97 respondents aged 30-45 years, and 32 out of 38 respondents aged 20-30 years speak foreign languages. Of all interviewed migrants, only one fifth have regular contacts with locals: some have contacts with locals outside of work, and have daily contact with locals at work (Fig. 1).

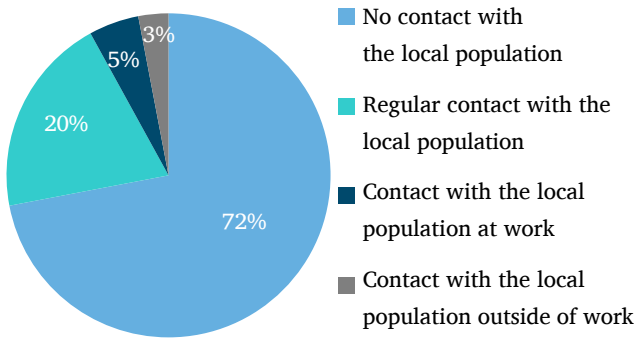

Figure 1. Contact of labour migrants with the local population
Source: compiled by the authors

Meanwhile, 48% of migrants reported experiencing domestic conflicts, compared to 52% of migrants who said they had no conflicts with locals. Thus, 5 respondents aged 45 years and older reported having minor conflicts with locals; 10 respondents aged 20-30 years also reported minor conflicts. Respondents aged 30-40 years had the highest number of conflicts (49 people). When asked how migrants feel about the local population, about half of the respondents gave a negative answer (78 people), only 48 people gave a positive answer and about 24 people found it difficult to answer. Such indicators are probably related to the fact that one third of the interviewed migrants have no interaction with the local population and, as a consequence, are unable to give any description of these relations (Fig. 2).

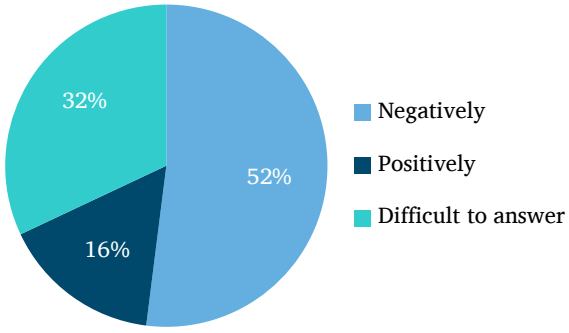

Figure 2. How migrants relate to the local population
Source: compiled by the authors

Migrants themselves are responsible for their integration, as well as for the integration of the government, organisations, and population of the host country; the host society is responsible for ensuring that the implementation of the legal status of migrants facilitates their involvement in the social, cultural, economic, and civil life of the society; migrants themselves must respect the norms and fundamental values of the host country and take an active part in the integration process without losing their unique identity. These principles require communication between the migrant community and the host society, as well as the infrastructure necessary for integration measures, the establishment of various programmes for different categories of migrants, and the involvement of civil society institutions. All participants in the labour exchange process seek to derive a concrete benefit from it. Many countries benefit from international migration, which usually means redistribution of labour, rotation of personnel, exchange of production experience, increased demand for labour and increased competitiveness of national economies, all of which contribute to the development of technology and production in all spheres.

The evolution of global migration processes is closely linked to the practical and legal actions of international organisations. The primacy of international law over internal legislation is determined by countries that take an active part in migration movements and ratify various conventions, recommendations, and protocols. This is significant both for the state and for migrants themselves, as it affects both their ability to protect their rights and freedoms abroad and their ability to integrate into the global community. International law, national legislation, and agreements between countries play an essential role in integration and adaptation. International agreements play a vital role in regulating migration flows and protecting the rights of migrants. The UN General Assembly adopted International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990). This convention regulates international labour migration. The Convention defines a "migrant worker" as a person who works for pay in a country of which they are not a national. Individual categories of migrants are defined to clarify the general idea of a labour migrant. They recognise the right of migrants to protection from discrimination, equal opportunities, and social protection.

Apart from international agreements, the national legislation of the receiving countries is of great importance for Central Asian migrants. Different countries set their own rules and requirements for obtaining work visas, work permits, and other documents for foreign workers. For instance, the Gulf countries have a sponsorship system that makes migrants highly dependent on their employers, which can lead to violations of their rights (Valenta *et al.*, 2020). Law of Germany "On the Residence, Employment and Integration of Foreigners in Germany" (2008) sets out the rules for the residence of foreign nationals in Germany, including employment and integration. It contains provisions on residence permits, work permits, periods of stay, and the procedure for extending the status. Law of Turkey No. 6458 "On Foreign Citizens and International Protection" (2013) defines the general principles and rules regarding the entry, stay, and exit of foreigners from Turkey. It also regulates visas and work permits for foreign workers. Canada Labour Code (1985) regulates working conditions for all workers, including migrant workers. These include regulations on pay, working hours, holidays, safety and health at work, and other aspects of the employment relationship. Migrant workers may be transferred to countries with more developed economies, governments, and legal systems due to gaps in the laws of their home countries governing labour migration procedures. Unbalanced socio-economic development of individual

countries and liberalised access of foreign labour to other countries are the main reasons for modern labour migration.

Sending and receiving countries can conclude bilateral and multilateral agreements to regulate migration flows and protect migrants' rights. These agreements may concern visa regime issues, the legal status of migrants, labour conditions, and social protection. A crucial aspect of migration law is refugee law (Mourad & Norman, 2020). Thus, the Enhanced Partnership and Cooperation Agreement between the European Union, of the one part, and the Kyrgyz Republic, of the other part (2022), the Enhanced Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Kazakhstan, of the other part (2016), and the Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Republic of Uzbekistan, of the other part (1998) establish a framework for cooperation between the EU and the Central Asian countries in various fields, including migration and human rights. They may contain provisions on mutual support in migration matters, including combating irregular migration and cooperation in ensuring the rights of migrants.

Many labour migrants from Central Asia may also be refugees or persons in need of international protection. In this context, it is essential to ensure compliance with international law regarding the protection of refugees and the provision of appropriate legal safeguards. Despite the existence of international and national laws, migration of labour workers from Central Asia is often accompanied by various problems.

Illegal migration is one of the principal problems. Many labour migrants are forced to resort to illegal border crossing methods due to restrictions and difficulties in obtaining official documents. This makes them vulnerable to exploitation and violation of their rights. Widespread temporary "circular" migration, which is often seasonal, is encouraged by the absence of visa regimes and the close proximity of the region's member countries (Constant, 2020). Migrants tend to have a low awareness of the laws of the countries to which they are travelling (Boswell & Badenhoop, 2021). Although they may enter the country legally, they often start working there without proper documentation (Segal, 2019). As a result, they are deprived of social protection and are not subject to income tax by the state. To promote legitimate temporary work, laws need to be passed, one of which should simplify the process of entering and leaving the country.

Irregular migration is defined as crossing a state border without authorisation, which includes passing through checkpoints, hiding from customs and border guards, using false documents or visas, acting alone or with the help of unauthorised persons, and residing in the territory of a foreign country without the official consent of the relevant state authorities (Donato & Massey, 2016). Individuals or organisations of individuals who organise irregular migration, assist in crossing borders in violation of legally established national and/or international regulations, and smuggle migrants to obtain benefits. Persons who forcibly enter a foreign country and their continued stay there do not pose such a threat to the law. The actions of organised criminal groups that import many irregular migrants and use them for various illegal purposes, such as forced labour, ensuring their stay as transit or as cheap labour (Campana, 2020). Irregular migrants may have limited access to services and resources, leading to a sense of isolation in local society. This can create problems of understanding, integration, and community support.

Another significant problem and integration factor is the lack of social protection for labour migrants. Many are denied access to social services, healthcare, and other support. It is difficult for labour migrants to access social services enjoyed by the local population (Fig. 3). Migrants face unique challenges when trying to access healthcare. Without a medical examination, labour migrants working on patents are effectively excluded from the healthcare system (Loganathan *et al.*, 2020). According to the study, few migrants had health insurance.

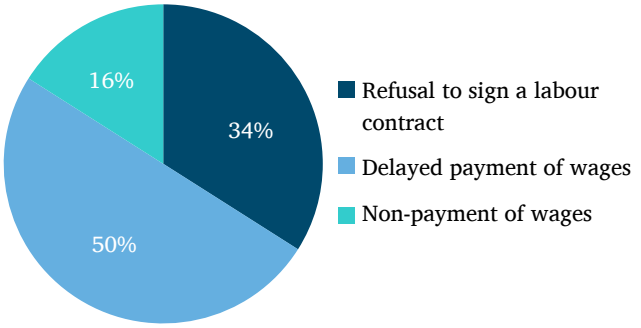

Figure 3. Types of violations of migrants' social and labour rights
Source: compiled by the authors

This dramatically increases the risks for both local populations and migrants. Legal, civilised migration requires respect for the rights of labour migrants, but these rights, according to the survey, are regularly violated. During the survey, 51 migrants reported that employers refused to grant them formal legal status by signing a labour contract; 75 reported that they were delayed in receiving their wages; and 24 reported that they had not received any wages at all. 37% of respondents had their passports cancelled, 46% were denied the right to leave their place of work, and 17% were denied access to medical care.

Discrimination and inequality can seriously complicate the integration of labour migrants into new societies. Migrant workers are often discriminated against in the workplace and in society because of their origin, ethnicity, or migrant status (Esses, 2021). It is difficult for migrants from Central Asian countries to enter the labour market. Discrimination takes the form of restrictions on immigrant workers' access to certain categories of jobs, as well as differences in pay and working conditions. Currently, over 70% of migrants rely on friends and family or well-established informal migrant networks to help them find work. To help migrants enter the labour market in destination countries, employment mechanisms need to be better institutionalised. Poor housing conditions for labour migrants continue to be a serious problem in large cities. According to the survey, many migrants (125 respondents out of 150) live where they work. These are unsuitable premises previously intended for residential use, but converted into residential premises: attics, basements, unfinished or to-be-demolished buildings, caravans, shacks. These facilities often lack electricity, heat, water, and sanitation. Many migrants spend many years living and working in major cities but never move beyond their

immediate neighbourhood (Mucci *et al.*, 2019). These living conditions make it difficult for migrant workers to adjust and they often develop a poor opinion of the local population. As for living and working conditions, 46% of migrants surveyed believe that they are worse than at their previous place of residence.

Labour migrants from Central Asia with higher education and professional training have difficulty finding jobs that match their qualifications. The responses of numerous respondents further confirmed this assumption: of the 105 people who have a college degree, 85% report difficulty in the job search process. More than half of the participants, including both current migrants and returnees, had higher education diplomas. Discrimination and inequality lead to social exclusion of labour migrants in the new society (Protosavitska, 2023). They feel "marginalised" or "unaccepted" in the local environment, which makes it difficult for them to integrate and causes psychological difficulties. The existence of a suitable institutional framework and inter-agency coordination is crucial for the successful implementation of measures to protect the rights of citizens while working abroad and maximise the benefits of labour migration. Azerbaijan, Tajikistan, and Turkmenistan, three countries of origin in North and Central Asia, have established autonomous migration agencies that control, among other things, the movement of labour beyond their borders (Chudinovskikh & Denisenko, 2020). As a result, it is usually observed that these countries of origin attach great importance to migration policies when it comes to addressing foreign policy objectives.

Successful social integration of labour migrants depends on the effective consideration and implementation of these legal aspects that ensure equal opportunities and protection of their rights. Therefore, it is important to consider some aspects. Ensuring labour migrants' legal status in the country of arrival is a priority (includes obtaining visas, work permits, and other necessary documents so that they can legally reside and work in the new country). Ensuring access of labour migrants to social services such as healthcare, education, and housing (includes the development of policies that facilitate migrants' access to these services, regardless of their residence status). Developing and implementing integration programmes that help labour migrants adapt to a new culture, language, and society (this may include language courses, life skills training, cultural activities, and job search support). Providing labour migrants with access to legal support and counselling in case of problems or conflicts in the workplace or in the community. For instance, the following programmes have been successful in helping labour migrants from Central Asia in the United States: the H-2A programme provides temporary visas for seasonal agricultural workers and the H-2B programme for seasonal non-qualified workers. The EB-3 visa programme provides permanent resident status for certain categories of workers, including non-qualified workers.

Generally, to successfully promote social integration and adaptation of labour migrants from Central Asian countries, it is urgent to develop an integration-adaptation mechanism at the highest legislative level. Its main components and contents should have a clearly expressed socio-cultural orientation, be aimed at forming a new culture of relations with migrants in the host society, eliminating contradictions arising from socio-cultural and ethno-religious differences.

Discussion

Most Central Asian migrants making their way to EU member states have little opportunity to learn about the activities of host governments, to influence national, regional, and local decision-making processes, or to influence the implementation of integration policies, as evidenced by surveys of labour migrant respondents. Numerous factors contribute to this, such as poor inclusion of people in the information and communication space of host countries, narrow focus on higher earnings, job fatigue, lack of social interaction. This can be explained by the fact that labour migrants know very little about migration policies and practices and have very little knowledge of legislation.

Having investigated the effects of the global economic crisis on labour migration in Central Asia, E. Marat (2009) identifies a range of problems which, as his findings suggest, still exist. These include:

- lack of communication between countries on migration-related issues;
- inadequate regional and national migration policies;
- lack of mechanisms for migration data collection;
- poor coordination and understanding of migration issues by government agencies;
- insufficient capacity to manage migration and border crossing;
- widespread exploitation of migrants for labour and sexual purposes;
- lack of capacity to use migrant remittances for the economic development of their countries.

Asymmetric and metamorphic aspects of international migration are essential factors. Unlike internal migration, which affects a single social environment, migration movements involve multiple countries, each of which has established its system of treatment of labour migrants, as well as rules and guidelines regarding work, housing, social protection, education, and other areas (De Haas *et al.*, 2019). The fact that societies themselves differ in terms of origin and perception is another manifestation of asymmetry. At the same time, migration leads to metamorphoses in both migrant populations and societies of origin and reception. Changes in the demographics of both societies can be used as an illustration.

According to the findings of the researchers of current study, the problem of surplus labour force in the Central Asian republics is solved by the departure of labour migrants. Labour migration reduces unemployment, lowers the costs of social benefits, retrains the unemployed, organises public works for them, and helps their families. Thus, S. Piyapromdee (2021) notes that labour migrants develop new productive and organisational skills while working abroad. Central Asian migrants raise their overall educational and cultural standards because they live in a country with more advanced technology, stricter regulations, and higher labour standards. In addition, they are expanding their personal ties with foreign partners. The experience and knowledge that migrants acquire is invaluable and will benefit them back home. Following T. Lang and R. Nadler (2014), migrants working abroad save start-up money to open small and medium-sized businesses upon their return. As a result, the development of the middle class is encouraged.

The degree of integration of labour migrants into the host society depends on the acceptance of these migrants and the availability of organisational, material, cultural and

legal resources for this purpose (Grosescu, 2023). It is determined not only by the intentions of labour migrants. Having investigated the ability of a migrant to adapt and integrate into the host country, K. Saguin (2020) notes that it largely depends on the availability and effectiveness of their legal and social protection. The conducted study confirms this: the most evident problems for migrant workers are those related to their pay as well as that of locals, the availability of health insurance, how they use their free time, and whether they can really defend their rights at the local level. It is worth adding that it is impossible to separate the adaptation of labour migrants from their integration. Although they are not the same thing, these ideas are related. The opposing processes of adaptation and integration can occur to varying degrees in a dynamic social context. There are many different cases of illegal, anti-social, and violent behaviour among irregular migrants, especially those who are deprived of employment, social, and legal protection (Shcherbatiuk *et al.*, 2024). The researcher points out that in recent years illegal migration has been used as a kind of mechanism for regulating migration. Such irregular migration is exclusively legal; its illegality is related to both regulatory mechanisms and the legal standards in place. Under such circumstances, migrant workers can be employed either legally or illegally.

According to A. Lochmann *et al.* (2019) and the migrants themselves, the success of finding and obtaining it is determined by several criteria. First of all, mastery of the national language. The employer's mentality against hiring a stranger is considered. In addition, the applicant's level of professionalism, legal status as a labour migrant, and availability of information about the position they hold are also important. As the researchers point out, activating social capital and migration networks (friends, family, and acquaintances who work in the EU or elsewhere) will help to find a job. It is also important to mention other spreading forms of job search, such as the use of the Internet and other modern means of communication (Spytska, 2023). It is essential to remember that labour migrants from Central Asian countries do not expect or hope for assistance in finding a job from the population of the host country or state institutions, as evidenced by the survey results.

According to S. Yildirim (2019), unlike other groups of migrants from other post-Soviet states, labour migrants from Central Asian countries face serious problems in social integration and are highly unwelcome in some countries. Cultural, linguistic, religious, and attitudinal differences hinder the successful integration of immigrants from these countries into the host society. The findings of the survey confirm this. Since the main purpose of the visit is to earn money to send home to relatives, citizens make no effort to establish social ties with migrants, and the visitors themselves often have no intention of engaging in active interaction with the local population, as they are determined to return to their country of origin after the visit. In this sense, labour migrants from Central Asia interact less with the local population than representatives of other ethnic groups who came from the former Soviet republics, even though they generally assess the attitude of the country's citizens towards them well (Palmer & Drbohlav, 2022). Furthermore, they are more likely than others to face negative attitudes based on nationality.

Learning the language of the country to which migrants move, as mentioned earlier, is the first step in the integration process for migrants. Exploring this issue, L. Rocca *et al.* (2020) argue that language serves as the primary means of communication for both immigrants and the host community. The process of language learning is greatly influenced by the host nation. All major groups of characteristics of the integration index include the need to speak the language of the country of immigration. A. Pot *et al.* (2020) also argue that proficiency in a professional language is a prerequisite for both effective career development and implementation of the principle of labour mobility. Language proficiency is a prerequisite for citizenship and permanent residence status, as well as for family reunification (for immigrant family members). Most migrants, according to research, try to speak the language of their new nation fluently. Undoubtedly, the main reason for this is the realisation that being able to speak another language opens more job opportunities and increases the chances of securing a well-paid position. But it is also important to remember that mastering a language requires respect for the people who speak it, their customs, and culture.

Researchers look at various legal factors that affect the social integration of labour migrants from Central Asia. One of the key factors is the legislation regulating migration and the status of migrants. The flexibility, clarity, and fairness of laws affect migrants' ability to integrate into society and the labour market. Legislation concerning labour migration rights, such as the right to work, working conditions, and protection against discrimination, affects how successfully migrants can integrate into the work environment. The existence of programmes and policies for the integration of migrants, including language courses, professional adaptation, and access to education and healthcare, contributes to their successful adaptation and integration. Effective measures to combat discrimination and xenophobia create more favourable conditions for the integration of migrants, allowing them to feel accepted and needed in society.

Conclusions

Countries in the study region, such as Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan, are major migrant sending countries. "Migrant worker" is a person who works for pay in a country of which they are not a citizen. Individual categories of migrants are defined to clarify the general idea of a labour migrant. Migrants themselves are responsible for their integration, as well as for the integration of the government, organisations, and population of the host country. The host society is responsible for ensuring that the realisation of the legal status of migrants facilitates their participation in the social, cultural, economic, and civil life of the society; migrants themselves should respect the norms and fundamental values of the host country and take an active part in the integration process without losing their unique identity. Despite the existence of international and national laws, migration of labour workers from Central Asia is often accompanied by various problems and challenges (illegal migration, lack of social protection, discrimination, and inequality).

It is necessary to create favourable social, legal, and economic conditions for labour migrants to remove obstacles to their social integration and adaptation by the host society. These conditions should include legalisation of their status, decent housing, gainful employment, social security, insurance, and legally guaranteed compensation payments, as well as ensuring a social identification process. To achieve

this goal, it is necessary to establish and strengthen social ties with the indigenous population and to develop partnerships and collectivist social relations. Tolerance and multiculturalism are also important concepts to develop (recognising culturally distinct communities from mainstream society and giving them special rights, including the right to protect their cultural autonomy). It is crucial to give migrant workers important social roles and responsibilities, to promote close interaction with them in social structures and institutions, and to provide language training for foreign workers. The ability of a labour migrant to successfully integrate into the host society depends on their proficiency in the local language. Furthermore, it is crucial to promote intercultural communication and increase the local population's understanding of the customs and cultures of the peoples, ethnic and ethnographic groups to which the vast majority of labour migrants belong.

Generally, to successfully promote social integration and adaptation of labour migrants from Central Asian countries, it is urgent to develop an integration-adaptation mechanism at the highest legislative level. Its main components and contents should have a clearly expressed socio-cultural orientation, be aimed at forming a new culture of relations with migrants in the host society, eliminating contradictions arising from socio-cultural and ethno-religious differences.

The prospect for further research is to assess the effectiveness of various programmes and measures to support labour integration of migrants based on legal mechanisms. This may include analysis of training programmes, employment support, legal aid mechanisms.

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Conflict of interest

None.

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Юридичні чинники впливу на соціальну інтеграцію трудових мігрантів із Центральної Азії

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Анотація. Вивчення впливу юридичних чинників на інтеграцію мігрантів дає змогу зрозуміти, як правове середовище в країнах-приймачах впливає на їхнє соціальне пристосування і включення в суспільство. Мета цього дослідження полягала в аналізі юридичних аспектів, що впливають на процес соціальної адаптації та інтеграції мігрантів у трудову сферу. У процесі дослідження було використано такі методи: структурно-функціональний метод, порівняльно-правовий метод, теоретико-прогностичний метод, метод анкетування. У результаті дослідження було встановлено, що інтеграція є процесом, який мають пройти мігранти, як особистості, так і як особлива соціально вразлива група. Незважаючи на існування міжнародних і національних законів, міграція трудових працівників із Центральної Азії часто супроводжується різноманітними проблемами та викликами (незаконна міграція, брак соціального захисту, дискримінація та нерівність). Необхідно створити сприятливі соціальні, правові та економічні умови для трудових мігрантів, щоб усунути перешкоди для їхньої соціальної інтеграції та адаптації з боку приймаючого суспільства. Ці умови мають включати легалізацію їхнього статусу, гідне житло, оплачувану зайнятість, соціальне забезпечення, страхування і гарантовані законом компенсаційні виплати, а також забезпечення процесу соціальної ідентифікації. Загалом, вкрай важливо створити механізм інтеграції-адаптації на вищому законодавчому рівні для ефективної підтримки соціальної інтеграції трудових мігрантів із країн Центральної Азії. Для створення нової культури стосунків із мігрантами в приймаючому суспільстві та зняття суперечностей, що виникають через соціокультурні та етнорелігійні відмінності, її основні компоненти й наповнювачі повинні мати чітко виражену соціокультурну спрямованість. Практична значущість даної роботи полягає в тому, що всі теоретичні положення, висновки та рекомендації можуть бути використані органами влади, до компетенції яких належать питання міграційних процесів, для поліпшення умов праці, захисту прав, збереженні соціальної стабільності, стимулюванні економічного розвитку та підтримці міжкультурного взаєморозуміння

Ключові слова: ринок праці; кваліфіковані фахівці; соціальна ідентифікація; працевлаштування за кордоном; мобільність робочої сили

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Comparative analysis of models of organisation of forensic activities: International experience

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Abstract. The purpose of the study was to identify the main models of organisation of the forensic system in Ukraine and to assess international experience in the field of expert support of justice, as well as to analyse ways to adapt modern world standards to national expert practice. The theoretical basis of the study was the documents defining the status and organisation of forensic experts in Ukraine, Latvia and the Czech Republic. The functions related to forensic examinations, examination, and seizure were analysed. It was revealed that the organisation of forensic expert activity in European countries is focused on creating an effective system of expert institutions and ensuring optimal conditions for conducting examinations by qualified specialists who are appropriately accredited and included in the official registers of forensic experts. It was emphasised that in Ukraine there is a mixture of two approaches to structuring forensic expert activity. The advantages of such a mixed model include harmonisation of forensic examinations, standardization of expert methods, accreditation of forensic laboratories and publicity of the register of forensic experts. The author substantiated the need to integrate the Ukrainian system of expert support of justice into the international context and to participate Ukrainian forensic institutions in international organisations that bring together foreign expert institutions. This will help to improve the procedures for the participation of forensic experts in justice. The author proposed to establish a single body – the National Service for the Provision of Forensic Expertise, which will be

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subordinated to the Ministry of Justice of Ukraine. Thus, the practical significance of the study is that its results can be used to centrally address the problem of methodological and information support of expert activity, which in turn will improve the organisation of forensic activities in Ukraine

Keywords: forensic examination; expert support of justice; specialised knowledge; expertology; international experience

Introduction

Forensic expert activity is central to the legal system of any country, as the results of examinations have a significant impact on the judicial decision-making process. In this regard, the efficiency and quality of forensic activities are critical to ensuring a fair and objective trial in courts. This underscores the need to continuously improve the organisational and technological aspects of expert activity, as well as to integrate international best practices to improve the justice system. Due to the full-scale invasion of Ukraine by the Russian Federation in 2022, there was a significant need for various forensic examinations. This became important to establish the facts and circumstances related to the loss of life, damage to infrastructure, property and environmental destruction, in order to document war crimes committed by representatives of the aggressor state and bring the perpetrators to justice. For example, from 1 March to 31 May 2024, at least 436 civilian deaths and 1,760 injuries were recorded (United Nations, 2024). Due to the active hostilities and limited access to the territories of Ukraine temporarily occupied by the Russian Federation, these data are incomplete. This situation has significantly increased the burden on state specialised institutions, which, according to Article 7 of the Law of Ukraine No. 4038-XII "On Forensic Expertise" (1994), have the exclusive right to conduct forensic, forensic medical and forensic psychiatric examinations. Thus, Optimisation of forensic work during the war required the development of effective strategies to preserve and develop scientific and technical potential.

Many scholars have studied the models of organisation of forensic activities. S. Korniyko (2020), O.G. Ruvin (2020) and V.O. Mykhailov (2023), emphasised that different countries have consistently implemented the principles of ensuring the independence of the expert, focusing on his or her special knowledge necessary to perform the tasks of justice, and the principle of competition of experts, which is crucial to ensure an objective, independent and qualified examination. S. Koropetska and V. Savchenko (2022) and V. Levchenko (2023) argued that the tasks of an expert in any country are the same: using their specialised knowledge, to conduct an examination that will contribute to the resolution of legal disputes or conflict situations. In view of this, it is worth emphasizing that international cooperation between forensic institutions is necessary for the exchange of knowledge and the incorporation of modern scientific and technical achievements, as well as for the creation of specialised areas. Ukrainian forensic institutions have chosen the path of integration with international forensic organisations, which contributes to improving the quality of forensic activities in Ukraine (Vozniuk & Hryha, 2023). The European integration course envisages the introduction of international standards in the field of forensic science.

According to K. Shunevych (2023), A.Y. Lebedenko and I.S. Volokhova (2023), N. Tkachenko and V. Alekseichuk (2022), using the experience of European countries in creating a separate forensic institution, which will allow concentrating forensic examinations within one agency. This will indeed provide an opportunity to implement an integrated approach to solving organisational, managerial, regulatory, personnel and financial issues, which will increase the efficiency and effectiveness of forensic activities. Works by A. Biju *et al.* (2021), B. Kumar *et al.* (2022) and B. Budowle (2023) are devoted to the problems of organising forensic activities in the process of criminal prosecution and improving the procedure for obtaining evidence in criminal proceedings.

The contribution of the above-mentioned scholars to the development of doctrinal research in the field of forensic science in Ukraine is undeniable. However, the issues of organisation and operation of forensic institutions remain insufficiently researched, especially with regard to the adaptation of the positive experience of such countries as the UK, France, and Poland into the national law enforcement system. Thus, the study and implementation of successful practices of the operation and functioning of forensic institutions abroad is extremely relevant. It should be emphasised that copying the legislation of other countries, in particular the members of the European Union (EU), without taking into account the Ukrainian mentality and the peculiarities of the national specifics of the development of forensic science and the organisational structure of forensic institutions is not effective. The purpose of this study was to conduct a comparative analysis of the models of organisation of forensic activities in Ukraine and other countries of the world.

Materials and methods

The study analysed regulatory and legal acts to assess the current state of the problem and identify possible solutions. Thus, in the course of scientific analysis and for a full understanding and substantiation of the issue, the rules from various legal sources were used, in particular: Law of Ukraine No. 4038-XII "On Forensic Expertise" (1994), Order of the Ministry of Justice of Ukraine No. 1138/5 "On Certain Issues of Ensuring Forensic Expert Activity under Martial Law" (2022), Resolution of the Cabinet of Ministers of Ukraine No. 710-96-p "On Approval of the Instruction on the Procedure and Amounts of Compensation (Reimbursement) of Expenses and Remuneration to Persons Summoned to Pre-trial Investigation Authorities, Prosecutor's Office, Court, or Authorities in Possession of Cases on Administrative Offences, and Payments to State Specialised Forensic Institutions for Performing the Functions of Experts and Specialists by Their Employees" (1996), Decision of the Accounting Chamber No. 28-1 "On Consideration of the Report on the Results of the Audit of the Management Efficiency of Forensic Research Institutions of the Ministry of Justice of Ukraine, Which Has Financial Implications for the State Budget" (2022), Order of the Ministry of Justice of Ukraine No. 230/5 "On Establishing the Cost of One Expert Hour in 2023" (2023), Law on Forensic Experts of the Republic of Latvia (2016), Regulation of the Cabinet of Ministers of the Republic of Latvia No. 606 "Procedures for Organising Forensic Expert-examinations" (2016), Ordinance of the Minister of Justice of the Republic of Poland No. 133 "On Court

Experts" (2005), and Law of the Czech Republic No. 254 "On Experts, Expert Bureaus and Expert Institutes" (2019).

In the course of researching this topic, a methodology was applied that allowed to provide a general description of various models of organisation of forensic activities in different countries of the world, in particular, the United Kingdom, Poland, and France, in particular, the method of legal comparative studies. The selection of the above countries is justified by their experience in developing effective models of forensic science, which differ from each other, but at the same time have common features that may be useful for adaptation to the national law enforcement system. The United Kingdom, for example, has a well-developed system of independent forensic institutions that operate under clear standards and regulations. Poland, for its part, offers an interesting experience of integrating forensic science into the law enforcement system, while France demonstrates a model with an emphasis on state control and regulation of expert institutions.

Accordingly, the inclusion of these countries in the study sample allows for a comparative analysis of different approaches to the organisation of forensic science activities, which will facilitate the development of recommendations on possible directions for the development of the national law enforcement system. Thanks to this approach, it became possible to consider in detail the peculiarities of legal regulation of forensic expert activity in the international context. The system-functional method made it possible to carry out a comprehensive assessment of the effectiveness of the current models of organisation of forensic expert activity. The analysis of international experience has made it possible to identify current trends and the state of forensic science in different countries.

The use of the system-functional method in the study of models of organisation of forensic activities allowed for a deeper understanding of the problem and the development of recommendations for improving the national system of forensic activities, in particular, in the direction of applying one of the studied models of other countries. In addition, the use of the logical and legal method in combination with other approaches has made it possible to obtain new conclusions regarding some established organisational and legal aspects. In particular, this method helped to clarify the essence and content of the key elements of the organisation of forensic activities in different countries, which contributes to a more effective integration of best practices into the national system.

The modelling method used in this study allowed us to offer recommendations for adapting these models to the specific conditions of Ukraine. This included an analysis of existing models in the context of their effectiveness and possible shortcomings, as well as the identification of the most appropriate elements for adaptation to Ukrainian realities. The integration of proven practices and technologies that have proven effective in the international context can help Ukraine to improve the quality and efficiency of forensic science activities by ensuring better coordination and standardization within the national legal system. This, in turn, allowed for the formation of constructs that reflect modern approaches to the organisation and functioning of forensic institutions. The phenomenon classification method was used to systematize existing models according to a number of criteria, such as the legal status of experts, the organisational structure of institutions and the principles of their activities.

Results

Forensic science plays a key role in the administration of justice, as it provides objective evidence that is used in investigations and trials. The importance of this activity is due to the fact that examinations provide scientifically based information and factual data used to establish the circumstances of a case and evaluate evidence. In criminal cases, the results of forensic examinations can have a significant impact on determining the guilt or innocence of suspects, as well as on establishing the objective truth in a case. For example, DNA analysis, toxicological testing, forensic examination of traces and documents can indicate the causes of a crime, confirm or deny the existence of criminal activity, and help identify the perpetrator. In civil cases, forensic expert opinions are often used to resolve disputes involving issues such as damage assessment, property division, or medical issues affecting compensation for damages. For example, expertise can help determine the real value of property in dispute or assess the medical consequences of injuries resulting from an accident.

The efficiency and quality of this activity largely depend on the model of its organisation, which determines the structure, functions, and subordination of forensic institutions. Different countries of the world use different approaches to the organisation of forensic activities, which reflects the national peculiarities of the legal system, traditions and specific needs of society. Forensic expert activity is carried out in the course of legal proceedings with the participation of specialised state institutions, their territorial branches, municipal expert institutions, private forensic experts and other specialists (experts) in the relevant fields of knowledge, in accordance with the requirements established by the current legislation – part 1 of Article 7 of the Law of Ukraine No. 4038-XII (1994). The peculiarity of forensic expert activity lies in its research nature. The work of an expert has common features with research work, but at the same time differs in specific forms of performing tasks, which are defined by the relevant regulations (Fig. 1).

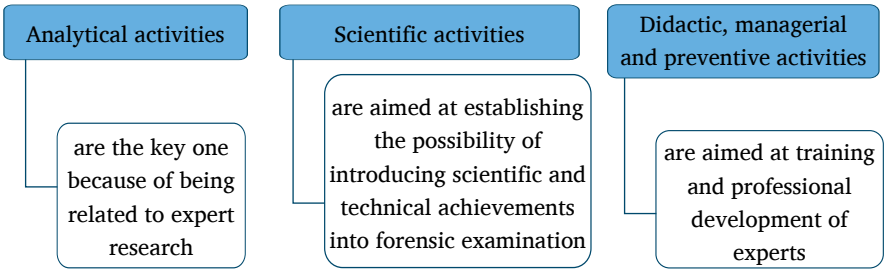

Figure 1. Types of forensic activities

Source: compiled by the authors

The organisation of the forensic science system in Ukraine is structured in four levels, including research institutions operating under the Ministry of Justice of Ukraine, the Ministry of Internal Affairs of Ukraine, the Ministry of Defence of Ukraine, the Security Service of Ukraine, the State Border Guard Service of Ukraine, the Ministry of Health of Ukraine and the State Bureau of Investigation – Article 7(2) of the Law of Ukraine No. 4038-XII (1994). The institutional system of expert institutions implements about 80 areas of expertise and covers several administrative structures at the central and regional levels. According to the Register of Certified Forensic Experts (n.d.), there are about 8000 experts in Ukraine. This system not only ensures forensic examinations, but also has significant potential in the preventive direction. Expert prognostication provided by experts provides significant support to state authorities in improving the system of restrictions, controls, and requirements aimed at preventing offences and increasing the effectiveness of preventive measures.

The system of forensic activities based on expert prognostication provides support to state authorities in improving control mechanisms, introducing new requirements and restrictions, which will directly affect the reduction of the likelihood of offences (Adanbekova *et al.*, 2022a). This may include reviewing existing procedures and introducing new measures to improve the overall effectiveness of preventive measures. An example is the experience of the United Kingdom, where forensic institutions actively use predictive models to combat economic crimes, including fraud. Through a detailed analysis of past cases and the use of predictive technologies, experts have created recommendations for strengthening regulatory requirements in the financial sector, which has helped to reduce the number of fraud cases and increase the effectiveness of law enforcement (Sandepudi, 2024). Thus, the forensic system, through its ability to predict and prevent, makes a significant contribution to improving law and order, preventing potential offences and contributing to more effective risk management at the state level.

The organisation of forensic science activities in different countries of the world is characterized by a significant variety of approaches and models. The analysis of these models allows us to identify the main advantages and disadvantages of each of them, which may be useful for improving the forensic system in other countries. In Europe, two main organisational models of forensic examination have been formed. The first model involved the involvement of specialised expert institutions that carried out forensic examinations within their specialisations (France). The second model was focused on individual forensic experts who had the appropriate certifications and were included in the official registers of forensic experts (UK). The latter organisational form, known as the institute of sworn experts, was widespread in socialist European countries in the middle of the last century. The essence of this institute was to delegate the conduct of examinations to specialists who took an oath (Poland) (Ivanović, 2018). However, there are problems associated with the organisational and procedural aspects of forensic examination, in particular, with the administrative management of forensic activities, the departmental subordination of such institutions and the degree of their centralization or decentralization. In countries such as the United Kingdom, France and Poland, the forensic service, along with other law enforcement agencies, is subordinated to the Ministry of Internal Affairs. This structure ensures that the rule of law is upheld, and that forensic methods and tools are effectively used to detect and investigate crimes.

Countries such as the United Kingdom use a mixed model for organising forensic science. This model combines elements of both centralised and decentralised systems, which allows for uniformity of methodologies and standards while ensuring flexibility and efficiency. For example, in the UK, there is a National Forensic Science Service that cooperates with independent laboratories and the police. The UK example is the organisational structure of the Forensic Science Service (FSS) (2024), which is an executive agency of the UK Home Office and plays a key role in the police's work to detect, investigate and prevent crime. The FSS provides professional support in performing these tasks. In addition, the UK provides for the possibility of engaging private forensic laboratories to conduct certain types of examinations, which usually include forensic examination of documents. Thus, the organisation of forensic activities in the UK is based on a mixed model that combines centralised and decentralised elements. This allows for uniformity of methodologies and standards, while ensuring flexibility and efficiency in the work. The involvement of private laboratories and independent experts allows for a rapid response to the needs of investigations, adapting to specific situations. Centralised systems can indeed lead to excessive bureaucracy, which complicates and slows down decision-making processes. This issue is particularly relevant in the context of the British system, where centralization and bureaucracy have their own specific characteristics and impact on the effectiveness of governance. In particular, excessive formalization of processes and procedures can have a negative impact on the speed and efficiency of investigations (Tickell, 2022). These aspects prove that centralization and bureaucratization can have both positive and negative effects, depending on how effectively they are regulated and adapted to modern conditions. Therefore, in general, the mixed model used in the UK can serve as an example for improving forensic science in Ukraine.

In some countries, the forensic service has been integrated into the Ministry of Justice, as in Portugal, or the Ministry of Defence, which has included it in armed police forces, as in France. In France, for example, the organisation of forensic activities is based on a central model that concentrates all expert units under a single state body, in particular the National Institute of Scientific Police (INPS). All expert units operate under the guidance of a single state body, which ensures a high degree of centralization. This allows for standardization of examination methods, which guarantees consistency and high quality of results. To improve the efficiency of investigations and crime detection, France has created specialised units deployed throughout the country. This includes regional laboratories and specialised teams that work in close cooperation with local law enforcement agencies. This structure ensures that expert services are quickly available and accessible in different parts of the country (Sauvagère *et al.*, 2023). At the same time, staff involved in criminal investigations work in specialised units, such as regional laboratories, which are subordinated to INPS. They support local law enforcement agencies by providing expert services within the framework of uniform standards and methodologies. This combines the benefits of centralization with the necessary flexibility to effectively investigate and solve crimes. An analysis of this model may be

useful for Ukraine when considering possible reforms in the field of forensic science.

Some countries have a different structure and subordination of forensic laboratories. For example, in Poland, forensic laboratories are subordinated to the Ministry of Justice, while there are also laboratories under the jurisdiction of the Ministry of the Interior. The laboratories under the jurisdiction of the Ministry of Justice specialize in forensic examinations, in particular, those used in judicial investigations and criminal cases. At the same time, laboratories under the jurisdiction of the Ministry of Internal Affairs are engaged in examinations that are directly related to operational and investigative activities, including research that is important for crime investigations. This separation of jurisdiction promotes the specialisation of laboratories and allows them to focus on their specific tasks, thus providing them with deeper knowledge and expertise in their respective fields. It also reduces possible influence from law enforcement agencies, which can be important for maintaining the impartiality of experts. Nevertheless, this organisational structure has its drawbacks. The main challenge is the difficulty in coordinating between laboratories subordinated to different ministries. The absence of a single governing body makes it difficult to share information and cooperate between institutions, which sometimes leads to delays in investigations and slows down the implementation of forensic research. In addition, separate reporting lines can lead to differences in the methodologies and standards of forensic examinations, which can negatively affect the quality and consistency of results (Solodov, 2023). Bureaucratic obstacles can also be a significant impediment to the effective operation of expert institutions. Despite these challenges, the Polish model demonstrates the importance of balancing the independence of experts with the need for effective coordination between different government agencies.

Thus, the overall organisational structure of forensic science institutions in European countries may vary depending on national legislation and institutional norms. In some European Union countries (e.g. France), the executive management of forensic science activities is carried out within law enforcement agencies, in particular, through their subordination to the Ministry of the Interior. Private forensic laboratories may also be involved in some specific areas of expertise, which further expands the capabilities of the forensic support system. In some European countries, such as France, the structure of forensic laboratories may include their subordination to the Ministry of Justice or the Ministry of Defence, depending on the specific context and institutional decisions. This demonstrates the diversity of approaches to the organisation of forensic science in Europe, which is reflected in the diversity of legal frameworks and challenges faced by law enforcement agencies in each country. Thus, the consideration of the structural aspects of the forensic service in Europe shows that the development and reform of this area is aimed at ensuring high standards of justice and the effective functioning of the law enforcement system of each country.

The analysis of funding in forensic science in Ukraine has shown a systematic deficit, especially in providing experts with the necessary specialised equipment and materials for conducting examinations (Decision of the Accounting…, 2022). For this reason, the main emphasis is placed on self-directed professional development, as state funding does not provide sufficient resources for this process. At the same time, it should be understood that according to the current Order of the Ministry of Justice of Ukraine No. 1138/5 (2022), an unscheduled inspection of the activities of a forensic expert and verification of compliance with working conditions can be carried out only in areas where there are no military (combat) operations or which are not under temporary occupation, encirclement (blockade). This may be done in the case of an application from a person who intends to obtain or confirm the qualification of a forensic expert in a particular expert speciality, or to extend the validity of a forensic expert qualification certificate. This emphasizes the need to ensure that the working conditions of forensic experts are accessible and appropriate, even in conditions of limited funding and difficult circumstances.

Given the rapid pace of technological progress and digitalization, as well as the emergence of new research methods and types of crime, expert institutions constantly need to update their technical equipment, including laboratory equipment, and software. The situation is further complicated by the fact that, according to Article 7(3) of the Law of Ukraine No. 4038-XII (1994), only state-specialised institutions are authorized to conduct forensic, forensic medical and forensic psychiatric examinations. This creates several problems in the context of the development of new research methods and the emergence of new types of crime, including limited access to innovations that state institutions cannot have. Given the rapid development of investigative technologies and methods, limiting the involvement of private experts may slow down the introduction of new effective solutions into practice. The emergence of new types of crimes, such as cybercrime or crimes involving new technologies, requires the adaptation and expansion of expert methodologies. State-specialised institutions may not have sufficient resources or expertise to implement the necessary new techniques in a timely manner. If they are the only ones authorized to conduct expertise, this may lead to delays in responding to new challenges. The state monopoly in expert activities may create risks of bias and lower quality of expertise due to the lack of competition and alternative approaches to solving expert problems. These limitations make it difficult to adapt to modern conditions and effectively apply new methods in the investigation of crimes, which is critical for the effective functioning of the forensic system. Thus, due to these legislative restrictions, non-governmental forensic institutions are unable to fully meet the need for expertise required to investigate crimes committed only by governmental organisations. On the other hand, due to objective limitations and insufficient funding, the state cannot provide full support to the entire extensive system of state-owned specialised institutions.

Currently, there are seven state forensic institutions in Ukraine that were subordinated to different ministries and agencies, including the Ministry of Justice, the Ministry of Internal Affairs, the Security Service, the Ministry of Health, the Ministry of Defence, the State Border Guard Service and the State Bureau of Investigation – Article 7(2) of the Law of Ukraine No. 4038-XII (1994). This meant that there were separate expert services in each of these bodies. Each of these institutions had its own expert qualification commissions, educational and scientific resources, expert training programmes, accounting databases, registers, developed methodologies and departmental instructions. Another problem

was that many public and private forensic experts in Ukraine faced low salaries, which led to an outflow of qualified specialists abroad and a general decline in the quality of expertise in the country. Therefore, the issue of the economically justified cost of an expert hour required urgent resolution. In accordance with paragraph 12 of Resolution of the Cabinet of Ministers of Ukraine No. 710-96-p (1996), the cost of conducting examinations in criminal cases and administrative offences was determined on the basis of the standard cost of one expert hour, which was UAH 378.64. This number corresponded to the actual time spent on the examination. However, pursuant to the Order of the Ministry of Justice of Ukraine No. 230/5 (2023), the new cost per expert hour was set at UAH 238.98, taking into account the consumer price index for 2022. Given the maximum workload (22 working days per month, 8 hours per day), an expert could expect a salary in excess of UAH 40,000.

The situation with state experts was similar. Audits conducted to assess the managerial efficiency of forensic research institutions have repeatedly revealed a discrepancy between the actual cost of expert services and their official valuation. These services included not only labour costs, but also the costs of utilities, building maintenance and consumables, which were not covered in full. Renovation of the material and technical base was often carried out at the expense of special funds. In the Decision of the Accounting Chamber No. 28-1 (2022), it was noted that there is a problem of insufficient funding of public institutions. It also emphasised the need to determine the economically justified cost of one expert hour for conducting examinations in criminal and administrative proceedings. This was also exacerbated by the aggravation of the situation due to the Russian aggression, which forced many qualified specialists, including those who spoke foreign languages and had international certificates, to leave the country in the first months of the conflict and find new jobs abroad. To solve this problem, it is necessary to review the existing approaches to the financing of forensic activities in Ukraine. Optimising the staffing of expert institutions will increase the salaries of state experts. Adequate funding for forensic science is critical to ensuring public confidence in the judicial system, the fairness of court decisions and the equality of all before the law. Effective work of forensic experts requires the existence of a special legal act that defines the procedure for obtaining the status of an expert, as well as the procedures for certification and advanced training. For example, in Latvia, forensic expert activity is regulated by the Law on Forensic Experts of the Republic of Latvia (2016) and Regulation of the Cabinet of Ministers of the Republic of Latvia No. 606 (2016). In the Czech Republic, the legislation was updated by Law of the Czech Republic No. 254 (2019).

The main legal act that regulates forensic expert activity in Ukraine, ensuring justice through independent, qualified and objective examinations, is Law of Ukraine No. 4038-XII (1994). This law had a significant positive impact on the development of forensic science, becoming the first document in independent Ukraine to consolidate the basic principles of expert activity. It defined important aspects, such as the legal status of a forensic expert, the basis of his or her activities, tasks, and principles of work. However, the law adopted in 1994 no longer met the modern requirements for the development of forensic practice. The identified shortcomings were related to the fact that the act mainly regulated the procedural aspects of conducting examinations, leaving organisational and tactical issues unaddressed. The main problems that required legislative regulation were: the need to clarify the provisions of the law on the basis of forensic examinations; lack of time limits for the execution of examinations; lack of regulation of the review of expert opinions; uncertainty of the body responsible for state policy in the field of forensic science; inconsistency of the norms of by-laws with the norms of the law; the need for detailed legislative regulation of the activities of private expert institutions and experts. Based on the above analysis, it was found that Law of Ukraine No. 4038-XII (1994) required a substantial revision or even complete replacement with a new legislative act. This new law should clearly define the legal, organisational and financial basis of forensic science. The modern system of forensic expert activity had to be built and developed taking into account the needs of state authorities, judicial authorities and the public, which implied the creation of a unified legal framework for the regulation of expert activity.

The Law of Ukraine No. 4038-XII (1994) required a substantial revision due to changes in social relations and the development of the legal system. Since its adoption, many amendments and additions have been made to improve the regulation of forensic science. Thus, the legal, organisational and financial framework for the activities of forensic experts has been significantly updated and clarified, in particular:

- clarification of the status of experts, as amendments were made to the definition of the status of forensic experts, including the expansion of the circle of persons entitled to conduct forensic examinations, as well as clarification of their duties and responsibilities;
- organisational changes, as the latest version of the Law of Ukraine No. 4038-XII (1994) provides for clearer provisions on the organisation of forensic activities, including the establishment of new bodies responsible for the control and regulation of forensic experts;
- financial support, as provisions have been introduced to regulate the financing of forensic activities, including new funding mechanisms to ensure the independence and effectiveness of examinations;
- introduction of new standards and methodologies.

The new version pays more attention to standardization and implementation of modern methods of conducting examinations that meet international standards. Accordingly, in the current, final version of Law of Ukraine No. 4038-XII (2023), the legal provisions governing forensic science in Ukraine have been updated compared to the first version of the law (Law of Ukraine No. 4038-XII, 1994), which in many aspects no longer met modern requirements and challenges. The experience of European countries demonstrates the organisation of forensic activities within a particular agency (Ministry of Internal Affairs, Ministry of Defence, Ministry of Justice and others) as a part of it, vested with certain powers and functions. This practice of organising forensic activities within a particular agency may be useful for implementation in Ukraine. Therefore, it is advisable to create a separate and single body – the National Forensic Science Service, subordinated to the Ministry of Justice. Having a special body for this purpose would allow for effective analysis and comparison of data on the qualifications of forensic experts, assessment of the needs of expert institutions for new specialists, as well as the number of trained experts in public and private educational institutions.

A comparative analysis of the models of organisation of forensic activities shows that each of them has its advantages and disadvantages. It should be understood that in the countries under consideration there are a number of challenges related to the organisation of the effective functioning of expert activity. These problems cover both departmental expert institutions and non-departmental organisations that carry out expert activities outside forensic structures. Among the main issues, it is worth highlighting the problems of training and professional development of experts, including issues related to educational systems and training standards, as well as regulatory issues covering organisational and ethical aspects, the role of heads of expert institutions and the range of persons authorized to order examinations; financial issues, such as the formation of the cost of expert services and the lack of regulation for private experts; and issues of control over the performance of expert activities. In this context, it is important to take into account the specifics of Ukraine's national legal system, the level of development of forensic science and the needs of the state. For example, Ukraine needs to find a balance between centralised control and the autonomy of local and private expert institutions to ensure both high-quality expertise and promptness in conducting it. Therefore, Optimisation of forensic activities in wartime requires a comprehensive approach and coordination of efforts by government agencies, scientific institutions, international organisations and the public, as only close cooperation can ensure the effective functioning of the forensic system and the preservation of scientific and technical potential.

Discussion

The study of the models of organisation of forensic activities in the world practice allows for a better understanding of different approaches to ensuring the effectiveness of expert work, which is important for improving the forensic system in Ukraine and other countries. The analysis of different models of organising forensic activities reveals both effective and problematic aspects of different systems, which in turn helps to develop recommendations for improving existing practices. In particular, the results of the study confirm the importance of integrating elements of centralised and decentralised models to ensure high quality expertise and adaptability of the system to specific conditions. This is consistent with the findings of other researchers. For example, S. Bitzer *et al.* (2021), N. Sunde and G. Horsman (2021) point out that forensic examination is a key element for establishing the truth in criminal proceedings, but the qualifications of an expert alone do not always guarantee the quality of expert research. As mentioned above, improving the quality of expertise not only through the qualification of experts, but also through the Optimisation of organisational models can significantly affect the effectiveness of expert activity.

According to S. Doyle (2019) and V.R. Kebande *et al.* (2021), it is necessary to adapt legislation to European standards in the context of protecting human rights and freedoms. The results of the study indicate that Ukraine should focus on the integration of European practices in the field of forensic science. A comparison with the models used in the UK shows that hybrid approaches that combine centralised, and decentralised elements can provide the best results. This approach allows for effective coordination of experts, high-quality expertise, and quick response to specific requests arising in different regions. Implementation of a similar hybrid model in Ukraine could improve coordination between public and private expert institutions, increase the level of professional training of experts and ensure a more flexible and efficient management of the forensic science system.

The review of the organisational aspects of the functioning of forensic institutions in European countries indicates the need to harmonize principles and practices to increase the effectiveness of the fight against transnational crime and improve the processes of investigation and detection of crimes (Chornous & Dulskyi, 2024). It is important to establish common organisational principles and operational approaches among European law enforcement agencies to achieve these goals. This position is supported by research findings, in particular, in the works of S. Weyermann and C. Roux (2021), N.V. Passalacqua *et al.* (2021), who note that models of law enforcement systems are shaped by multiple factors that are specific to the historical and cultural conditions of particular countries. This means that, while there are general principles of organisation and functioning, each model has its own unique advantages and disadvantages.

Researches by K. Górka and M. Mazur (2021), A. Olckers and Z. Hammatt (2021) confirm the importance of the theoretical foundations of forensic science and methodological approaches to conducting examinations and note the importance of introducing international standards in the field of human rights and freedoms. Obviously, the development of a model of forensic expert activity should be based on a comprehensive analysis of historical experience and a comprehensive approach to combating crime. The existence of registers and the procedure for registering persons engaged in forensic science activities indicate their professional level and qualifications (Buribayev *et al.*, 2020). It also reflects the level of trust in the system and its effectiveness in ensuring high standards of expert activity.

As noted earlier, official registers of experts should serve as databases containing information about specialists in specific fields, and inclusion in such registers should be a confirmation of high standards of their work. However, according to scientific research, in particular, in the works of J. Fraser (2020) and T.E. Gross *et al.* (2021), there are serious questions about the effectiveness of these registers. It is noted that deficiencies in expertise are one of the main sources of miscarriages of justice, which complicates the establishment of the truth in criminal proceedings. As noted by I. Zieniewicz (2021), the existence of official lists of forensic experts does not always guarantee their real competence. Many candidates seeking to be included in such lists may use political influence or other extra-legal means that are not related to their professional achievements and qualifications. The findings of this study confirm these conclusions, pointing to numerous cases where formal registration procedures do not ensure an adequate level of expert competence. In particular, it was found that in some cases, the qualification requirements for experts are not sufficiently clear or are not properly enforced. This can have a negative impact on the quality of forensic examinations and the administration of justice in general. Therefore, a number of measures should be taken to improve the quality of forensic expertise: improve the procedures for inclusion in the registers, establish clear criteria for assessing the competence of experts and introduce effective mechanisms to monitor compliance with these criteria. In addition, it is necessary to ensure transparency

of the registration process and reduce the possibility of influence from political and other external factors (Dmytrenko, 2024). Thus, ensuring the reliability of official registers of experts is critical to improving the quality of forensic science. In view of the identified shortcomings, it is necessary to focus on improving the system of expert qualification and introducing stricter control mechanisms. This will reduce the likelihood of miscarriages of justice and ensure a more efficient functioning of the justice system.

Taking into account historical contexts and international experience, scholars and practitioners, in particular S. Jhalani *et al.* (2024), identify several approaches to reforming forensic science:

- maintaining the traditional model, which involves minor adjustments and decentralization of management functions;
- updating the traditional model by expanding the possibilities for creating expert institutions under sectoral central authorities;
- radical reforms with the creation of a single central body;
- a mixed model that combines elements of traditional and radical models;
- competitive model, which provides for the subordination of expert institutions to pre-trial investigation bodies to meet the specific needs of the investigation.

In the context of the modern development of science and technology, the institute of forensic examination is expanding and improving, creating a new institutional and organisational structure that integrates the latest achievements. Modern innovations such as digital forensic photography, 3D modelling, artificial intelligence and new diagnostic tools are becoming an integral part of expert research, opening up new opportunities for the accuracy and efficiency of forensic examination (Adanbekova *et al.*, 2022b).

Exploring related issues, Y.S. Sulley (2023) and V. Abrol (2024) point out the importance of taking into account the positive experience of other countries when organising forensic activities, without neglecting the achievements of national systems (in particular, the material, methodological and professional capabilities of departmental specialised expert institutions). This position is supported by studies that emphasize the importance of ensuring maximum independence and impartiality of forensic examinations. At the same time, some scholars, in particular S. Prahladh and J. van Wyk (2022), J.S. Allwood *et al.* (2020), believe that the departmental affiliation of experts should not affect their impartiality, especially in administrative proceedings.

Thus, the results of the study confirm that for the effective organisation of forensic activities, it is necessary to consider both the advantages of centralised models and the flexibility of decentralised systems. The recommendations arising from the study point to the need to create an adaptive system that can integrate best practices from international experience, considering the specific conditions of Ukraine.

Conclusions

The study showed that centralised models, which involve the management of forensic science through one central body, provide for more stable and standardised practice. At the same time, decentralised models, where different bodies or institutions have their own role in expert activities, allow for a more flexible response to the specific needs of regions or oblasts. The organisation of forensic activities in European countries is focused on creating an effective system of expert institutions and ensuring optimal conditions for conducting examinations by qualified specialists who are appropriately accredited and included in the official registers of forensic experts. A single regulatory act or set of rules for conducting forensic examinations helps to unify approaches and improve the quality of expert opinions. Models for organising forensic activities in some countries, such as France, demonstrate the successful use of expert prognostication for crime prevention. This includes the development of preventive measures and recommendations for public authorities, which contributes to a more proactive approach to crime prevention.

The integration of the latest technologies and methodologies into the field of forensic science has become a decisive factor for countries with a developed forensic system. Modern technologies help to improve the accuracy and efficiency of expertise and make it accessible to a wider range of users. International experience confirms the importance of choosing an organisational model of forensic science that meets the specific requirements and conditions of each country. Adaptation of successful practices and implementation of advanced models can significantly increase the efficiency of expert activity and ensure the improvement of the quality of justice. The results of the study confirm the expediency of combining different models to improve the organisation of forensic activities. Such an approach allows for the integration of best practices, compliance with international standards and consideration of national peculiarities. This study is a significant step towards the development of recommendations for optimising the organisational structure of forensic science in Ukraine.

It may not be possible to study all possible models of forensic science organisation on a global scale in a single study due to its complexity and scope, which may lead to the omission of important aspects. For example, the study of forensic organisation models is limited to a few countries or regions, which may not fully reflect global trends and diversity of practices. As a result, some aspects may not be presented or sufficiently explored. Similarly, socio-cultural differences between countries may affect the organisation of forensic science activities, but are not always taken into account in the study. This can limit the understanding of specific contexts and model adaptations. Optimisation of forensic activities during martial law requires a comprehensive approach and coordination between government agencies, scientific institutions, international organisations and the public. Only through close cooperation can the effective functioning of the forensic system be ensured and the scientific and technical potential preserved.

Further research could focus on the impact of legal reforms, the introduction of new technologies such as artificial intelligence and 3D modelling, and their impact on the effectiveness of forensic institutions in different countries.

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Conflict of interest

None.

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Порівняльний аналіз моделей організації судово-експертної діяльності: світовий досвід

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Анотація. Метою дослідження була ідентифікація основних моделей організації судово-експертної системи в Україні та оцінка міжнародного досвіду в сфері експертного забезпечення правосуддя, а також аналіз шляхів адаптації сучасних світових стандартів до національної експертної практики. Теоретичною базою дослідження стали документи, які визначають статус та організацію судових експертів в Україні, Латвії та Чехії. Було проаналізовано функції, пов'язані з проведенням судових експертиз, огляданням і вилученням. Виявлено, що організація судово-експертної діяльності в європейських країнах орієнтована на створення ефективної системи експертних установ і забезпечення оптимальних умов для проведення експертиз кваліфікованими фахівцями, які мають відповідну акредитацію і включені до офіційних реєстрів судових експертів. Акцентовано, що в Україні спостерігається змішування двох підходів у структуризації судово-експертної діяльності. Переваги такої змішаної моделі включають гармонізацію судових експертиз, стандартизацію експертних методик, акредитацію криміналістичних лабораторій і публічність реєстру судових експертів. Обґрунтовано необхідність інтеграції української системи експертного забезпечення правосуддя в міжнародний контекст та участь українських судово-експертних установ у міжнародних організаціях, що об'єднують зарубіжні експертні інституції. Це сприятиме вдосконаленню процедур участі судових експертів у правосудді. Запропоновано створення єдиного органу – Національної служби з забезпечення судово-експертної діяльності, що підпорядковуватиметься Міністерству юстиції України. Практичне значення дослідження, таким чином, полягають в тому, що його результати можуть бути використані для централізованого вирішення проблеми методичного та інформаційного забезпечення експертної діяльності, що в свою чергу, покращить організацію судово-експертної діяльності в Україні

Ключові слова: судова експертиза; експертне забезпечення правосуддя; спеціальні знання; експертологія; міжнародний досвід

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Assessment of state policy and legal framework related to enhancing the well-being of the elderly in Thailand

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Abstract. The ageing of society significantly influences the economic system and social stability and is a global challenge of the 21st century. The study aimed to explore ways to improve the quality of life of older people in the Lower Central Region of Thailand. The study was based on a qualitative approach and was conducted by collecting information from 8 key informants through structured interviews. The study substantiated the expediency of creating a centralised database to improve communication between all actors in the system of ensuring the welfare of the elderly, which improves the quality of services provided, contributes to a better basis for political decisions and promotes a more rational use of resources. The study noted that key respondents identify expanding access to healthcare, increasing financial assistance and strengthening social support systems to ensure the holistic well-being of older people as urgent problems in the region. The need for wider use of the latest technologies and the creation of an intelligent information management system in the area of elderly people's welfare is emphasised in the study. Given the negative impact of social isolation on the quality of life of older people, particular attention is devoted to the effective management of senior clubs, namely the priority of various activities, intergenerational interaction and meaningful leisure to strengthen social ties and belonging to society. The integration of Buddhist principles and psychological theories is emphasised as an important tool for developing compassion, mindfulness and positive outcomes. Overall, the findings highlight the importance of integrated approaches and comprehensive measures to optimise care for older people and improve their well-being. The results of the study can be used to determine the content of information to be included in the centralised database and to develop an algorithm for exchanging information between its users

Keywords: life quality; centralised database; ageing; demographic; Buddhism; social protection; health care

Suggested Citation

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Introduction

The increase in the proportion of the elderly population is a global phenomenon driven by declining birth rates and longer life expectancy. According to certain forecasts, by 2050, the global population over the age of 60 will exceed 22%, which is twice as much as in 2015 (World Health Organisation, 2022). The ageing of society results in a range of concomitant problems of both demographic and economic nature. The speed with which the age structure of society is changing requires a quick response from the state, which necessitates a study aimed at identifying the needs that may arise both in the state as a whole and in each specific region.

More than 12 million older people reside in Thailand, accounting for about 18% of the population, while this number is projected to increase to 28% by 2033 (Thailand's leadership and…, 2023). These data are in line with the forecast that Thailand will become a "super-aged" society by 2036, with the share of the elderly population rising to 30% (Thailand will become…, 2023). Thus, an ageing society is already taking shape in Thailand and the coming years it will become a country with a fully elderly society. The main problems of older people include mobility problems, which lead to the need for assistance in everyday life, and the share of such older people is 8.2%, while a third of them do not receive the necessary support. Traditionally, most older people in Thailand have lived with their families, but as the ageing population grows, this is becoming increasingly problematic. By 2050, most older people are expected to be 80 years old, which will require more care to address health issues (Caring for Thailand's…, 2021).

Studying the problems associated with ageing, K. Chan *et al.* (2022) point out that their main characteristic is multifactorial, as age-related changes affect all areas of human life. C. Henning-Smith *et al.* (2022) highlight the need to address the significant differences between the elderly in urban and rural areas. Specifying the needs of older people, N. Kohli *et al.* (2020) point to the need for care, specialised healthcare, as well as psychological support and social protection. F. Sierra (2019) points out that global ageing will increase the imbalance towards a sharp decline in productive forces with an increasing demand for resources. On the other hand, as noted by J. Li *et al.* (2021), the rapid development of the latest technologies successfully addresses the problems arising from the care, monitoring and overall improvement of the quality of life of older people. P. Nillaor *et al.* (2022) highlight the need to improve information collection on older people, which is characterised by significant fragmentation, which does not allow for effective coordination of different services.

Improving the well-being of older people in the lower central region requires coordinated efforts to strengthen the social security system. This involves both strengthening existing programmes and introducing new initiatives aimed at significantly improving the quality of life (Bocheliuk *et al.*, 2021). As N. Jensantikul (2023) notes, a crucial factor in this is ensuring access to basic health services, such as health insurance and reimbursement of medical expenses, which correlates with a reduction in the likelihood of poverty among older people. J.B. Komaraiah *et al.* (2023) also address the important role that financial assistance, including social support and its adequate level, plays in addressing food insecurity and improving overall well-being. H. Liao *et al.* (2023) highlight the role of both formal and informal social support channels in the system. By addressing these complex factors and implementing comprehensive social welfare programmes, effective solutions can be developed to improve the well-being of older people in the lower central region.

Thus, given the need for not only a national but also a regional approach to addressing the issue of improving the well-being of older people, the study aims to identify ways to improve the well-being of older people in the lower central region of Thailand.

Literature review

The creation of a centralised database (CDB) on elderly care is an integral part of the elderly care system as a whole. As such, Y. Xu *et al.* (2023) note that such a database can be a comprehensive resource that provides valuable information about the needs, preferences and health status of older people, which can be used by healthcare professionals, caregivers and policymakers to make informed decisions and tailor services to meet the specific needs of each individual. Following W. Aneksak *et al.* (2023), this approach ensures more personalised and effective care, which contributes to the well-being of older people.

The academic literature points out that the most important component of the CDB is the introduction of smart elderly care services based on intelligent technologies and advanced equipment. According to H. Xiao and Y. Sun (2023), this approach ensures that the functioning of the elderly care system is more efficient, thus improving overall well-being. In addition, digital information and technology bridge the digital divide by providing convenient access to the necessary care information (Krasivskyi, 2023). The creation of an intelligent system of medicine and healthcare will optimise the use of medical resources based on reliable data on the health of older people. This intelligent service model, which focuses on primary care and health, promises to improve the quality of care while improving the accuracy of care data recognition.

Senior clubs are crucial centres for fostering social connections and a sense of belonging among older people, and their effective management is key to maximising their impact. As K.H. Park and B.J. Lee (2022) points out, that this involves the organisation of a variety of activities, workshops and events that cover the different interests and abilities of older people. S.F. Alradade *et al.* (2022) point out that promoting intergenerational interaction and active participation in public life can help combat social exclusion and increase overall well-being. According to N.E. Pope and E. Greenfield (2022), full-time leisure activities provided by these clubs, including community rituals and opportunities for giving and sharing, provide a deep sense of belonging and happiness, thus attendance at social clubs for older people has a significant impact on their functional status, quality of life and physical activity levels. In summary, the effective management of senior clubs has significant potential to improve the well-being and social interaction of older people, contributing to healthy ageing and independence (Cheberyako & Skulish, 2022).

The integration of Buddhist principles with psychological theories provides insights into improving the well-being of older people. S. Gallagher *et al.* (2023) point out that Buddhism's emphasis on compassion, mindfulness, and acceptance of impermanence can help foster positive thinking,

reduce anxiety, and promote acceptance. At the same time, F.S. Kiani and S. Ehsan (2023) emphasise that psychological theories such as positive psychology and cognitive behavioural therapy provide practical ways of improving mental well-being and resilience in older people. According to M. Elfahmi and L.I. Mariyati (2023), the incorporation of Buddhist principles and theory into interventions and support programmes will provide a holistic approach that can effectively address the overall well-being of older people.

Thus, certain issues related to the well-being of older people are a frequent issue of consideration in the academic literature. The focus is on psychological, organisational and social issues. At the same time, improving the well-being of older people requires considering many factors, including regional ones. The present study focuses on consolidating approaches to address a specific problem – improving the well-being of older people in the Lower Central region of Thailand.

Materials and methods

Four key areas were addressed to address the issue of improving the well-being of older people in the Lower Central Region of Thailand: the creation of a centralised database on elderly care; strengthening regulation in the social security sector; managing clubs for the elderly; and introducing Buddhist principles and psychological theories.

Key informants were selected using purposive sampling from 8 older people with good knowledge and relevance to the research topic in the lower central region of Thailand. Thus, the criteria for selecting respondents were age (over 60); involvement in social life and thus awareness of existing opportunities; interest in receiving social support; and lack of legal education, which provided objective data on the accessibility of the existing social protection mechanism for people without special knowledge. The study was conducted in the fourth quarter of 2023. The method of in-depth interviews and non-participatory observation was used with respondents. The interview included a study of respondents' opinions in four areas: the creation and operation of a centralised database; improving regulation in elderly welfare; ensuring effective management of senior clubs; and introducing Buddhist principles into the area of elderly care. To identify the need to improve regulation in the social security sector, respondents were asked to identify which areas require additional regulation to improve the welfare of older people. The respondents were also asked to formulate their suggestions on what types of activities they consider appropriate for elderly clubs to make them a more effective tool for organising the social life of older people. The respondents' opinion on the expediency of including Buddhist practices in the system of care for older people was also sought.

The study also included direct observation of senior citizen clubs, the activities that take place there, and the use of Buddhist practices in conducting such activities. Detailed notes were taken to capture relevant information, which were subsequently used during the interviews to ensure accuracy, clarity and understanding between the researcher and key informants. The data set obtained from the interviews and observations was structured for effective analysis of the results using three main principles: data reduction and filtering, display and description of information, and concluding thematic analysis. This process involved analysing and refining the data, presenting and explaining relevant information, drawing conclusions and interpreting the findings. The groundwork for further study and interpretation of the results was created, ensuring a consistent and unified approach to analysing the research findings.

The regulatory framework of the study is based on the provisions of the Thai Civil and Commercial Code (1925) and the Social Security Act (1990). The information base for the study was the data from the Research on the International Cooperation Projects for Response to Population Aging in Thailand (JICA, 2022) and the Situation of the Thai older persons (2021; 2022). These sources were analysed to assess whether there is a legal basis for the possibility of taking action to improve the well-being of older persons and to identify gaps, if any, in such regulation.

Results

The Thai government identified the issue of older people as a national agenda and continues to develop an action plan. For instance, the National Plan for 2002-2022 set a goal to prepare for the full integration of older people into society by 2021 (The 2nd National…, 2002). However, there are still areas that need to be improved, such as population preparedness, promotion and development of older people, and social protection. Therefore, the National Committee for the Elderly has adjusted plans for 2022-2023 to focus on key issues such as preparing for old age, fostering positive attitudes towards older people, increasing employment opportunities for older people, helping vulnerable older people, transforming small schools into centres for the development of older people, and promoting retirement savings (Situation of the Thai…, 2021). A high degree of information centralisation is one of the distinctive features of the Thai healthcare system (JICA, 2022). At the same time, this is not sufficient to provide the required level of care for older people, as such care includes many other aspects, including non-medical ones.

Similar to any centralised database, the elderly care database is an array of information within a single mainframe accessible to authorised users from anywhere in the world. The creation of a CDB has several goals. Firstly, in the context of the global ageing of society, it should contain all the data necessary to maximise the fulfilment of the needs of the elderly in non-stationary care. The second task is preventive in nature and aims to timely prevent exacerbations of existing problems and the emergence of new ones, primarily of a medical nature (Choi *et al.*, 2022). Thus, an important issue in the functioning of a centralised database for elderly care is the issue of its information content. Such content should cover the full range of problems faced by older people and reflect the personal needs of each person. Previous studies have shown the feasibility of including information on both physical and mental health (general data, medical history, current medical prescriptions), general assessment of well-being, lifestyle, social activity, and current needs in the CDB (Jaraeprapal & Jinpon, 2018).

The study confirmed the feasibility of implementing a centralised database of care for older people, referring to its versatility of benefits. The respondents noted the benefits of using a database as "facilitating communication and cooperation between healthcare professionals", which makes it possible to develop individual care plans based on complete information about the needs and preferences of older people. The respondents expressed the view that the creation

of such a database would allow for a "more individualised approach to care" for older people and thus ensure their well-being more effectively. In addition, respondents, focusing on the potential use of a centralised database on elderly care in terms of policymaking, pointed to the role of the database in providing "invaluable information" for making "more informed decisions" on resource allocation and policy development. Thus, the role of the database as a platform for tripartite information exchange, which is used to plan and coordinate actions aimed at ensuring the well-being of older people, is noteworthy. The second important aspect is the system of information exchange and decision-making using CDB. Three main actors of this system can be distinguished: older people themselves (conventionally – beneficiaries of services); service providers (medical institutions, social services and other relevant services with access to the CDB); and state structures, whose competence includes public policy issues concerning older people.

When exploring ways to improve CDB functioning, respondents highlighted the need to "introduce smart elderly care services" to use technology to improve the quality and efficiency of care. There were also reports of the importance of "using digital information and technology" to "bridge the digital divide" among older people by providing access to relevant information and care services. The development of an "intelligent system of medicine and healthcare" to optimise the use of resources and more effectively identify health problems in real time was also mentioned as a necessary component of the development of the DBD. Harnessing the potential of an "intelligent model of care for older people" was noted as a necessary component to improve the quality of care through prevention and early intervention, which will reduce costs and improve health. Respondents also noted that an integrated approach to building a centralised database, combined with smart technologies and a smart healthcare system, addresses critical challenges in elderly care, including personalised service delivery, resource optimisation and bridging the digital divide, which can significantly improve the quality of care and well-being of older people. Overall, collective views emphasise the importance of integration, innovation and inclusivity in improving the quality of elderly care services.

The Social Security Act (1990) is the basis of the social security legislation. Aside from defining the powers of special bodies in the field of social protection, such as the Social Security Committee, its office, and the Social Security Fund, the law defines its beneficiaries, including older persons (Chapter 7). The Act defines the elderly as those who have reached the age of sixty. The provisions of the Act relate to the activities of the Foundation and the National Committee for Older Persons. It also defines the rights of older people, including the right to medical care, the right to information and education, self-development and social activity, the right to comfort and safety in public places, the right to material security and other social guarantees. These provisions are basic for all of Thailand. The thematic analysis of the interview responses identified three main strategies for strengthening the social security system to improve the well-being of older people in the lower central region: improving access to healthcare services, increasing financial assistance and strengthening social support systems. The respondents' answers emphasise the importance of access to healthcare services, stating that "this includes improving health insurance coverage and improving reimbursement schemes for medical expenses". Financial assistance is also emphasised, with the need to introduce "social support programmes and direct financial assistance to address issues such as food shortages". Respondents emphasise the need to create reliable social support systems, suggesting that "both formal and informal support channels should be strengthened". Overall, respondents advocate a comprehensive approach that addresses multiple dimensions of well-being, reflecting the recognition of the interconnectedness of health, financial stability and social support in the care of older people.

Central and local governments have been active in the development of senior clubs since the early 21st century (JICA, 2022). Senior clubs in Thailand operate as community-based organisations, with the main areas of activity being health promotion and educational activities. The academic literature also indicates that financial support as well as partnership programmes, particularly with healthcare organisations, are important aspects of making such organisations operational (Rojpaisarnkit, 2021). Statistics show that there is a demand for the services provided by such organisations (Fig. 1).

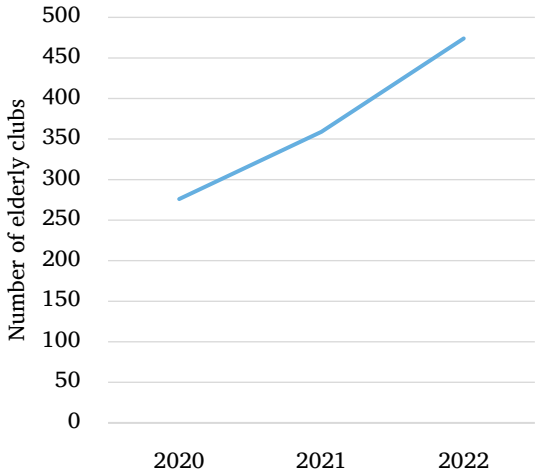

Figure 1. Dynamics of the number of clubs for the elderly in 2020-2021
Source: Situation of the Thai elderly (2022)

The thematic analysis of the interview responses identified several key strategies for the effective management of senior clubs that promote social connections and a sense of belonging among older people. Respondents emphasise the importance of a variety of activities that meet the interests and abilities of club members. For example, respondent 1 stated: "I suggest that senior clubs should offer a wide range of activities to meet the diverse interests and abilities of older people". In addition, according to respondent 2, it is important to develop intergenerational interaction: "To maximise the impact of senior clubs, it is necessary to promote intergenerational interaction in society". Creating meaningful leisure activities through activities such as community rituals and opportunities to share experiences is crucial to strengthening the sense of belonging and happiness of club members, as noted by Interviewee 3. Overall, the effective management of senior clubs implies prioritising inclusivity, intergenerational communication and meaningful leisure

activities to promote well-being and social connectedness among older people.

It is worth noting that there is no special legislation regulating the activities of such clubs. Their establishment and operation as legal entities are regulated by the Thai Civil and Commercial Code (1925). The establishment of such organisations is registered by local courts as legal entities, and, being a legal entity similar to an association, they must remain within the scope of their mission stated during registration. A logical continuation of the legislative regulation of the activities of organisations such as senior citizens' clubs would be the adoption of a law on the operation of non-governmental organisations (Draft Act on the Operation of Not-for-Profit Organisations). However, the adoption of this act is hampered by the presence in the draft of provisions that are a direct violation of Thailand's human rights obligations (Thailand: NGO law…, 2022).

Buddhism is considered a doctrine at the intersection of philosophy, religion and culture, as well as the basis of positive psychology (Segall & Kristeller, 2022). The Buddhist approach to psychology is an effective combination of the principles of self-sufficiency, optimism, continuing education and meditation practice, which can have a positive impact on the psyche of older people, overcome the phenomena of depression and anxiety and increase social activity, which leads to an improvement in the quality of life in general (Harnkijroong & Klomkul, 2019). Thus, an approach that can be conditionally called "healthy ageing", which is based on the perception of ageing as a natural process to which all living organisms are subject, and a conscious perception of the inevitability of ageing allows avoiding psychological problems associated with it, is worth noting (Songkaeo, 2023).

Thematic analyses of interview responses indicate the importance of integrating Buddhist principles with psychological theories to enhance the well-being of older people. Respondents emphasise the importance of diverse activities, intergenerational interaction and serious leisure time to develop social bonds and a sense of belonging among older people. Interviewee 7 suggests: "I suggest organising a variety of activities and events in clubs for older people to promote social bonding and a sense of belonging". Furthermore, interviewee 8 emphasises the need to consider the serious leisure experiences provided by clubs, stating, "Effective management of clubs for older people involves addressing the serious leisure experiences they provide". These considerations are consistent with the principles of compassion, mindfulness and acceptance of impermanence in Buddhism, as well as psychological theories such as positive psychology and cognitive behavioural therapy. By integrating these principles and theories into interventions and support programmes, holistic approaches can effectively address the overall well-being of older people. At the same time, the findings suggest that promoting an approach to caring for older people based on the principles of Buddhist philosophy will be more effective when applied to older people's clubs, as it provides collective perceptions and collaborative practices.

In the development of legal regulation on improving the well-being of older people, awareness raising of both older people and service providers (primarily social services and medical institutions) about the available opportunities is of great importance. Clubs for the elderly as a way to ensure the social activity of the latter, have great potential for overcoming the psychological consequences associated with the perception of the individual processes of ageing and forced social isolation. In this regard, the draft law on the activities of non-governmental organisations should be supplemented with a provision obliging organisations that provide services to the elderly to notify regional social services and healthcare institutions of their registration with a detailed list of services provided and terms of cooperation. In turn, social services and healthcare institutions should be obliged to provide this information to older persons under their care. In addition, it is proposed to establish a favourable advertising regime for the activities of clubs for the elderly.

Discussion

The study of the problems associated with providing appropriate care and improving the quality of life of older people is an important area of research, as the solution to the problems arising from this is not only important for individuals but also for society. As indicated in the academic literature, an ageing society will inevitably lead to a drastic increase in health and social care burdens (Ma & Shen, 2023). Thus, given the trends of population ageing, delaying the development of this area and the associated lack of planning will lead to a deterioration of the social situation and an increase in state-wide problems (Asadzadeh *et al.*, 2022). The above confirms the relevance of the conducted research, although it refers to the global aspects of the problem of population ageing, while the obtained results indicate that the means of counteracting the impact of population ageing on the economic and social situation in the country should be based on the consideration of both global and regional factors.

The research demonstrated that the proposed components of building a system of care for older people are supported both by respondents who are carriers of the opinion of the population of a particular region, and generally supported by the authors of relevant academic studies. For instance, a centralised database to collect and share information on the situation needs and demands of older people was identified as an important component of the elderly care system. Respondents to the study were unanimous in their support for such a centralised database of care for older people, emphasising its critical role in improving communication, personalising care, shaping policy and optimising the use of resources. This is consistent with the findings of W. Aneksak *et al.* (2023) who highlight the importance of the database in modernising decision-making processes and improving the quality of care. A centralised database containing information from different actors in the elderly care system and thus reflecting the views of all stakeholders, especially older people as beneficiaries of the system, provides an integrated basis for informed decision-making, which ultimately improves the effectiveness of care for older people. The integration of intelligent technology further enhances the value of the database by ensuring that it accurately reflects the needs of older people and contributes to data-driven improvements in elderly care services. Interview responses identify three key strategies for improving the well-being of older people in the lower central region: improving access to health care, increasing financial assistance, and strengthening social support systems. These findings echo studies by J.B. Komaraiah *et al.* (2023) and H. Liao *et al.* (2023) emphasising the importance of financial assistance and social

support in meeting the needs of older people. In agreement with these studies, the suggestions presented in the data offer reliable and effective strategies for caring for older people, emphasising an integrated approach to improving their quality of life in the region.

Social isolation is one of the most common problems faced by older people (Chornyi & Chorna, 2017). The statistics presented in the study showed an increase in the number of senior clubs, indicating their demand by society. In the interview responses, respondents also indicated the importance of diverse activities, intergenerational interaction and meaningful leisure activities for effective management of senior clubs. Respondents emphasised inclusivity, stating that tailored activities and the development of connections are vital to the well-being and social connectedness of older people. These findings are consistent with K.H. Park and B.J. Lee (2022) emphasises the importance of offering a variety of activities to build trust and positive relationships in the community. In addition, these findings coincide with S.F. Alradade *et al.* (2022), who emphasise the need for interaction between different age groups to reduce loneliness and improve well-being. Organising activities that relate to life achievements through enjoyable and meaningful experiences contributes to achieving these goals.

Interview responses emphasise the integration of Buddhist principles and psychological theories to enhance the well-being of older people. Respondents favoured a variety of activities, intergenerational interaction and serious leisure activities, which is consistent with the principles of compassion, mindfulness and positive psychology. The findings are consistent with S. Gallagher *et al.* (2023) who emphasise that compassion and mindfulness promote positive emotions and reduce stress. H.X. Vu (2024) also highlights that the positive effects of Buddhist practices have found confirmation in their long-term application and their acceptance by different branches of psychology. Of particular relevance to older people are techniques for dealing with negative destructive emotions that often accompany the ageing process. Positive psychology and behavioural theories further improve well-being, which is consistent with recommendations for integrated care to improve the quality of care and satisfaction of older people (Pytel & Wroński, 2023). At the same time, it should be understood that Buddhist psychology aims to promote psychological well-being by accepting the age-related changes that occur at the physiological level (Visasvora & Phaensomboon, 2022), thus avoiding the illusion that incorporating Buddhist teachings into care programmes for older people can have a significant impact on their physical health, whereas the impact on psychological health is undeniable.

Issues related to the activities of informal carers require special attention. This aspect was not mentioned by the respondents, however, academic literature points to the relevance of this issue. Thus, S. Wongpun and S. Gauhati (2019) highlight that an online support system for informal carers is an effective tool to reduce stress and ensure effective communication between them and relevant institutions. In particular, such a system also reduces the burden on the health care system, improving the quality of care for older people. Thus, informal carers can be included as beneficiaries in the CDB system. It is also worth noting that the study focused on the well-being of older people in a particular region. The situation regarding the level of care provided to older people is not homogenous. The difference in approach is not only due to differences in the care policies that are in place in different countries but also between urban and rural areas within the same country (Chornyi, 2013). This position is also supported by academic literature. Attention should be devoted to the position of P. Lhakard (2023) regarding the role of the community in addressing the issue of care for older people and its role in improving the quality of services provided. This approach is fully justified as the local community is the most informed actor in the field of local problems, needs and opportunities. N. Kim and I. Ha (2023) points out that relevant community-based services can be an alternative to traditional social services, especially when they are scarce, which is especially true in rural areas. The local community thus holds an intermediate position between elderly care providers (social services, health centres) and government agencies.

The findings of the study are supported by the academic community. The need to address regional aspects when dealing with issues related to improving the well-being of older people is undeniable. Thus, in addition to studying the problem of an ageing society on a global scale, studies focusing on problems specific to certain localities in the context of urban/rural areas, as well as narrow-regional studies, are becoming more relevant today. In addition, the constant development of the latest technologies allows to talk about the relevance and possibility of creating “smart systems” for monitoring the well-being of older people and exploring the possibilities of artificial intelligence to achieve these goals.

Conclusions

The study identified features that need to be considered specifically for the Lower Central region of Thailand, leading to a set of recommendations for further development and research. Thus, the implementation of a centralised database in the care of older people requires prior preparation, including technical requirements, confidentiality issues and interoperability standards. The survey of respondents confirmed the relevance and feasibility of a CDB, which can facilitate communication between users of such a system (older people, service providers and the public sector); individualise services and thus better ensure the well-being of older people. At the same time, the creation of an intelligent information exchange system and the inclusion of informal carers and local communities in the structure of the actors of the Centralised Database require separate studies.

Senior clubs are crucial in overcoming psychological problems associated with changing lifestyles and reducing the number of social contacts. For the region under study, the respondents noted the need to increase the diversity of activities conducted by clubs; to attract people of younger age to participate in activities to prevent the loss of communication between generations. The analysis of legal regulation of clubs’ activities has shown that their existing regulation within the framework of general provisions on legal entities may be insufficient to achieve their objectives. This problem can be solved by including a provision before the legislation regulating the activities of non-governmental organisations that oblige clubs to inform the competent services in the field of care for older people (social and medical) about their registration and areas of activity. The introduction of preferential treatment for the placement of relevant advertising could also be an effective way to encourage the dissemination

of information about the activities of such clubs. Also, given the regional specificities identified by respondents, improving the management of older people's clubs to promote social connections and well-being requires the development of separate strategies for their development.

Consideration of the feasibility of using Buddhist practices as a tool to stabilise and improve the condition of elderly people and improve their quality of life revealed the proven effectiveness of this tool. The principles of interaction with the world and people and the attitude to personal life embedded in Buddhist philosophy allow to successfully overcome crisis states associated with the ageing process. Respondents noted the need for a greater variety of activities related to such practices. The most effective such activities can be carried out within the framework of the activities of senior clubs. The solution to the problem of improving the well-being of older people is complex. The role of legislation, as a reflection of government policy in this area, is to create the best possible environment for both the agencies involved in the welfare of older persons and to maximise the protection of their rights. In general, Thailand today has specific legislation on the elderly, such as the Older Persons Act. Concerning regional issues, ways of addressing them can be regulated through regional acts, development plans and programmes, which should consider the results of regional studies, as this is the most appropriate approach to ensure that the interests of the local population are fully addressed.

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Conflict of interest

None.

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Оцінка державної політики та нормативно-правової бази, пов'язаної з покращенням добробуту людей похилого віку в Таїланді

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Анотація. Старіння суспільства суттєво впливає на економічну систему та соціальну стабільність і є глобальним викликом XXI століття. Метою дослідження було вивчення шляхів покращення якості життя літніх людей у Нижньому Центральному регіоні Таїланду. Дослідження ґрунтується на якісному підході і проводилося шляхом збору інформації від 8 ключових інформантів за допомогою структурованих інтерв'ю. У дослідженні обґрунтовано доцільність створення централізованої бази даних для покращення комунікації між усіма суб'єктами системи забезпечення добробуту людей похилого віку, що підвищить якість послуг, які надаються, сприятиме кращому обґрунтуванню політичних рішень та більш раціональному використанню ресурсів. У дослідженні зазначається, що ключові респонденти визначають розширення доступу до охорони здоров'я, збільшення фінансової допомоги та зміцнення систем соціальної підтримки для забезпечення цілісного благополуччя людей похилого віку як нагальні проблеми в регіоні. У дослідженні наголошується на необхідності більш широкого використання новітніх технологій та створення інтелектуальної системи управління інформацією у сфері добробуту людей похилого віку. З огляду на негативний вплив соціальної ізоляції на якість життя літніх людей, особлива увага приділяється ефективному управлінню клубами для літніх людей, а саме пріоритетності різних видів діяльності, взаємодії поколінь і змістовного дозвілля для зміцнення соціальних зв'язків і приналежності до суспільства. Інтеграція буддійських принципів і психологічних теорій підкреслюється як важливий інструмент для розвитку співчуття, уважності та позитивних результатів. Загалом, результати дослідження підкреслюють важливість комплексних підходів і всебічних заходів для оптимізації догляду за літніми людьми та покращення їхнього добробуту. Результати дослідження можуть бути використані для визначення змісту інформації, яка буде включена до централізованої бази даних, та розробки алгоритму обміну інформацією між її користувачами

Ключові слова: якість життя; централізована база даних; старіння; демографія; буддизм; соціальний захист; охорона здоров'я

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Problem aspects of adoption in civil proceedings of Republic of Kazakhstan

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Abstract. The relevance of this study was conditioned by the reduced level of effectiveness of one of the key social institutions due to the presence of problematic aspects and conflicts of legislation. In this regard, the purpose of this study was to analyse the problematic aspects of the current adoption procedure under the current legislation of the Republic of Kazakhstan. The study employed several methods of scientific cognition, namely logical analysis, formal-legal, functional analysis, dogmatic, legal hermeneutics, and others. A study of statistical data on the total number of registered orphans revealed that the current figures are still quite high; however, the number of children raised in orphanages is declining. This study investigated the legislative acts that thoroughly regulate the procedure and order of adoption, namely the Convention on the Rights of the Child, the Civil Procedural Code of the Republic of Kazakhstan. It was noted that a significant role in adoption cases is given to the decisions of the plenums of the Supreme Court of the Republic of Kazakhstan, which serve as a guide for the courts in considering and resolving civil cases and are applicable to different proceedings. It was also found that the national legislation of the Republic of Kazakhstan does not make provision for such a procedure as pre-adoption, compared to the foreign practices of some countries. No less important is the analysis of the adoption procedure for found and abandoned children by foreign nationals. The practical value of the obtained results lies in providing a detailed characterisation of the mentioned process and offering some recommendations for its improvement

Keywords: guardianship; family legal relations; social protection; children's rights; orphans; institution; state

Introduction

Currently, there is an increasing interest on the part of society and the state in issues related to the younger generation. Laws, such as the Law of the Republic of Kazakhstan No. 63 "State Allowances for the Families with Children" (2005), are being adopted to improve the demographic situation in the country, protect the rights of underage citizens, and develop legal relations in society. The institution of adoption has ancient historical roots, and it was established in ancient times within patriarchal families. Adoption has taken different forms in different historical eras, but the legal regulation of this institution has been underdeveloped. The original purpose of the institution of adoption was to maintain the size of clan communities, but over time such community ties have become more complex and changed.

Although the total number of registered orphans in Kazakhstan has decreased over recent years, the number of children being placed back into orphanages has paradoxically increased. This counterintuitive trend is due to several factors, including the instability of some adoptive families and guardianships, which has led to the return of children to state care. Additionally, there has been an increase in cases where children who were previously under informal care arrangements are now being formally registered as orphans. These dynamics reflect the complexities of the adoption system and highlight the need for ongoing support for adoptive families to prevent disruptions in placement (Child for rent…, 2023). According to international and national standards, adoption is considered the preferred method for the placement of such children, for assorted reasons, to provide for children who find themselves in difficult life situations due to loss of parental care. In this regard, it is quite relevant to consider the regulation of the procedure following the current legislation of the Republic of Kazakhstan.

Considering the goals of adoption from a social standpoint, its main objective is to create for children who have lost their parents for various reasons conditions as close as possible to their stay in a biological family. This means providing them with a decent level of upbringing, care, education, and other social benefits necessary for their personal development. According to L. Aliyeva *et al.* (2024), adoption contributes to the fulfilment of key values of family relations, including the protection and respect of the rights and

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interests of the child, as well as providing an opportunity for parents who, for whatever reason, cannot have biological children to meet their needs in the role of parents and fulfil the functions of motherhood and fatherhood. A.B. Tursunov (2020) believes that the social role of the institution of adoption is to create favourable conditions for the development of children in a family environment, which contributes to their moral and ethical development.

N. Çalış (2022) consider that adoption of siblings by different adoptive parents is inappropriate and therefore inadmissible. However, the law does not oblige the court to verify the opinion of the sibling to be adopted as to whether they need such an adoption, as K. Shalgimbekova *et al.* (2023) note. According to K. Luhamaa and C. O'Mahony (2021), there is a debate on this issue, which is often raised in academic circles, on whether the contact of adopted children with their grandparents should be prevented to preserve the confidentiality of the adoption. To solve these problems, it is necessary to combine the efforts of all branches of government, and in this process public control bodies will play a significant role. Effective measures should also be taken to increase the number of children available for adoption. In analysing current trends in the development of the institution of adoption in Kazakhstan, the legislator is taking a number of measures aimed at improving the existing legal mechanism of adoption.

J. Palacios *et al.* (2023) explore the multifaceted aspects of adoption within the broader framework of developmental psychology and the law. They highlight the importance of creating a legal environment that supports the best interests of the child, emphasizing that pre-adoption procedures should be designed to ensure a thorough evaluation of prospective adoptive parents. This evaluation is crucial in determining the suitability of candidates to meet the psychological and emotional needs of the child, thus contributing to more stable and successful adoptions. J. Luyt and L. Swartz (2023) delve into the complexities of the legal and policy frameworks surrounding transracial adoption in South Africa. Their analysis underscores the need for a clear and consistent legal approach to pre-adoption processes, particularly in cases involving transracial adoptions. The authors point out that while pre-adoption procedures can help ensure the compatibility of adoptive families with the child's cultural and racial background, there are also significant challenges. These include the potential for reinforcing racial biases and the difficulty of balancing the rights of biological parents with those of adoptive parents.

C. Ingenito (2023) discusses the protection of relationships in adoption, particularly in cases addressed by the Constitutional Court of Italy. The author examines the legal provisions that safeguard the continuity of the child's relationships with significant others during the adoption process. Pre-adoption procedures are seen as vital in protecting these relationships, but C. Ingenito (2023) also highlights the potential drawbacks, such as the risk of prolonging the adoption process and causing additional stress for the child. The analysis suggests that while pre-adoption assessments are necessary to protect the child's welfare, they must be carefully managed to avoid unnecessary delays and complications in the adoption process.

Proceeding from the above, the purpose of this study was to analyse the current adoption procedure in Kazakhstan and identification of insufficiently regulated, problematic aspects of this procedure. For this, such tasks as studying the regulatory framework, defining the term "adoption" and analyse statistical data on the total number of registered orphans in the country are necessary.

Materials and methods

This study was conducted using several types of analysis method. The method of logical analysis made it possible to characterise the term "adoption", to learn about the key features and principles of the implementation of this act, to identify the range of subjects and objects. The above method helped to highlight the rules governing adoption in Kazakhstan, stages, procedures, and requirements. The method of functional analysis provided an opportunity to investigate the functions and role of legislative acts in regulating the adoption procedure. The method of statistical analysis helped to learn about the data that shows the total number of registered orphans in Kazakhstan from 2018 to 2022. The method of comparative legal analysis was used to consider the experience of some countries, to identify the specific features of the adoption procedure, signs and principles in comparison with the law enforcement practice of Kazakhstan. The abstraction method provided an opportunity to focus in greater detail on such aspect of the research as the adoption procedure for found, abandoned children, and the adoption of children by foreign nationals. This helped to identify the essential characteristics of these procedures in Kazakhstan and to assess the law enforcement practice and its compliance with international norms.

The formal-legal method was used to analyse the norms that govern the adoption procedure and the protection of children's rights and interests in general. This study investigated such acts as the Constitution of the Republic of Kazakhstan (1995), Convention on the Rights of the Child (1989), the Code of the Republic of Kazakhstan No. 518-IV "On Marriage (Matrimony) and Family" (2011), the Civil Procedural Code of the Republic of Kazakhstan (2015), the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 1 "On Some Issues of Application of Legislation on the Judiciary in the Republic of Kazakhstan" (1998), the Normative Decision of the Supreme Court of the Republic of Kazakhstan No. 2 "On the Practice of Application by Courts of Legislation on the Child Adoption" (2016), the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 15 "On the Application by Courts of Law in Resolving Disputes Related to the Upbringing of Children" (2018), the Order of the Minister of Health and Social Development of the Republic of Kazakhstan No. 692 "On Approval of the List of Diseases, in the Presence of Which a Person Cannot Adopt a Child, Take Him under Guardianship or Trusteeship, Patronage" (2015). The method of legal hermeneutics was used to determine the meaning and intention of the legislators inherent in these norms, which involved analysing the text, context, and other aspects and made it possible to identify their compliance with the principles and objectives of family law. The dogmatic method helped to identify legal concepts and terms used in Kazakhstan's norms on adoption, to analyse the content of these norms, their applicability and impact on legal relations in the field of adoption in Kazakhstan.

The method of deduction provided an opportunity to characterise the institution of adoption in Kazakhstan based on its inherent features, attributes, and principles of implementation. The method of induction was used to provide

concrete characteristics of the mentioned institution proceeding from the norms prescribed in the legislation. The synthesis method, based on the results obtained, made it possible to determine the compliance of the current regulations with international norms and to provide recommendations.

Results

In the modern legislation of Kazakhstan, the main goal is to protect the interests of children (Constitution of the Republic of Kazakhstan, 1995). To achieve this goal, all adoption-related regulations play a significant role. Particular attention is paid to the establishment of an adoption order. Approval of an adoption trial is a necessary step to ensure that the rights of all parties involved are respected, as well as to protect the interests of the child and ensure legality in the adoption process. Adoption of a child is permitted only according to the procedures established by law and under the supervision of the State. This is confirmed by the provisions of Article 21, paragraph A of the Convention on the Rights of the Child (1989), which states that a child should be adopted only with the authorisation of authorised bodies and following the established legal provisions. Ethnic origin, religious and cultural background, native tongue, and the possibility of maintaining continuity in upbringing and education are the primary factors considered when deciding whether to adopt. Adoption should always be a voluntary process and no coercion is allowed. It is worth considering statistics on the total number of registered orphans (Fig. 1).

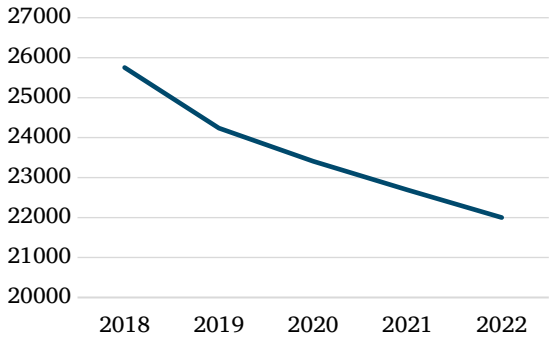

Figure 1. Total number of registered orphans in Kazakhstan 2018-2022
Source: compiled by the author of this study based on Zh. Tileukhan (2023)

The data provided suggests that from 2018 to 2022, the level of registered orphans decreased by 15%. Therewith, at this stage, the rates are quite high. Accordingly, it is vital to consider the regulation of the adoption of children. The procedure for the adoption of children is defined in the Code of the Republic of Kazakhstan No. 518-IV (2011), namely in its Article 87; according to this article, adoption is carried out through the judicial process, as this is the best way to respect and realise the rights and guarantees of children without parental care. To assist the child welfare authorities, it was established that all persons and organisations that become aware of a child without parental care must report it. They are obliged to inform the authorities at once and the authorities are obliged to carry out an inspection within three days. If this fact is confirmed, the authorities must ensure that the rights and interests of the child are protected until a decision is taken on their placement in a family or an institution for orphans and children left without parental care. However, for example, if a new-born baby is left in a medical organisation, staff must notify the relevant authority within three working days (Article 91, paragraph 1). Having received supporting information, the authority must provide documented information (questionnaire) for inclusion in the Republican Data Bank of orphans and children left without parental care (Article 91, paragraph 2). Thus, the guardianship and custody agencies, as well as other structures, create a national data bank of orphans and children left without parental care. It is formed based on questionnaires completed by the authorities, the Committee, and the Department, and consists of three sections: the Children's Data Bank, the Children's Data Archive, and information on settled children.

As of 2024, the hearing and resolution of cases at court hearings stand for a key part of the proceedings in any type of case. The importance of this stage is undoubted, and this also applies to adoption cases. It should be emphasised that it is at court hearings that the objectives of civil justice are first realised. According to current legislation, these objectives are to protect the rights, freedoms, and interests of citizens, the state and organisations, to strengthen law and order, and to prevent offences. For adoption cases, correct judgement is of immense importance. The right decision involves many aspects. Not only formal compliance with the procedural norms of the Civil Procedural Code of the Republic of Kazakhstan (2015) (CPC of RK) is important, but also the achievement of the set goals in the adoption process. This requires highly skilled adoption professionals. The requirements for their professionalism apply to everyone involved in adoption. According to the current legislation, adoption cases are considered in a special (undisputed) procedure.

The differences between special action proceedings exist and are prescribed in the relevant chapters of CPC of RK (2015). Notably, they are not purely technical and have a substantial impact on the course of the case and the achievement of its goals. These differences are significant because they tailor the legal process to the unique needs of adoption cases, ensuring that the best interests of the child are prioritized. For example, special action proceedings may involve stricter timelines, specific requirements for evidence, and particular attention to the psychological and emotional well-being of the child. These procedural nuances are designed to prevent delays, ensure thorough consideration of the child's needs, and avoid legal pitfalls that could jeopardize the adoption. By adhering to these specialised procedures, courts can more effectively achieve the goals of protecting the child's welfare and ensuring a stable, legally sound adoption process. The effectiveness of the resolution of court cases of the category in question depends largely on the consistent observance of the principles of civil procedure law.

An important role in adoption cases is played by the decisions of the plenums of the Supreme Court, which, along with the Constitution of the Republic of Kazakhstan (1995) and the CPC of RK (2015), provide guidance to courts in considering and resolving civil cases and are applicable to different proceedings. Documents of general importance include regulatory resolutions of the Supreme Court of the Republic of Kazakhstan, such as Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 1 (1998), Normative Decision of the Supreme

Court of the Republic of Kazakhstan No. 2 (2016) and Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 15 (2018).

The CPC of RK (2015) thoroughly regulates the legal proceedings concerning the adoption of children in Kazakhstan. The adoption process can be divided into three main stages: pre-trial, trial, and post-trial. Notably, in a pre-action adoption, citizens wishing to adopt a child must personally establish contact with the chosen child and maintain contact for at least 2 weeks (Article 148, paragraph 3). Kazakh citizens who reside outside the country and foreign persons must have direct communication for at least 4 weeks (Article 148, paragraph 4).

The national legislation of Kazakhstan does not make provision for such a procedure as pre-adoption. In contrast, a legislative initiative, such as Regulation of Adoption and Foster Care of Minors (1983), has been proposed in Italy that allows for the application for future adoption of an unborn child. In this case, the adopted child is identified by the identity of the mother (birth mother) who plans to relinquish the child after birth. A pregnant woman who decides to relinquish her child after birth can go to the juvenile court to search the database for adoption candidates, and her identity is guaranteed anonymity. However, candidates for adoption must still meet the legal requirements. This procedure aims to protect the rights of the child and the use of such a legal mechanism is necessary. The use of pre-adoption procedures, as highlighted in the Italian legislative initiative, is aimed at safeguarding the child's rights by ensuring that the adoptive parents are thoroughly vetted and prepared before the child's birth. This process has been shown to reduce the risk of adoption disruptions by allowing for early intervention and support, as noted by J. Palacios *et al.* (2019). The structured approach also ensures that the adoptive parents are fully committed, reducing the likelihood of a child being returned to state care. Considering the legislation in Kazakhstan and the existing challenges in adoption, such a procedure could significantly improve the adoption process for orphans. By allowing for early matching and commitment, it would provide a more stable environment for children and decrease the number of children who are returned to orphanages. Implementing a similar pre-adoption process in Kazakhstan could help address the current gaps in the system, leading to more successful and permanent placements for children in need. The mother's initial agreement to relinquish the child must be evidenced by her consent to the adoption, which is consistent with current family law.

The Commonwealth of Independent States (CIS) and Baltic countries have established uniform rules of jurisdiction for all adoption cases, regardless of the residence and nationality of the adoptive parents. Specifically, the Code of the Republic of Kazakhstan No. 518-IV, Article 91 (2011) outlines these jurisdictional rules. Article 22 of the Law of the Republic of Lithuania "On Fundamentals of Protection of the Rights of the Child" (1996) and the Family Law Act of Estonia, Article 148 (2009), also adhere to the same jurisdictional standards. However, for those living abroad, adoption proceedings may be complicated by the need to obtain additional authorization or consent from the competent state authorities. In Kazakhstan, adoption of found or abandoned children is not possible without a birth certificate. The court reviews the application to determine if the child is registered with the state. If the child is not registered, the court may return the application to the applicant before the registration is finalised (Code of the Republic…, 2011). When considering cases of adoption of children by foreign persons, it is worth noting that they have equal procedural rights and obligations with citizens, if this does not contradict ratified international treaties. Documents that have been issued, drafted, or certified by the competent authorities of foreign states and relate to organisations or persons in Kazakhstan may be accepted by the courts with consular legalisation or apostille (Civil Procedural Code…, 2015).

When verifying the documents confirming a person's eligibility to adopt, it should be considered that information on the existence or absence of a criminal record must be confirmed by the authorities competent to make such a judgement in the country where the person resides and wishes to adopt a child. When checking for medical conditions following the Order of the Minister of Health and Social Development of the Republic of Kazakhstan No. 692 (2015), it is necessary to consider the medical certificate obtained in the country where the applicants reside. If there are doubts about admissibility and sufficiency as evidence, the court may suggest a medical examination. If an adoption located in orphan and children's organisations is being considered, the court should be satisfied that the applicants are on the register of persons. Adoption of children by foreigners is allowed only to citizens of a country that has international obligations in the field of protection of the rights and interests of children, equivalent to international treaties ratified by the Article 95 of the Civil Procedural Code of the Republic of Kazakhstan (2015). The legal norms established in Kazakhstan's Civil Procedural Code are stringent and aim to ensure the protection of children's rights by thoroughly verifying the eligibility of prospective adoptive parents. The requirement to confirm the absence of a criminal record and the need for a medical examination reflect a commitment to safeguarding the child's well-being. The emphasis on foreign adoption being permissible only from countries with equivalent child protection obligations aligns with international standards. In comparison, countries like the United States and the United Kingdom also have rigorous procedures. In the United States, the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993) mandates that adoptive parents undergo background checks, including criminal record checks, and comprehensive medical evaluations. Similarly, in the United Kingdom, the Adoption and Children Act (2002) requires prospective adoptive parents to pass thorough criminal background checks and health assessments, often involving home visits and interviews by social workers.

However, some countries, such as Italy and France, may have more flexible norms regarding the verification process, particularly in medical examinations, stringent as those in Kazakhstan. For example, in Italy, while criminal background checks are mandatory, the health assessments are generally less rigorous, focusing primarily on severe physical or mental conditions that could impede the ability to parent, rather than a comprehensive medical examination. France also has a more flexible approach, where the psychological readiness of the adoptive parents is given more weight than the detailed health conditions. Kazakhstan's approach, particularly its insistence on confirming the equivalency of child protection obligations in the adoptive parents' home country, is a robust measure that underscores a

high level of caution. This ensures that the adoption process aligns with international standards and protects the rights of the child, but it can also make the adoption process more complex and potentially lengthier. While these norms are effective in preventing unsuitable adoptions, they could be perceived as barriers by some prospective adoptive parents, especially foreigners, leading to fewer international adoptions. Thus, while Kazakhstan's norms are thorough and in line with protecting children's best interests, there might be a need for some flexibility or additional support systems to streamline the adoption process without compromising child safety, especially in international cases.

In Kazakhstan, an adoption is finalised when the court decision enters into force. The adoption is then registered with the respective state agency. After the finalisation of the adoption, the adoptive parents shall be obliged to submit annual reports to the state authority on the child's living conditions, education, upbringing, and health. These reports should include photographs of the child. The frequency of reporting may be adjusted by the state agency at its discretion. Foreign adoptive parents must file their reports through an accredited adoption agency for the first three years after the adoption is finalised, and then once a year thereafter until the child turns 18 (Code of the Republic..., 2011).

It is quite expedient to introduce amendments on issues of the adoption process in the Code of the Republic of Kazakhstan No. 518-IV (2011). This would involve adding a requirement to obtain a psychologist's report to assess a person's capacity to be an adoptive parent. Such pre-adoption counselling with psychologists would encourage more informed decisions about adoption and, as a result, reduce the number of refusals and adoption annulments. Apart from being an important document that helps the guardianship authorities and the court to determine whether the applicant meets the requirements for adoption, the psychologist's report can also help to improve the quality of the adoption. Thus, it will help adopters better understand their own needs and capabilities, as well as the child they plan to adopt. Pre-adoption counselling with psychologists is a well-established practice in various countries, designed to ensure that prospective adoptive parents are well-prepared for the challenges of adoption. In the United States, the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993) mandates psychological evaluations as part of the home study process. This evaluation includes assessing the mental and emotional readiness of the applicants, which helps in identifying potential issues that could affect the adoption. The goal is to ensure that adoptive parents fully understand their own needs and capabilities, as well as the needs of the child they plan to adopt. This process is crucial for reducing the likelihood of adoption disruptions and annulments.

Similarly, in the United Kingdom, the Adoption and Children Act (2002) requires prospective adopters to undergo a detailed assessment, which includes psychological counselling. This assessment helps the adoption agency evaluate the suitability of the applicants and provides them with insights into their own readiness to adopt. The psychological report plays a significant role in this process, offering valuable information that aids in making informed decisions and enhancing the quality of the adoption. In Australia, the Adoption Act (Victoria) (1984) includes provisions for pre-adoption counselling, where prospective parents receive guidance from psychologists. This counselling helps to address any emotional or psychological issues before the adoption is finalized, contributing to more successful and stable placements. The psychological evaluations are intended to help applicants understand their readiness for adoption and ensure they are prepared for the responsibilities involved. These international practices highlight the importance of psychological counselling in the adoption process. Such evaluations are not only vital for assessing the suitability of adoptive parents but also for enhancing the overall quality of the adoption by ensuring that both the parents and the child are adequately prepared for the transition.

Counselling with a psychologist can help adoptive parents create a stronger and more harmonious relationship with their adopted child, which will help the child adapt more successfully to their new family. Research by C. Balenzano *et al.* (2018) indicates that pre-adoption counselling, including psychological assessments, helps adoptive parents better understand the emotional and behavioural needs of their child, leading to more effective parenting strategies and improved family dynamics. This, in turn, facilitates the child's successful adaptation to their new environment by addressing potential challenges proactively and fostering a supportive family atmosphere. The problem lies in the fact that adoption is a complex transition for both the child and the adoptive parents. Without proper psychological support, parents may struggle to address the unique challenges of adopting a child, such as dealing with trauma or attachment issues, which can hinder the child's successful integration into the family (Dufynets *et al.*, 2024). Pre-adoption counselling helps mitigate these challenges by equipping parents with the tools and insights needed to support their child's emotional well-being effectively.

Establishing the stages of the adoption process and the relevant requirements is important in terms of safeguarding the interests of the children and understanding the legal implications of adoption. These should be clearly defined so that adopters and foster carers know what is needed from them at each stage. The requirements for adopters must be reasonable and in the best interests of the children. Some concrete requirements that could be introduced in the Code of the Republic of Kazakhstan No. 518-IV (2011):

- adoptive parents should receive adoption training (this should include information on the psychological and emotional aspects of adoption, as well as the legal implications of adoption);
- criminal record checks, which are necessary to ensure the safety of children;
- being interviewed by a psychologist to assess the adoptive parents' ability to raise the child.

The introduction of these requirements will help to ensure safer and more successful adoptions, which is in the interests of all parties involved in the process: children, adoptive parents, and society as a whole.

Discussion

Adoption is an important and complex legal process in all countries of the world. The future fate of a child often depends on the correct and responsible decision of prospective adoptive parents. Even the slightest mistake in conducting an adoption can violate the rights of both the parents and the child, as well as those who wish to adopt. That is why the law strictly regulates the conditions and procedures for

conducting and terminating an adoption. Under Article 27 of the Constitution of the Republic of Kazakhstan (1995), marriage and the family, maternity, childhood, and paternity are protected by the State. To protect the interests of children without parents, the law prescribes the possibility of guardianship and trusteeship. Thus, these children can be adopted and taken into foster care.

Provisions on the process of adoption of children in Kazakhstan are contained in a special legal act and represent the legislative mechanism used in adoption (Code of the Republic…, 2011). These rules aim to ensure that the adoptive parent and adoptee interact in a way that creates a relationship similar to parent-child relationships, both emotionally and legally. Among these norms, the grounds and purposes of adoption, who can be the adoptive parent and the adoptee, as well as the legal consequences of adoption, are regulated. In modern conditions, legislation relating to adoption and subsequent monitoring of the upbringing of children is in a constant process of improvement. This is primarily because the possibility of adopting children by foreign nationals became available only after Kazakhstan gained independence. During this time, new regulations have been developed, but conditions are changing.

According to C. McMellon and E.K.M. Tisdall (2020), psychologists around the world argue that a child needs a family to develop fully, and the earlier adoption takes place, the more seamless it will be for the child. The researchers also argue that adoption can help children who have experienced trauma or abuse as it can give children the sense of security and stability they need to heal. It is worth agreeing with this and emphasising that increased juvenile delinquency, deviant behaviour, illness, and a tendency towards unhealthy habits are all negative factors that can arise if adoption or relinquishment occurs late (Spytska, 2023). There are three forms of family upbringing in Kazakhstan: adoption, guardianship (custody), and foster family. The most preferable option for realising the interests of the state and the child is adoption.

O.M. Onayemi (2021) defines intercountry adoption as a legal act that establishes a personal and property relationship between the adopted child and the persons who foster the child. He also notes that intercountry adoption is a complex and multi-stage process that is governed by the laws of two countries: the country of origin of the child and the country of adoption. It is necessary to add to the author's position that these relations are similar to parent-child relations, but they are complicated by the presence of a "foreign element". According to C. Dumitru and N. Ghițulescu (2019), such relationships are governed by the rules of private international law, which determine which laws of several countries apply in a given situation. It should be added that if the adopter and the child to be adopted are nationals of different countries, or if the adoption is to take place abroad and follow the law of another country, the term "international" or "foreign" adoption applies.

Adoption of children by foreign nationals is permitted only for citizens of a country that has relevant treaty obligations of an international nature with Kazakhstan (Podoprigora *et al.*, 2019). According to L.D. Leve *et al.* (2019), children can only be placed for adoption by foreign nationals after no suitable candidates from among relatives, citizens permanently residing both within and outside the state, can be found within 3 months of the child's inclusion in the centralised registry. An important aspect of judicial review of the adoption process is to verify whether these children were actually offered to Kazakh adoptive parents prior to the transfer of information about them to foreign nationals. According to Article 84 of the Code of the Republic of Kazakhstan No. 518-IV (2011), children may be placed for adoption by foreign citizens only if it is not possible to place them with Kazakh citizens or relatives.

This subject stays topical in the Republic of Kazakhstan due to the insufficient development of the legislative framework and the difficulty of tracing adopted children. This is particularly noted in US experience, where the practice of adoption annulment is common, as noted by M. Barney *et al.* (2022). As the authors mention, in the US, the monitoring of adopted children is nationwide, child welfare authorities are entitled to conduct adoption checks at any time after adoption. In Kazakhstan, adopted children are monitored only within consular districts, which currently exist only in New York and Washington, D.C. (White *et al.*, 2022). This means that adoptive parents living in other regions of Kazakhstan cannot be sure that their children are properly supervised. In the US, criminal record certificates are issued based on a multi-county or state background check. This provides a more comprehensive criminal record check, as adopters may have criminal records in more than one place. In Kazakhstan, criminal record certificates are issued based on a criminal record check in only one county or state (Abdrasulov *et al.*, 2023). That is, adoptive parents may not be aware of a child's criminal record if the child was convicted elsewhere. Family law in the United States and Kazakhstan is generally similar. However, there are some crucial differences that can complicate the adoption process. For instance, in the USA, adoption usually takes place through state guardianship and custody agencies, while in Kazakhstan it can take place through both state guardianship and custody agencies and private agencies (Maksymenko, 2024). This can lead to confusion and delays in the adoption process. Overall, there are several shortcomings in adoption practice in Kazakhstan that need to be addressed to ensure the safety and well-being of children.

The above examples provide grounds for reconsidering the possibility of adoption of Kazakh children by foreign nationals, as the state should maximise their safety and control over their well-being. A specific feature of adoption of children who have reached the age of 10 is the need to obtain the child's consent following the Code of the Republic of Kazakhstan No. 518-IV (2011). Kazakh citizens who permanently reside outside the country may adopt children, but only if it is not possible to foster them with Kazakh citizens or relatives of the children. I. Farmakopoulou *et al.* (2022) note that the development of adoption legislation has led to different approaches to this legal institution in different countries. The authors also mention that approaches differ in terms of adoption goals, age of the child, candidates for adoption and adoption procedure. It should be added to this position that the institution of international adoption must consider the existing socio-legal contexts of adoption in each individual legal system.

After Kazakhstan gained independence and opened its borders, the adoption of Kazakh children by foreign nationals became much more common. Until 1991, the borders were effectively closed and adoption of children from Kazakhstan by foreign nationals was not considered possible

(Seymore, 2022). Later, there was a period of updating the legislative framework of the Republic of Kazakhstan, and therefore adoption agencies were unable to operate in Kazakhstan. The updating of the legislative framework for international adoption began after a multitude of applications from foreign nationals to adopt children. However, many cases of children travelling abroad have been accompanied by violations of the law and moral problems, as D. Lasio *et al.* (2021) write. The authors mention that they include the illegal removal of children from families, child trafficking, and the mistreatment of children. In some cases, children were abused or exploited after adoption. There are several reasons for the introduction of litigation to establish adoption.

According to B. Mounts and L. Bradley (2019), in the first place, the administrative adoption procedure allowed for gross violations of existing legislation in adoption decisions. S. Malcorps *et al.* (2021) note that in most foreign countries, adoption is judicial. In their view, this means that the decision to adopt is made by the court after careful consideration of all the circumstances of the case. This provides safeguards to protect the rights of children and adoptive parents. Proceeding from the above positions, the advantages of the judicial process are also that the court is independent and acts only according to the law; it is not subject to parochial interests and judges have professional knowledge of the law.

It is important to mention that there are currently some shortcomings in Kazakh legislation regarding the adoption of children by foreign nationals. Accordingly, measures such as improving the state's mechanism for monitoring the well-being of adopted children abroad by providing annual reports on their situation; and tightening criminal record checks on foreign adopters through the competent international bodies are proposed. This will provide an opportunity to ensure an effective and quality adoption procedure, as well as protect the rights and interests of children.

Conclusions

This study was conducted to analyse the adoption procedure according to the norms of the current legislation of the Republic of Kazakhstan. A statistical analysis was conducted on the total number of registered orphans in the country from 2018 to 2022. Accordingly, it was found that the level of indicators is still at a fairly high level at this stage. However, the number of children in orphanages continues to decline as 80% of the 22,000 children were adopted.

The current legislative framework was analysed. During the analysis, it was noted that the procedure for the adoption of children is defined, first and foremost, by the Code of the Republic of Kazakhstan No. 518-IV "On marriage (matrimony) and family", namely its Article 87. The analysis also found that the judicial process of child adoption in the Republic of Kazakhstan follows international standards and norms, as well as with the practice of other countries. Furthermore, it was established that for the effective work of guardianship and custody bodies, the identification of orphans and children left without parental care should be carried out by all individuals and legal entities who have learnt of the child's lack of parental care. In this connection, there is a national data bank of orphans and children left without parental care. This study regulated the procedure and its specific features for the implementation of adoption of found and abandoned children by foreign nationals.

An analysis of foreign legislation from Italy, Estonia, and Lithuania reveals significant insights into adoption practices and regulations. Italy's adoption framework is governed by the Regulation of Adoption and Foster Care of Minors, which includes provisions for pre-adoption procedures that allow prospective adoptive parents to apply for future adoption even before the child's birth. This approach is designed to facilitate early planning and ensure that the adoptive parents are well-prepared to meet the child's needs from the outset. Family Law Act of Estonia outlines rigorous standards for the adoption process. The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption mandates that prospective adopters undergo comprehensive assessments, including psychological evaluations, to ensure their suitability. These evaluations are crucial in helping adoptive parents understand their readiness for adoption and addressing any potential issues before the adoption is finalized. Lithuania's adoption regulations require prospective parents to undergo detailed background checks and medical evaluations, aiming to ensure that only those who are fully prepared to adopt are approved. Overall, these legislative frameworks illustrate a strong emphasis on pre-adoption counselling and thorough assessments, reflecting a commitment to ensuring the well-being of both the child and the adoptive parents. These practices contribute to more informed decision-making and can lead to more successful and stable adoption placements. Subsequent research will focus on comparative legal analysis of the procedure of adoption by foreign citizens in foreign countries.

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None.

Conflict of interest

None.

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Проблемні аспекти усиновлення в цивільному процесі Республіки Казахстан

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Анотація. Актуальність даного дослідження обумовлена зниженням рівня ефективності одного з ключових соціальних інститутів через наявність проблемних аспектів і колізій законодавства. У зв'язку з цим метою даного дослідження був аналіз проблемних аспектів сучасної процедури усиновлення за чинним законодавством Республіки Казахстан. У дослідженні було використано декілька методів наукового пізнання, а саме: логічний аналіз, формально-юридичний, функціональний аналіз, догматичний, юридичної герменевтики та інші. Вивчення статистичних даних про загальну кількість зареєстрованих дітей-сиріт показало, що нинішні показники все ще залишаються досить високими, проте кількість дітей, які виховуються в інтернатних закладах, зменшується. У ході дослідження були вивчені законодавчі акти, які детально регулюють процедуру і порядок усиновлення, а саме: Конвенція про права дитини, Цивільний процесуальний кодекс Республіки Казахстан. Відзначено, що значна роль у справах про усиновлення відводиться постановам Пленумів Верховного Суду Республіки Казахстан, які служать керівництвом для судів при розгляді та вирішенні цивільних справ і застосовуються в різних провадженнях. Також було виявлено, що національне законодавство Республіки Казахстан не передбачає такої процедури, як попереднє усиновлення, в порівнянні з зарубіжною практикою деяких країн. Не менш важливим є аналіз процедури усиновлення знайдених і покинутих дітей іноземними громадянами. Практичне значення одержаних результатів полягає у наданні детальної характеристики зазначеного процесу та формулюванні деяких рекомендацій щодо його вдосконалення

Ключові слова: опіка; сімейні правовідносини; соціальний захист; права дитини; діти-сироти; інститут; держава

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International acts as part of the current legislation of Kazakhstan: Influence on the country's social policy

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Abstract. The topic is relevant in the light of the current globalisation processes, which promote intensive interaction between international and national norms. This creates a need for a systematic study of this problem. The purpose of this study was to analyse the practice of using international acts as part of the current legislation of Kazakhstan and to investigate the role of international acts in the legal system of the country. To fulfil this purpose, the methods of analysing regulations, the method of comparative analysis of judicial practice, as well as the historical legal method, systemic, and statistical analysis were used. It was found that international acts have a prominent place in the system of national legislation of Kazakhstan, contributing to the adaptation of the domestic legal order to the standards of the international community. The types of international instruments and the level of their implementation in national legislation were examined, together with the ratification procedure. A study of statistical data for the last three years was carried out on the use of international instruments by the courts. According to the results of statistical analysis, it was found that the court of first instance in both civil and criminal cases is the enforcer of international norms, while the courts of appeal and cassation used international treaties in their decisions in isolated cases. A tendency was noted for a steady decline in the use of international treaties in court judgements starting from 2020 to 2022. The analysis of judicial practice showed a restrained use of international

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acts in court judgements. Such use can be of various kinds, such as purely formal references and the intended use of the norms that justified a particular decision. It was concluded that even the formal use of a norm of an international act in the reasoning part of a judgement is a positive practice of human rights promotion. This study can be used to further improve the mechanisms of incorporation, implementation, and application of international acts in the legislation of Kazakhstan, as well as a more profound understanding of their impact on law enforcement in the context of global changes

Keywords: judicial practice; national law; legal integration; legal harmonisation; outside legal influence; law enforcement

Introduction

The legislative system of a country is an integral component of the social order that determines the legal framework and the direction of development. In today's environment of increased integration, international law is becoming an increasingly determining factor in shaping national legislation. One of the key aspects of this interaction is to examine the role of international instruments as a component of legislation. The relevance of the subject under study is conditioned upon modern changes in international relations, which require an innovative approach to the study and implementation of international norms. In the face of complex global challenges such as economic integration, environmental sustainability, and combating transnational crime, it is relevant to consider the mechanisms of interaction between international and national norms in the legal space of Kazakhstan.

Y. Buribayev *et al.* (2023) investigated this topic. The paper analyses the relevance of international labour standards adopted by the International Labour Organisation in the development of state legislation. It was found that international law is valuable in the practice of labour and social disputes. It is argued that, despite its value and universality, international law is still underused by the courts and is particularly underused in the practice of labour disputes. This is explained by the lack of mechanisms and understanding of the correct use of international treaty norms by the courts in their practice. It is recommended to create legal opportunities for judges by providing training and clarification on the application of international law.

This topic was also covered by L. Mohilevskyi (2020). The paper was aimed at investigating the application of international acts in the field of labour law. According to such criterion as legal force, it was found that the international legal act in the hierarchy among other regulations is located in the first place, which is rather conditional under the influence of other factors, but even in the presence of other features determining the hierarchy – the international legal act is still at the highest level. An international legal act as a structural element of the system of sources of labour law is an official act concluded following the legally established procedures between the parties to international law – has acquired the status of part of the current national legislation.

O.N. Safonova (2020) explores the correlation of national and international law in the Constitution of the Republic of Kazakhstan. It was concluded that the Republic of Kazakhstan (RK) in its Constitution fully reflects and enshrines human and civil rights according to international acts. The paper highlights that Kazakhstan is making a long-term international commitment to changes in legislation for the future associated with joining international organisations. At the same time, it is noted that much has already been done since independence to harmonise national legislation with international law, but much work is still to be done to implement democratic principles and humanistic ideals. Overall, the paper emphasises the importance of protecting human and civil rights in Kazakhstan and points to the need for further efforts to improve the legal system and to translate the principles of international law into national practice.

S.Y. Khon (2022) examines this topic from the standpoint of the enforcement of international instruments in Kazakhstan during the pandemic. The paper highlights the issues of limitation of human rights and freedoms in the conditions of introduction of restrictive measures, specifically the state of emergency in the Republic of Kazakhstan. It was noted that although international law defines standards for the restriction of rights and freedoms, the actions of bodies and officials in some cases did not follow the law and international law. The author emphasises the importance of maintaining a balance between restricting rights and freedoms in times of crisis and ensuring compliance with international human rights obligations. V.P. Klymchuk (2019) also investigated the topic. The paper was aimed at investigating the international legal acts, their classification and application in criminal proceedings. The definition of an international act in the field of criminal procedure was provided and the grounds for classification of such acts were proposed, namely, classification by the ability to influence national criminal legal relations. The conclusion was made that there may be many grounds for classification, and today there is no consensus among scholars on this issue. The classification is also possible based on such criteria as the significance of an international act, its focus and the strength of its impact on relations.

The focus of this study was to highlight the nature and mechanisms of integration of international acts into the system of national law, as well as to analyse their impact on the country's legal system in the context of social policy. The study was aimed at identifying ways and forms of introducing international norms into the national legal system, as well as analysing practical aspects of the application of these norms in the judicial practice of Kazakhstan. The purpose of this study was to comprehensively investigate the mechanisms of interaction between international acts and national legislation of Kazakhstan, to determine their role and influence on the establishment and development of the legal system of the country. Considering the content of Article 4 of the Constitution of the Republic of Kazakhstan (1995), which defines the provisions of an international treaty in national law and prescribes the priority of international treaties over laws, it is important to examine the context and practical implementation of the norms of the Constitution. Furthermore, the goal was to analyse the practical significance of international acts in the law enforcement and interpretation of legislative norms in Kazakhstan.

Materials and methods

The study of the role and influence of international acts on the legal system of Kazakhstan utilised various scientific methods to ensure validity and comprehensiveness. By

analysing case studies, trends, and approaches, key issues in integrating international norms were identified. The induction method was employed to study practical integration examples and patterns in court judgments. Deduction was used to develop a theoretical model of interaction between international acts and national legislation, and to forecast future developments. Hermeneutics facilitated a systematic analysis of international and national legal texts, revealing key norms and practical implementation aspects. Induction and deduction proved crucial in providing a comprehensive understanding of the topic.

The method of comparative analysis was used to compare the decisions of various courts in the context of the application of international acts in domestic legal disputes. By comparing court judgements, it was possible to identify trends and nuances in the interpretation of international norms in the national legal order (On judicial practice of…, 2016; Judicial Collegium on…, 2023; Tukiyev *et al.*, 2024). The use of historical legal method helped to investigate the context of the development of interaction between international legal acts and acts of national law in retrospect, as well as to consider the development of relations between Kazakhstan and the international community. Analysing the historical stages helped to understand the evolution of this process and to identify patterns. By the method of system analysis, the problem under study was considered as a component of a vast system of legal relations. Using a systemic approach, it was possible to understand the interrelationships and mutual influence of international instruments with other parts of the legal system. The statistical method helped to study the practice of application of international treaties by the courts of the RK in their decisions both by courts of first instance and in appeal and cassation (Normative Decision of the…, 2003). This method also analysed statistics on the use of international instruments in various forms of legal proceedings.

Each of the above methods helped to consider in detail the aspects of interaction between international acts and national legislation of Kazakhstan. Through their combination, a comprehensive understanding of the role of international instruments in the country's legal space was achieved, and the main practical aspects of their implementation and use were identified. The regulatory framework of this study included the Constitution of the Republic of Kazakhstan (1995), Vienna Convention on the Law of Treaties (1969), the Law of the Republic of Kazakhstan No. 11-VII "On International Treaties of the Republic of Kazakhstan" (2023), Universal Declaration of Human Rights (1948), the Normative Resolution of the Constitutional Council of the Republic of Kazakhstan No. 6 "On the Official Interpretation of the Norms of Article 4 of the Constitution of the Republic of Kazakhstan in Relation to the Procedure for the Execution of Decisions of International Organisations and their Bodies" (2009), the Normative Decision of the Supreme Court of the Republic of Kazakhstan No. 5 "On Judicial Decision on Civil Cases" (2003). To ensure a comprehensive analysis of the topic under study, a diverse information base was used, including official reports and annual human rights reviews (2023 country reports…, 2023; More than 1000 people…, 2024; Report of the Ombudsman…, 2024). Also, sources on current human rights issues and their impact on the social and legal situation in Kazakhstan became an important part of the information base for the study (Annual review of the…, 2022). These sources provided the legal basis and context for the study of the integration of international acts into the legal system of Kazakhstan, as well as a deeper understanding of their impact and application in the national legal order.

Results

Priority of international treaties in Kazakhstan's legal framework. Among many legal instruments, international legal instruments relating to the protection of fundamental human rights, dignity, and security are of particular importance. Kazakhstan's legislation has a so-called "gold standard", which is prescribed in Article 4(3) of the Constitution of the Republic of Kazakhstan (1995), which states that international treaties ratified by Kazakhstan take precedence over its laws. According to part 4 of Article 4 of the Constitution of the Republic of Kazakhstan (1995) all international treaties involving the Republic of Kazakhstan in them must be published. If such an act relates to the rights, freedoms, and duties of a person and citizen, one of the conditions for its application is official publication. This norm is a general principle and is introduced in all legislative acts without exception. This is how the priority of international treaties ratified by Kazakhstan over national laws is fulfilled.

Since the Constitution of the Republic of Kazakhstan (1995) presupposes the term "international legal treaty", the question of its correlation with an international act arises. Notably, scholars have different approaches to this issue, and it is the subject of debate. "International legal instrument" is a more accurate term to describe such human rights standards, which are enshrined in international treaties, conventions, declarations. The term "international legal act" does not fully capture the essence of international legal treaties, and it is emphasised that the term "international treaty" has a clear formal definition, including aspects such as written form, regulation by international law, and independence from the number of constituent documents (Klymchuk, 2019). In addition, in favour of the term "international legal treaty" is the clear legal definition of the Vienna Convention on the Law of Treaties (1969), which defines a "treaty" as an agreement between States in written form approved by international law, regardless of the number of constituent instruments.

It can thus be determined that it is more appropriate to use the term international legal treaty when referring to interstate obligations. An international legal act may be regarded as an independent source of international law. It is a common instrument adopted by two or more states that contains legal rules establishing, modifying or such as terminate rights or obligations between them. An international legal act is also recognised as one of the main sources of international law, which regulates the relationship between states and other subjects of international law (Kostiuk & Iryna, 2024). In practice, different names may be used for an international legal instrument, such as "international treaty" or "international legal treaty", which have the same content and express the essence of the same phenomenon. An international legal act is a general concept that includes diverse types of acts such as conventions, acts, agreements, charters, declarations. Usually, the determination of the title of an international treaty does not affect its legal force, and this issue is decided by the parties themselves to a particular international legal act (Mohilevskyi, 2020).

The classification of international legal instruments has been a problem in international law to date. In researching this topic, it is important to note that there is still no universally accepted classification of international legal instruments. The term "classification" in relation to these acts is interpreted differently by different scholars, and there is no unity and standard approach in this context either. Thus, the classification of international regulations depending on different criteria has more theoretical significance than practical (applied) in the context of the implementation of legal frameworks (Klymchuk, 2019). At the same time, it is also possible to divide the system of international legal acts according to the criterion of importance of application. Thus, international acts can be classified into acts that act as sources of national legislation, e.g., criminal procedural legislation, such as international treaties that have been ratified, as well as the practice of the European Court of Human Rights; acts that contribute to the regulation of organisational aspects that are not sources of legislation, but which are legally binding on member states. This can include international conventions aimed at co-operation between member states, combating crime; other acts, such as principles, charters, recommendations of the UN, as well as the Council of Europe, which are of a recommendatory nature and can be used to improve criminal procedural legislation and the practice of its application.

Highlighting the theoretical aspect of this problem, S. Akhmetzharov and S. Orazgaliyev (2021) proposes a classification of another type, which divides international acts into regulations, i.e., international treaties between two or more countries, and into normative decisions of international organisations binding on all member states of these organisations. In such a context, "international treaties" are the primary form of an international legal instrument. The concept of international organisations and other international obligations of the Republic of Kazakhstan is not clearly defined in the Constitution of the Republic of Kazakhstan (1995) or other legislative acts. However, based on the definitions set out in the Law of the Republic of Kazakhstan No. 11-VII (2023), it is possible to extend the legal regime of international treaties to other international obligations that arise as a result of other circumstances rather than directly from the treaty.

Distinction between international legal terms. Important in this understanding is the Normative Resolution of the Constitutional Council of the Republic of Kazakhstan No. 6 "On the Official Interpretation of the Norms of Article 4 of the Constitution of the Republic of Kazakhstan in Relation to the Procedure for the Execution of Decisions of International Organisations and their Bodies" (2009). It indicates that the decisions of international organisations and their bodies established by international treaties take precedence over national laws and can be directly applied. The precedence of such decisions may apply in cases of conflict with national law. However, this explanation has its limitations: decisions of international organisations cannot prevail if they violate constitutional rights and freedoms of the individual or violate the foundations of the constitution regarding the sovereignty of the republic, its territorial integrity and form of government. Therewith, there is the principle of peaceful coexistence of countries as a key principle of international law. It is reflected in the Constitution of the Republic of Kazakhstan (1995), which supports equality and non-interference in the internal affairs of other states, as well as the peaceful resolution of international disputes and the renunciation of the first use of armed force (Safonova, 2020).

The key role of international treaties is to support world order and security, the development of international co-operation, the protection of human rights, and to ensure the legitimate interests of subjects of international law and states. International treaties play a key role in many areas of international relations and are the primary source of international law (Golovko *et al.*, 2023). Furthermore, international treaties play an essential role in the cyber security of states and society. Two norms of peacetime international law – the principle of sovereignty and the principle of non-interference in the internal affairs of other states – are used in this light (Moynihan, 2021).

The basic meaning of treaties stipulated by several circumstances. Firstly, the contractual form allows for a clear articulation of the powers and duties of the parties, which facilitates the interpretation and application of contractual rules. Secondly, treaty regulation covers all branches of relations between states, and thus they replace oral customs with treaties between themselves. Thirdly, international treaties ensure harmonisation and correct interaction with the norms of national legislation. Notably, there are no significant differences in the science of international law and the practice of defining the term "law of treaties" and there are no disputes about regulation of this branch. The law of treaties is a system of principles and rules governing the conclusion, termination, and performance of international obligations enshrined in a treaty. This branch of law stays stable and important, and the conventions that have been adopted complement customary law and support the rules of international order. Vital in this aspect is the United Nations Charter (1945), which prescribes the fundamental principles of international law and emphasises that treaties cannot contradict these principles. The domestic law of countries, especially constitutional law, also plays an equally vital role in regulating international treaty relations. Constitutional law defines the procedure for concluding treaties, the competence of state bodies, the types of treaties that need to be ratified. Modern constitutions tend to give priority to ratified treaties over domestic laws. The influence of domestic law is reflected in the creation of corresponding rules of customary international law.

A significant event was Kazakhstan's accession to the Vienna Convention on the Law of Treaties (1969), which obliged Kazakhstan to implement its norms and harmonise them with other domestic regulations. The norms of the convention have become an integral part of the current legislation of Kazakhstan. States harmonise domestic law with international obligations to a certain extent. The implementation at the domestic level is carried out in two main ways: incorporation and transformation. In case of incorporation, international legal norms are reproduced without change in the laws of the implementing state. Transformation refers to the transformation of the norms of the relevant international treaty while incorporating them into national legislation, considering national legal traditions and standards.

To systematise the conclusion of international treaties in Kazakhstan, relevant documents have been adopted, including Decree of the President of the Republic of Kazakhstan No. 2679 "On the Procedure of Conclusion, Execution and Denunciation of International Treaties of the Republic of Kazakhstan" (1995), which became invalid under the Law

of the Republic of Kazakhstan No. 11-VII (2023). The new law introduces more detailed regulation of the process of concluding international treaties, defining clear procedures for ratification and implementation, which provides greater legal certainty and transparency. It also clarifies the rights and obligations of state bodies participating in international treaties and establishes new requirements for denunciation of agreements, which improves control over the fulfilment of Kazakhstan's international obligations. These regulations govern all stages of the process of Kazakhstan's treaty activity with other subjects of international law. Accordingly, this role was first fulfilled by the decree and then by a separate law. Specifically, the Law of the Republic of Kazakhstan No. 11-VII (2023) defines the procedure for implementing the norms of international conventions and establishes the internal procedure for signing treaties. This Law prescribes the procedure for the conclusion, execution, amendment, and termination of international treaties to which the Republic of Kazakhstan is a party, considering the Constitution of the Republic of Kazakhstan (1995), generally accepted principles and norms of international law, the provisions of the treaty itself and other legislative acts.

According to Article 11 of the Law of the Republic of Kazakhstan No. 11-VII (2023), the following treaties are subject to mandatory ratification: on human and civil rights and freedoms; those, the performance of which requires amendments or adoption of new laws, as well as those that establish rules other than those prescribed by domestic legislation; on territorial delimitation of the Republic of Kazakhstan with other states, including treaties on borders and delimitation of the economic zone and continental shelf; on interstate relations regarding disarmament, international arms control, international peace and security, as well as peace and collective security treaties; on Kazakhstan's participation in associations and organisations (international), if the transfer of partial sovereign rights of Kazakhstan to them is envisaged or if they establish the binding nature of decisions of the bodies of such states or organisations.

Classification and application of international legal instruments. In Kazakhstan, an international treaty may be reviewed for compliance with the Constitution prior to ratification. This makes provision for the right of appeal to the Constitutional Council, which is vested in the President, the head of the Senate, the Chairperson of the Majilis, at least one fifth of the total number of members of Parliament and the Prime Minister. In case of appeal, the ratification period shall be suspended. Before signing an international treaty that is subject to ratification, there is a mandatory scientific and legal expertise. Emphasis is placed on the importance of this approach and the potential need for dual legal expertise. The RK strives to harmonise international treaty law and national law, ensuring their interaction, which contributes to integration processes and strengthens its position in the international arena. Public and political rights have a longer historical path than other categories of rights, and therefore their normative content is usually quite clear and defined. This implies the individual's freedom from state interference as well as their rights before the state. The state's recognition of individual rights and freedoms means that the state is obliged to consolidate these rights in the Constitution, legislation, and the process of law enforcement. The Constitution of the Republic of Kazakhstan (1995) incorporates most of the provisions of the Universal Declaration of Human Rights (1948) and other major international sources of human and civil rights and freedoms. In December 2003, Kazakhstan acceded to the International Covenant on Civil and Political Rights (1966), and the International Covenant on Economic, Social and Cultural Rights (1966). This confirmed Kazakhstan's intention to introduce democratic reforms. Accession to these covenants obliges a state to guarantee the human rights prescribed in them and to provide effective remedies at the national level.

Certain human rights prescribed in the Constitution of the Republic of Kazakhstan (1995) are not subject to restriction. To ensure the protection of these provisions, the Constitutional Council functions to determine the conformity of laws and regulations with the Constitution. The decision adopted by the Constitutional Council is binding and cannot be appealed (Annual review of the…, 2022). Kazakhstan, as a full-fledged subject of international law, has undertaken to respect and protect human rights and freedoms. The country is a party to multilateral international conventions that regulate various aspects of human rights (Report of the Ombudsman…, 2024). The ratification of the International Covenant on Civil and Political Rights (1966) is a major step in the development of democracy and civil society in Kazakhstan. The growth of the legislative framework at the national level is matched by accession to international treaties. Appropriate mechanisms are needed for this purpose (2023 country reports…, 2023). Many provisions of international conventions have been introduced into the national legislation of Kazakhstan. This contributes to the strengthening of the country's legislative framework and the development of a national system for the protection of human rights (More than 1000 people…, 2024).

The interaction between national and international law is particularly complex in the realm of human rights, a field with a long history of mutual influence. International human rights treaties and their monitoring mechanisms play a crucial role in improving rights protection. States' self-reporting to these bodies enhances practices through four key mechanisms: elite socialisation, training, domestic mobilisation, and legal development. Recent research indicates that such reporting leads to improvements in human rights practices, even from initial imperfect reports. This self-reporting process helps states align domestic policies with international standards and reduces resistance to external influence, turning reports into tools for social pressure and policy learning (Creamer & Simmons, 2020).

In post-Soviet countries, modern constitutions focus on constitutional law and sovereignty. However, the priority of international law is effective, particularly for human rights, which should be universal. International law enables individuals to seek justice at the European Court of Human Rights if national remedies are exhausted, demonstrating its significant influence on domestic affairs. While international law may not always take precedence, it can still shape domestic relations and human rights standards when national laws are lacking. National law must adapt to international legal changes and uphold international human rights principles (Khon, 2022). International treaty standards are integrated into domestic legislation and applied alongside national laws in Kazakhstan. Misapplication of these standards can render investigations or trials unlawful, with legal consequences. Courts frequently reference international treaties, such as the International Covenant on Civil and Political

Rights (1966) and the Convention on Road Traffic (1968), in their rulings. These treaties ensure principles like fair trials and influence decisions, even in appeals where they can justify or overturn previous rulings.

Therewith, there is a practice of mechanical application of international instruments. Under this approach, the norm has no weight, but is purely formally mentioned in the judgement to give it weight. According to the Normative Decision of the Supreme Court of the Republic of Kazakhstan No. 5 "On Judicial Decision on Civil Cases" (2003), the court has a duty and the parties and participants have a right, whereby the judge, when pronouncing judgements, must explain orally why they applied the norm of the international act, what legal consequences, its essence. Proceeding from this, it should be noted that international instruments and the rules contained therein should be used for their intended purpose – when such a rule serves as a justification for a court decision and such a decision is in fact in conformity with that international treaty. Based on an analysis of the practice of the use of international treaties by courts of general jurisdiction, two main lines of such use are identified (Tukiyev *et al.*, 2024).

An analysis of Kazakhstan's judicial practice shows that international treaties are actively used in resolving various categories of cases, including criminal, civil and administrative. As noted in court decisions, international treaties often become an important source of law alongside national legislation. One of the key international instruments applied in courts is the International Covenant on Civil and Political Rights (1966), especially its Article 14, which guarantees equality of all before the law and the right to a fair and public trial. This provision is fundamental in any human rights case. The application of international norms also covers administrative cases, especially in the area of road disputes. For example, the provisions of the UN Convention on Road Traffic (1968) are actively used in cases related to traffic incidents and often become decisive in court decisions. Notably, appellate courts can overturn lower court decisions if they have failed to take into account the provisions of international treaties or have applied them incorrectly, which emphasizes the importance of the correct application of international law at all levels of the judicial system.

It is important to note that international treaties are used both to confirm and to set aside court decisions. For example, appellate courts can declare a trial unfair due to non-compliance with international norms, even if they were formally mentioned at the previous stages. This demonstrates the flexibility of the application of international treaties and their ability to influence the outcome of trials. Kazakhstan's judicial practice demonstrates that international treaties have become an integral part of the courts' law enforcement activities, raising the standards of justice and ensuring more effective protection of human rights (Judicial Collegium on…, 2023). Analysing these practices, it can be said that international treaties are actively integrated into national law, and their application in judicial practice helps to establish higher standards of legal regulation.

First line may include the mere mention of international treaties as sources of applicable law. In such cases, the court concluded that the international treaty governed the domestic legal relations at issue in the individual dispute. However, most often this way of application is characterised by the actual coincidence of the regulatory effect of the norm of an international contract with the norm of a domestic legal act. The second line of law enforcement by the courts in this matter is the direct application of the norms of international treaties as a legal regulator of legal relations in the case. This choice is usually expressed in the form of a legal assessment of the relevant source of international law and a statement of the prevailing fact of the application of its rules. This conclusion reflects the loyalty of the enforcer to the more common trend within dualist theory regarding the priority of international law over national law. However, in this case, certain important circumstances may still be unaccounted for, such as the legal force and validity of a particular international treaty, the scope of social relations to be regulated by these norms, and the interpretation of the norms of international treaties. Other aspects, albeit of a more theoretical nature, are important for law enforcement practice, since without them it is impossible to determine the possibility or impossibility of regulating the disputed legal relations by an international treaty.

Judicial practice in Kazakhstan's application of international treaties. The judicial implementation of approved international agreements is demonstrated through several aspects. In judicial procedures, the court acts as a body for the protection of human rights and freedoms, adopting a comprehensive approach using both national and international law. The judicial decision-making process involves the free and independent action of the judge, who is subject only to the law and their own convictions. Thus, the judge's decisions are formed according to their own convictions, are absolutely impartial, and consider the application of international treaties regardless of the positions of the conflicting parties and authorities. The judicial process also includes an examination of the possibility of using international norms to resolve disputed situations, and the court refers to the content of these norms to inform its judgements (Buribayev *et al.*, 2023). Notably, the organs of a state that has signed international human rights treaties or conventions can refer to such treaties when interpreting domestic law, even if the treaties have not been enacted into national law (Greene, 2019).

The analysis emphasizes that courts of first instance play a dominant role in enforcing international treaties, with fewer references in appellate and cassation courts. In terms of the specifics of the use of international acts, in civil proceedings, when considering the statistics of decisions adopted for 2020-2022, the International Covenant on Civil and Political Rights (1966) stands out in law enforcement, followed by the Convention on the Rights of the Child (1989), which once again proves that the sphere of human rights, including the rights of the child, is the most widespread sphere of interaction between international and national law.

When comparing civil and criminal cases, the use of international treaties is significantly more common in civil cases, as illustrated in the statistical data. The focus in civil matters is often on human rights protections, showing how international treaties have been used to uphold these rights. Criminal cases, however, show a much lower frequency of international treaty application. Despite this, both civil and criminal cases reveal a general downward trend in the use of international legal instruments over time (Judicial Collegium on…, 2023). The emphasis on human rights law, particularly the rights of children and civil liberties, points to the importance of these international treaties in shaping

national legal decisions. The International Covenant on Civil and Political Rights and the Convention on the Rights of the Child are central to the interaction between international and domestic law in Kazakhstan.

Courts have several options for the application of international treaties. In the first choice, judgements may contain a reasoning part in which they refer to international treaties that make provision for a fundamental human right, such as judicial protection (Nam, 2018; Tukiyev *et al.*, 2024). In the second variant, in the reasoning part one may find references to the norms of international law, which are incorrect, do not relate to the essence of the case, or cannot be applied in this or that dispute at all. For instance, in labour disputes, references to the rule on the right to a fair trial can be found (On judicial practice of…, 2016; Tukiyev *et al.*, 2024; Legal statistics, n.d.).

The citation of international treaties does not in itself have an impact on the substantiation of evidence or the resolution of a dispute and has little effectiveness in terms of enforcement, but it is important for the promotion of human rights enshrined in international law. In the third choice, the courts as sources of legal regulation of the disputed relations correctly identify international acts and individual norms as sources on the basis of which the essence of the dispute is resolved. In such a case, citations to support the court's findings are valid. The fourth choice refers in court judgements to acts declaring fundamental human rights. For example, the reasoning part of the judgement notes the Universal Declaration of Human Rights (1948), namely the right to a standard of living that is necessary to maintain health or in the event of loss of livelihood.

Article 2 of the European Convention on Human Rights (1950) also states that the law protects the right to life and health. These provisions are also reflected in the legislation of Kazakhstan in Articles 931 and 937 of the Civil Code of the Republic of Kazakhstan (Special Part) (1999), which establish the obligation to compensate a citizen's health in the event of injury. This wording found in court decisions on personal injury compensation is interesting in two respects. Firstly, in this way, the court document correctly reflects the reference to a person's right to reasonable accommodation in case of disability or illness, which is used to support the plaintiff's claims. However, on the other hand, the Court relies on the guarantees provided by the European Convention on Human Rights (1950), which Kazakhstan has not ratified. Thus, in this choice both correctly and accurately applies the norm of the international act, but also such a decision refers to the European universal act, which Kazakhstan has not approved (Buribayev *et al.*, 2023).

The latter practice described in the studies is a strategy of avoiding cases based on international law. Statistics show a decline in the use of international instruments by courts from 2020 to 2022. But this is not to say that there is no force of international law. This indicates that the legislation is consistent with the principles of international law and that it is developed, as judges can be guided more by national law.

Discussion

The subject of the influence of international law on national law has been investigated not only by scholars from Kazakhstan and Ukraine, but also by researchers from the United States of America, India, China, and the United Kingdom. Having analysed the obtained results of this study and compared them with the findings of other authors, the following can be noted. I. Kalpouzos (2020) explores the possibility of using the language of International Criminal Law (ICL) to analyse migration control policies in the context of Western countries. The author considers the possibility of applying the legal concept of crimes against humanity to issues related to deportations, detention, and deaths of migrants. Critical issues of systemic crime are examined through the lens of international practice. The paper emphasises the role of transnational migration and anti-migration policies in the context of the use of international criminal law. The researcher concludes that the use of the ICL concepts can help to reveal the limitations and potential of this approach to migration policy regulation and emphasises the importance of balancing the use of ICL in strategic litigation. This paper aims to explore the application of international criminal law to situations involving migration control policies. The study analyses how international agreements, conventions and other acts influence the formation and implementation of laws in Kazakhstan. Although both papers explore international legal aspects, they focus on different ideas: one on analysing international criminal law in the context of migration policy, the other in the context of national legal policy.

N.A. Combs (2021) focuses on analysing the phenomenon of "dissent" in the legal systems of national and international courts. The author highlights that dissent was initially negatively received, but over time has become an accepted and laudable part of the judicial system, particularly in the USA and other countries, as well as in international courts and tribunals. Special attention is paid to international courts established to prosecute crimes against humanity, genocide, war crimes. It is also noted that dissent has been under-researched as both an academic and practical topic. It is noted that, for reasons of historical and legal sophistication, some judicial systems allow or prohibit dissent in judgements. It was pointed out that in recent years most European countries have already openly expressed individual opinions in court judgements (Tsvigun, 2024). N.A. Combs (2021) also points out that individual opinions can influence the normative development of international criminal law.

The topic has also been explored by R. Killean (2021) in the context of the impact of international criminal law in responding to global and national environmental problems. The author discusses the ways in which international criminal law can respond to environmental destruction, including the possibility of introducing a new offence against the environment. The impact of mass violence on the natural environment is examined in detail and ways of dealing with the problem are suggested. The text highlights the need to recognise the harm caused by environmental destruction and the possibility of redress that takes this into account. The evolution of approaches to solving environmental problems in international criminal law is considered. Specifically, the introduction of the concept of "eco-sensitivity" to reparations, the possibility of reparations for environmental destruction, and the application of ecological approaches to "transformational reparations" are discussed. The paper concludes that there is a need to improve international law as opposed to national law, which does not regulate such relationships, including considering the introduction of new rules, considering environmental sensitivity, and providing redress for victims. Both above-mentioned works differ in

that the researcher emphasises the need for greater influence of international law specifically on environmental law, including national law. And this paper considers legislation as a whole, without singling out individual branches.

S.J. Hoffman *et al.* (2022) investigated the level of effectiveness of international treaties and their efficiency. The study addresses issues of the effectiveness of international treaties in addressing global problems. Analysing 224 studies and 82 high-quality studies, the authors conclude that most international treaties have failed to achieve the desired outcome. The exceptions are treaties relating to international trade and finance that have been successful in achieving their intended effects. The study also confirms that treaty performance depends on socialisation and normative processes rather than long-term legal processes. The possibility of improving treaty effectiveness using security arrangements and treaty modification is also pointed out. The authors note that treaties that regulate international trade and finance can indeed be successful because of their design and enforcement mechanisms. However, there are doubts about the value of international treaties that do not deal with trade or finance and that do not include enforcement mechanisms.

C. Perrings *et al.* (2022) analyse the impact of political party and stakeholder polarisation on adherence to and compliance with international treaties. Polarisation is explored as a factor that affects the implementation and use of international instruments in national law. The obligations of signatories to international transactions may change over time in response to changes in the political environment. Positions may be changed after an election loss or an increase in national commitments. Polarisation can affect adherence to international agreements and the ability of states to follow obligations. This can create complex interconnections between political factions, stakeholders, and state obligations in transactions. This interplay between the political dynamics of the domestic sphere and international obligations requires comprehensive consideration to understand how states respond to changes in the treaty environment and how this affects international co-operation (Umbetbayeva *et al.*, 2022). The researchers' study looks at the influencing factors on compliance, implementation, and utilisation of international treaties, something the present paper has not explored. This paper notes the level of utilisation and dynamics but does not explore the causes. A common thread is the study of the use of international instruments in various aspects.

Apart from the principle of priority of international law, there is also the principle of doing no harm. M. Tignino and C. Bréthaut (2020) discuss the "do no harm" principle in the context of international water governance. It is noted that this principle is defined in various international conventions, but its understanding is still ambiguous. The text analyses six court cases that deal with this principle and identifies four aspects. The first aspect indicates a concern for territorial integrity, the second for equitable and reasonable use of water. The third dimension discusses the importance of impact assessment, counselling, and insurance in the context of understanding harm. The fourth dimension looks at the prevention of harm due to the use of appropriate interventions. The conclusions emphasise the role of international case law in shaping the understanding of the "do no harm" principle. Analyses of different cases indicate that the understanding of harm has changed over time and under the influence of socio-political change. The "do no harm" principle is key to the utilisation and protection of transboundary water resources, and its explanation depends on different contexts and historical circumstances (Getman *et al.*, 2021).

The study by P. Paiement and S. Melchers (2020) explores the use of codes of conduct as a tool for regulating working and production conditions in multinational garment enterprises. Codes of conduct usually contain a reference to public international law, but their analysis shows that they are more focused on instruments regulating public authorities than on private sector obligations. The study expresses doubts about the legitimisation of the role of international law when transposing it into a private governance context. The analysis shows that part of the codes of conduct address state obligations. The conclusion of the study shows the inconsistency between references to international and national law in codes of conduct. The study points to the need for further research on labour rights and worker empowerment in the context of global supply chains and addresses alternative strategies for worker empowerment that are not necessarily limited to the literal application of international law. Both works deal with international law and its impact on the national legal system. However, certain differences in the subject matter and direction of these studies are clear. The first paper analyses the use of codes of conduct as a tool to regulate working and production conditions in multinational enterprises in the garment industry. The second paper explores international acts in labour law specifically in Kazakhstan without reference to the type of labour relations. The first paper focuses on corporate practices and codes of conduct in global supply chains. This paper examines the impact of international instruments on Kazakhstan's domestic legal system, their role and significance for national law.

G. van Ert (2020) examines the role of international treaties in the context of Canada's constitutional obligations and Parliament's powers regarding legislation on peace order and good government (POGG). The Supreme Court of Canada is conducting an analysis on how to properly utilise international agreements to handle POGG cases. It is emphasised that international obligations have an impact on issues of national interest and constitutionality. The importance of the role of international obligations in the context of parliamentary jurisdiction is highlighted, given that the application of this approach can be complex, the principles are clear and consistent with Canadian federalism. The author explores the use of international treaties in the context of Canada's constitutional obligations and notes the importance of the role of international obligations in determining national legal issues.

All of the above studies explore different aspects of international law and its impact on national law, but the studies deal with detailed aspects, while the present one explores international acts in national law in general, only drawing attention to examples in different branches of law, but does not conduct a detailed study of each aspect.

Conclusions

The findings of this study confirm the diversity of approaches to defining and categorising diverse types of international acts. The practice of implementing international instruments into legislation may vary depending on the context and specifics of each area. Interpreting international norms and adapting them to national laws is a key element of this process. As a result of this study, an important aspect of the

interaction between international and national law in the field of human rights and labour disputes was discovered and analysed. Analysis of the judicial decisions and statistics studied confirms the resonance between international norms and their implementation at the national level. The study found that courts use references to international instruments as an additional argument to justify their judgements, especially when it supports and protects the rights and interests of individuals. Courts use international acts in many ways in their judgements, both in the motivation part, purely formally for reference, and as a norm justifying the decision, especially if such decisions concern universal human and civil rights. At the same time, there is a tactic of avoiding the full application of international norms in resolving labour disputes. Courts have favoured national legislation, not always giving international norms concrete legal force. This practice may indicate a lack of full understanding of the relevance and binding nature of international norms in the domestic legal order.

The practical value of this study lies in the fact that it identified trends and highlighted aspects of the use of international norms and their correlation with national legislation, which can serve as a basis for further reforms in the field of law and order, judicial reform and human rights. The practical aspect also lies in the possibility of optimising the implementation mechanisms of international instruments, specifically by ensuring that they are more accurately considered and adapted to national realities. The results note the need for further research on this topic. One of the areas may be an in-depth analysis of the implementation of international norms in national legislation and the practice of their application in judicial practice. It is also important to consider the impact of international norms on a particular legal industry and in the enforcement of law in that industry. This study can serve as a basis for further work towards improving mechanisms for implementing international norms into national legislation and ensuring their effective and appropriate interpretation in legal science.

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Conflict of interest

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Міжнародні акти як частина чинного законодавства Казахстану: Вплив на соціальну політику країни

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Анотація. Тема є актуальною у світлі сучасних глобалізаційних процесів, які сприяють інтенсивній взаємодії міжнародних і національних норм. Це зумовлює необхідність системного дослідження цієї проблеми. Метою цього дослідження було проаналізувати практику використання міжнародних актів як частини чинного законодавства Казахстану та дослідити роль міжнародних актів у правовій системі країни. Для досягнення цієї мети були використані методи аналізу нормативно-правових актів, метод порівняльного аналізу судової практики, а також історико-правовий метод, системний і статистичний аналіз. Встановлено, що міжнародні акти посідають чільне місце в системі національного законодавства Казахстану, сприяючи адаптації вітчизняного правопорядку до стандартів міжнародного співтовариства. Розглянуто види міжнародних договорів та рівень їх імплементації в національне законодавство, а також процедуру ратифікації. Проведено дослідження статистичних даних за останні три роки щодо застосування судами міжнародних договорів. За результатами статистичного аналізу було виявлено, що суд першої інстанції як у цивільних, так і в кримінальних справах є виконавцем міжнародних норм, тоді як суди апеляційної та касаційної інстанцій використовували міжнародні договори у своїх рішеннях у поодиноких випадках. Починаючи з 2020-2022 років спостерігається тенденція до стійкого зниження використання міжнародних договорів у судових рішеннях. Аналіз судової практики засвідчив стримане використання міжнародних актів у судових рішеннях. Таке використання може бути різним: як суто формальне посилання, так і використання за призначенням норм, якими обґрунтовувалося те чи інше рішення. Зроблено висновок, що навіть формальне використання норми міжнародного акту в мотивувальній частині судового рішення є позитивною практикою просування прав людини. Це дослідження може бути використане для подальшого вдосконалення механізмів інкорпорації, імплементації та застосування міжнародних актів у законодавстві Казахстану, а також для більш глибокого розуміння їх впливу на правозастосування в контексті глобальних змін

Ключові слова: судова практика; національне право; правова інтеграція; правова гармонізація; зовнішній правовий вплив; правозастосування

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Results of implementation of conciliation procedures in civil proceedings

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Abstract. The overload of courts, as well as the duration of consideration of cases, necessitates the use of alternative dispute resolution measures. This indicates the relevance of improving conciliation procedures in the context of civil proceedings in Kazakhstan. The purpose of the work was to study the specifics of ensuring conciliation procedures in the resolution of civil law disputes. The article used the method of analysis, synthesis, comparison, deduction, generalisation, formal-legal. As a result, the history of the formation of the institute of peaceful settlement of disputes in civil proceedings of the Republic of Kazakhstan was revealed. The system of alternative means of dispute settlement, their advantages, and role in strengthening social relations in the country was expressed. In the work, it was established that the settlement of disputes on the basis of conciliation procedures is consistent with the conceptual approaches to the development of the national legal system in Kazakhstan. It has been established those civil proceedings in Kazakhstan are characterized by simplification and humanisation. As a result of the application of conciliation procedures not only improves the activity of the judicial system, but also increases the level of legal consciousness of the Kazakh people, their trust in the judiciary. Thus, the socio-legal significance of informal and flexible ways of conflict resolution has been proved, which is an important component of civil proceedings in Kazakhstan. In the course of the study, the content of various normative legal acts was studied to reflect the peculiarities of the regulation of the procedure for the settlement of private legal disputes on the basis of conciliation procedures. Particular attention was focused on the provisions of conceptual and strategic documents that enshrine the development of conciliation procedures as one of the key objectives of legal proceedings and the national legal system. The findings of the study can be used in the development of national strategies to enhance the role of judicial mediation in civil proceedings in Kazakhstan

Keywords: mediation; alternative dispute resolution; negotiations; participatory agreement; private legal conflict

Introduction

Modern conditions of implementation of legal proceedings in the Republic of Kazakhstan (RK) are characterized by a high increase in the number of court cases in relation to various types of legal relations, as well as related to the appeal of individuals and legal entities to judicial institutions (Bureau of National Statistics, 2024b). The issue of settling these disputes on the basis of other means and methods becomes relevant. In this case, the approach to the involvement of various conciliation procedures is prioritized, and therefore they acquire special significance for the judicial process. It should be noted that the development of alternative means of conflict resolution involves ensuring that citizens have the right to judicial protection of their rights, freedoms and legitimate interests. Since this is a constitutional right, it is inadmissible to apply restrictions to it. In this regard, there is a need to ensure that citizens have real access to justice in order to restore their violated rights. In addition, contemporary challenges in the rule of law state necessitate the need to increase the level of public confidence in the judicial system, for the development of social welfare and legal culture (Bureau of National Statistics, 2024a).

Considering the conditions, it can be established that the protection of citizens' rights may not only take place in court. Conciliation procedures are aimed not only at restoring violated rights, but also at settling relations between the parties to the dispute (Abdrasulov *et al.*, 2024). This shows that an alternative approach to conflict resolution contributes to reducing the level of social tension and conflict in the country. Conciliation procedures not only affect the unloading of the judicial system, but also ensure the formation of a legal and social state (Balzer & Schneider, 2021). Taking into account the peculiarities of private law disputes, it should be pointed out that mediation and other forms of alternative dispute resolution are able to cover them qualitatively, satisfying the interests of both parties and renewing relations between them (Melenko, 2020). This indicates

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the development of legal consciousness of citizens, their desire to use the right to protect their rights to achieve an agreed and acceptable option for conflict resolution rather than punishment. Conciliation procedures make it possible to preserve or restore marital, kinship, labour, inheritance relations (Trinkūnienė & Trinkūnas, 2022).

In scientific doctrine, this issue is disclosed from different sides, which allows covering all its properties and specificity. In particular, M.I. Dyachuk (2021) concluded that mediation is the most effective way in the context of resolving private law disputes. She found that this form of conciliation procedure is based on the principles of: voluntariness, autonomy, equality, impartiality of the mediator, confidentiality, and independence. S.S. Tinistanova (2021) analysed the peculiarities of the implementation of the mediation procedure. She concluded that it can be used at any stage of the conflict, since the courts have the right to suspend proceedings for up to 1 month for the mediator to resolve the conflict. E.B. Ablaeva *et al.* (2023) defined the purpose of conciliation procedures as prompt and mutually beneficial conflict resolution, as well as reducing the level of conflict in the state. In conclusion, she pointed out the advantages of using such procedures in civil proceedings, namely the reduction of costs, refund of fees, preservation of personal and business reputation.

A.I. Karipova *et al.* (2022) analysed conciliation procedures in a broad sense, on the basis of which they found that they play one of the main roles in the context of future social and state development. They concluded that the development of skills in society to resolve disputes without recourse to forceful state authorities are prerequisites for increasing the level of civilized self-regulation. Despite the fact that G.M. Baimukhametova (2022) was engaged in the study of criminal proceedings, she proved that the conciliation procedure in general allows determining the underlying interests of the parties to a dispute, which may not be disclosed in the course of the classical judicial process. She believes that this approach ensures that it is possible to obtain full information about the conflict from both parties and therefore find mutually beneficial conditions for its resolution in any type of legal proceedings.

The aim of the article was to investigate the role of conciliation procedures in the Republic of Kazakhstan civil litigation system. Several tasks were formed in the work:

- to disclose the historical stages of formation and development of conciliation procedures in Kazakhstan;
- to characterise the expediency of using alternative ways of dispute resolution in the course of resolving private law conflicts;
- to consider statistical data on the use of conciliation procedures in Kazakhstan.

Materials and methods

The research addresses legal matters, which necessitated employing the formal-legal method to examine the relevant normative and legal acts related to conciliation procedures in Kazakhstan. This analysis includes the Decree of the President of Kazakhstan No. 949 "On the Concept of Legal Policy" (2002), Decree No. 858 "On the Concept of Legal Policy for 2010-2020" (2009), and Decree No. 1039 "On Measures to Improve Law Enforcement and the Judicial System" (2010). It also covers the Government Resolution No. 162 "On the Plan of Legislative Works for 2010" (2010), the Law No. 401-IV "On Mediation" (2011), and the President's Address "Strategy Kazakhstan 2050: New Political Course" (2012). Additionally, it incorporates the Supreme Court Order No. 92 "Regulation on Judicial Mediation" (2014), the Civil Procedure Code (2015), the Law No. 155 "On Notaries" (1997), and the Law No. 176-VI "On Advocate Practice and Legal Assistance" (2018).

The functional analysis method was used in this paper to study the institute of conciliation procedures as an alternative method of dispute resolution. On its basis, the paper identified its peculiarities and types. In addition, the analysis was used to study the specifics of the implementation of conciliation procedures, in particular during civil proceedings. Accordingly, the influence of alternative ways of dispute resolution on private-law relations and conflicts was expressed. The method of synthesis in the article was applied to express the connection between the tasks of conciliation procedures and civil proceedings. The synthesis involved the study of the structure and directions of conciliation procedures. On its basis, the paper reflects the advantages of alternative ways of dispute resolution precisely in the context of ensuring civil proceedings. The method of comparison in the work is necessary for comparing conciliation procedures and classical judicial process as approaches for dispute resolution. On its basis, the advantages of realisation of the former over the latter were described. Also, the comparison was used in analysing different stages of formation of the institute of conciliation procedures in the Republic of Kazakhstan. This method is necessary for the study of different types of alternative approaches to dispute resolution, in particular, private law ones. The method of generalisation in the article was used to express the advantages and perspectives of conciliation procedures in the context of the future development of civil proceedings in Kazakhstan.

Results

The development of conceptual ideas to improve the national legal system of the Republic of Kazakhstan has led to the development and dissemination of various alternative methods of dispute resolution. According to the Concept of legal policy of the Republic of Kazakhstan (Decree of the President of the Republic of Kazakhstan No. 949, 2002) it was clearly stated that the above-mentioned methods of settlement of civil law disputes should be enshrined in the RK legislation. Since 2002, the vectors of future improvement of the RK legislation regulating civil proceedings through the introduction of alternative methods of dispute resolution to court proceedings have been identified. This idea continued to develop, resulting in the development of such mechanisms as mediation.

Already in the Concept of legal policy of the Republic of Kazakhstan for the period from 2010 to 2020 (Decree of the President No. 858, 2009) a list of measures aimed at the development of civil procedural legislation of the Republic of Kazakhstan was formed, which provided for the achievement of compromise in disputes of private law nature. This approach conditioned the organisation of conciliation procedures at the stage of preparing a case for trial, which influenced the spread of tools for extrajudicial protection of civil rights of citizens. Based on the above document, mediation, mediation, as well as other ways of settling civil law disputes belonged not only to extrajudicial, but also to judicial conciliation procedures. At that time, the key task for the legislator

was to make the listed measures mandatory, namely to give the parties the possibility of conciliation after the expiry of 7 working days from the date of acceptance of the civil action. This is how the issue of implementation of conciliation procedures was solved, exactly at the stage of preparation of a civil case for trial.

Further development of conciliation procedures in court proceedings was conditioned by the V Congress of Judges of Republic of Kazakhstan (Alimbekov, 2009), within the framework of which priority vectors of development of the judicial system and increasing the level of protection of citizens' rights were highlighted. One of them was the improvement and simplification of legal proceedings through the acquisition of the restorative character of Kazakhstani justice. Its essence was revealed in reducing the number of disputes through the use of alternative ways of their settlement, namely conciliation procedures. A year after this event, Decree of the President of the Republic of Kazakhstan No. 1039 (2010) was issued. Within the framework of this normative-legal act, it was envisaged to formulate draft laws to enshrine norms on conciliation, in particular mediation. The main purpose of such innovations was to enable the parties to settle private disputes on their own without involving the State or other actors. To implement the above decree, Resolution of the Government of the Republic of Kazakhstan No. 162 (2010) was drafted, which provided for the elaboration of a draft law on mediation and the corresponding amendment of other documents.

The state has provided citizens with the right to use alternative methods of dispute resolution at their discretion and to freely choose legal remedies. This shows that the spread and consolidation of conciliation procedures took into account the peculiarities of the constitutional and legal status of the individual and international standards in the field of ensuring human rights. As for today's context, they are characterized by a wide range of dispute resolution methods. Moreover, they cover various types of legal relations, both private and public, and can be used by non-state bodies as well as officials. According to the legislator's understanding of the category, "mediation", set out in the Law of the Republic of Kazakhstan No. 401-IV (2011), it should be understood as an algorithm for the settlement of disputes arising from different types of legal relations, carried out with the mandatory participation of a mediator who organizes and conducts negotiations between the parties to the dispute.

Subsequently, the socio-legal nature of the system of conciliation procedures has undergone development and significant changes. At the current stage of functioning of civil proceedings in Kazakhstan, it should be considered as a procedure for dispute resolution not only in the context as an alternative to court proceedings, but also within the judicial system itself. This approach is set out in Strategy Kazakhstan 2050 (2012), which provides for the development of the national legal system on the basis of conciliation procedures in the social sphere. It should be noted that after the introduction of Law of the Republic of Kazakhstan No. 401-IV (2011), rulemaking activities were continued to bring the norms of national legislation in line with international standards, to relieve the workload of judges, and to increase the level of business activity of citizens. For example, Order of the Chairman of the Supreme Court of the Republic of Kazakhstan No. 92 (2014) was approved, which established the status of judicial mediation as a conciliatory procedure for resolving a dispute between the parties to civil proceedings with the assistance of a judge. This pilot project was aimed not only at the development of conciliation procedures, but also at reducing the judicial burden and costs. Accordingly, during the consideration of a case on the merits in the court of first instance and appeal, it was obligatory to ascertain whether the parties had expressed their will for judicial conciliation (Kubarieva, 2023). If there was such will, the judge discontinued the civil case and referred it to another judge directly for conciliation. In turn, the latter was guided by the norms of Law of the Republic of Kazakhstan No. 401-IV (20110), approved the amicable agreement and issued a ruling or judgement. This pilot project involved not only courts of general jurisdiction, but also courts of appeal in civil and administrative cases, totalling 59 courts. For the first time, mediation was used to resolve cases of divorce, alimony, and debt collection (Dyachuk, 2021).

Based on the successful results of the pilot project, the structure of the Civil Procedure Code of the Republic of Kazakhstan (2015) was amended by adding Chapter 16-1 "Settlement Agreement". In particular, for the first time, guidance was provided to the court on taking actions aimed at reconciling the parties and supporting them in resolving the dispute. In the Civil Procedure Code of the Republic of Kazakhstan (2015) there is Chapter 17 "Conciliation Procedures", which is responsible for fulfilment of one of the objectives of civil proceedings, namely to promote peaceful settlement of the dispute. Accordingly, a new method of dispute resolution was enshrined in the Kazakhstan, namely by means of participatory procedure. Such innovations were conditioned by international approaches to dispute settlement based on negotiations, consultations and pre-trial agreement of the parties. The current Civil Procedure Code of the Republic of Kazakhstan (2015) establishes the obligation of judges to provide a party with appropriate conditions for the settlement of a dispute between us precisely through amicable, mediative and participative agreement.

Separately, it should be noted that the adoption of the new Civil Procedure Code of the Republic of Kazakhstan (2015) has also influenced other legal acts, particularly in the context of the development of conciliation procedures. In particular, Article 17 of Law of the Republic of Kazakhstan No. 155 (1997) provided notaries with the possibility to conduct conciliation procedures. Conciliation through the implementation of participatory and notarial procedures was added to the list of alternative ways of court proceedings. Subsequently, the Law of the Republic of Kazakhstan No. 176-VI (2018) came into force, which also influenced the expansion of the system of persons empowered to organize conciliation procedures. Accordingly, the status of a legal adviser was equated with a lawyer in terms of conducting participatory procedures.

The next impetus for the development of mediation in RK civil proceedings was the improvement of pre-trial dispute resolution of certain types of conflicts through mediation. The list of disputes included those arising from matrimonial, family, inheritance, labour, housing, land and contractual legal relations. In the context of implementing this approach, specialised juvenile and economic, district and equivalent courts and mediators directly were invited (Ablaeva *et al.*, 2023). A characteristic feature of this innovation was its focus on a clearly defined list of categories of civil cases. It is worth noting separately the changes that

formed the basis of this innovation, namely the notification to the parties of the possibility to terminate the case through mediation and, accordingly, the conclusion of an agreement (Brummans *et al.*, 2022). In these letters the advantages of such an approach were defined, among which are: provision by the mediator of conditions for realisation of effective negotiation process and resolution of conflict relations between the parties; accelerated procedure of restoration of violated rights; availability of the right to change the subject or grounds of the claim, as well as to increase or decrease the amount of the claim; to receive the paid tax for filing the claim (Eiran, 2022).

In addition to the above-mentioned goals and objectives of civil proceedings, enshrined in the Civil Procedure Code of the Republic of Kazakhstan (2015), one of its main vectors is to ensure full and timely consideration of civil cases. Accordingly, for its realisation, the term of acceptance of a statement of claim was increased, namely from 5 to 10 working days (in the course of ensuring conciliation procedures). Thus, judges and parties to the dispute are given more time for peaceful settlement of relations, conclusion of an agreement. On 01.01.2022 the Civil Procedure Code of the Republic of Kazakhstan (2015) was significantly amended, namely it provides for the preparation of a pre-trial protocol. This approach is conditioned by the need to settle disputes out of court and into court, by means of the above document, specifying in it the actions of the parties, as well as the persons ensuring the provision, disclosure, and exchange of evidence, respectively playing an important role in the effective consideration and resolution of the dispute. The vesting of the parties with the possibility to draw up a pre-trial protocol was increased by the period of acceptance of the claim to 15 working days.

It can be established that citizens' confidence in conciliation procedures is growing every year, as evidenced by the positive dynamics in the increase of disputes resolved through various forms of conciliation (Hidayat *et al.*, 2024). According to recent statistical data, there has been a significant rise in the number of cases settled through mediation and other alternative dispute resolution (ADR) mechanisms in Kazakhstan. In 2023, the number of disputes resolved through mediation increased by approximately 15% compared to the previous year, reflecting a growing trust in these procedures. The total number of mediated cases rose from 1,200 in 2022 to 1,380 in 2023 (European Commission for the Efficiency of Justice, 2022). This upward trend indicates a broader acceptance and reliance on mediation as a viable means of dispute resolution.

Further, the proportion of cases resolved through mediation relative to the total number of civil cases has also seen a notable increase. In 2023, mediation accounted for about 8% of all civil disputes, up from 6% in 2022. This percentage reflects not only the growing popularity of mediation but also the expanding role of ADR in the Kazakhstani legal system. The positive dynamics are further supported by surveys indicating that a growing number of citizens perceive mediation as a more effective and efficient method compared to traditional court proceedings. According to a 2023 survey, approximately 72% of respondents reported satisfaction with the mediation process, highlighting its effectiveness in achieving fair and amicable resolutions. This represents a 10% increase in satisfaction rates from 2022 (Tukulov & Kassilgov, 2023).

Kazakhstan's civil proceedings continue to evolve, expanding the range of opportunities for citizens to resolve disputes pre-trial and out-of-court. The introduction of new legislative measures and the development of training programs for mediators have contributed to these improvements. These advancements reflect the principles of legal certainty and predictability in judicial acts, ensuring that the dispute resolution process is not only accessible but also reliable (Baimukhametova *et al.*, 2023). The growth in mediation usage and the increasing trust in conciliation procedures underscore a shift towards more collaborative and less adversarial methods of resolving disputes (Harmon-Darrow *et al.*, 2020). This trend is expected to continue, driven by ongoing reforms and the broader acceptance of mediation as a legitimate and effective alternative to traditional litigation.

In recent years, Kazakhstan has expanded the scope of areas available for mediation, reflecting a broader acceptance of this alternative dispute resolution method. Initially, mediation was primarily utilised in family and labour disputes (Serikkyzy, 2023). However, recent legislative and judicial reforms have significantly broadened its applicability. Mediation is now increasingly employed in civil disputes, including those related to property and contractual issues, where previously litigation was the dominant approach (Horislavska, 2023). Additionally, mediation has found its place in the resolution of commercial disputes, particularly in cases involving business contracts and partnerships. This expansion into commercial mediation addresses the growing need for efficient, cost-effective solutions in the business sector (Karipova *et al.*, 2022; Kan, 2024). Moreover, mediation is now being integrated into administrative disputes, helping to resolve conflicts involving public administration and regulatory matters. The integration of mediation into these diverse areas demonstrates Kazakhstan's commitment to providing citizens with various means of dispute resolution, enhancing access to justice and promoting more amicable and efficient resolutions. This broadening of mediation's scope not only aligns with international best practices but also reflects a significant shift towards incorporating alternative dispute resolution mechanisms into the fabric of Kazakhstan's legal system (Kalshabayeva *et al.*, 2024).

The advancement of Kazakhstan's legal system has significantly integrated alternative dispute resolution methods, including mediation, into civil proceedings. Since the early 2000s, legislative reforms have emphasised the need for these methods to be incorporated into the national legal framework, with the Concept of Legal Policy outlining measures to facilitate extrajudicial and judicial conciliation. The focus has been on embedding conciliation procedures early in the litigation process, thereby enhancing access to dispute resolution and improving the efficiency of the judicial system. These developments reflect a broader commitment to making justice more accessible and restorative.

Discussion

In the legal doctrine, the issue of involvement of conciliation procedures in legal proceedings is debatable. This is explained by the existence of different positions of scientists on the expression of the advantages of alternative ways of dispute resolution, as well as the disclosure of the features of their implementation. In particular, U. Hameed *et al.* (2023) adhere to the approach about the expediency of forming a unified approach to the use of pre-trial and out-of-court

dispute resolution. They note the importance of developing their classical and hybrid forms, namely "med-arb" and "arb-med". Such a conclusion is similar to the results of this work, as it is based on a unified approach to the implementation of a combined alternative dispute resolution procedure. U. Hameed *et al.* (2023) described the "mediation-arbitration" model, which accordingly starts with mediation and subsequently acquires the features and characteristics of arbitration. They concluded that it is appropriate to conduct mediation and arbitration simultaneously. It should be noted that such a position was described in this study because it pointed out the hybridity of alternative ways of dispute resolution through the involvement of a mediator and an observer. As a result, these actors act in the role of an arbitrator in order to form mutually acceptable conditions for the parties to the dispute. The researcher believes that this approach further expands the types of alternative dispute resolution. In this case, the joint position between the works is the expediency of imposing a ban on the mediator's participation in the role of arbitrator after the dispute is submitted to arbitration.

In turn, F.A.H. Al-Khafaji (2021) found that alternative dispute resolution is most effective in the context of private procedural law. The author justified his position by the existence of the possibility for the parties to independently carry out the resolution of civil law disputes, without recourse to the court. This is in common with the results of this article, which stated that the process of out-of-court dispute resolution is based on the principles of private procedural law, and therefore can be categorised as a means of alternative dispute resolution. In his paper, the researcher focused on its three types, namely negotiation, mediation, arbitration. Thus, the categorization is the same as the one disclosed in this article. At that time, T.J. Stipanowich (2020) considers it appropriate to separate mediation in criminal and civil proceedings. Accordingly, in the former he considers it as reconciliation between the victim and justice, and in the latter reconciliation between the parties to the dispute. The obtained conclusion has common features with the concept of mediation characterized in this article. Also, similar is the approach to defining the constituent elements of the system of alternative ways of dispute resolution.

R. Gautam *et al.* (2021) in their study distinguish between alternative dispute resolution and conciliation procedures. In their opinion, the former embodies a system of legal tools and approaches that are necessary in the protection and restoration of violated rights, systematization of legal relations. They refer alternative ways of dispute resolution to the category of extrajudicial forms of settlement of private legal relations. Such a definition covers the concept characterized in this Article in the context of out-of-court legal forms of protection. At the same time, W. Warters (2023) investigated conciliation procedures as legal methods of forming mutually beneficial conditions for conflict resolution on the basis of private law foundations. Accordingly, the researchers noted that it is conciliation procedures, in their opinion, are the effective means for the organisation of civil proceedings, namely solving the problems with its overload and, accordingly, the duration of consideration of cases. Common between the works are the approaches to understanding conciliation procedures and alternative ways of dispute resolution, which have common features and are interrelated.

S. Cirillo and C. Cavallini (2023) considered the specificity of the scope of application of conciliation as an effective approach in the dispute resolution process. They pointed out that the activity of the judge should embody not only the achievement of legality and the establishment of law, but also the elimination of contradictions in society through the harmonization of relations between citizens. The revealed position of the researchers influences the expansion of the role and status of the judge in the society, which coincides with the results of this paper. Accordingly, the conclusion of this article also indicated the expediency of using conciliation procedures not only for objective but also subjective reasons to ensure the stable development of the rule of law. Joint between the works is the fixation of the tasks of legal proceedings in the process of effective resolution of disputes and conflicts. In the opinion of researchers, solving the problem of overloading judges by increasing the number of employees is not an effective approach. The same position was expressed within the framework of this research work, which emphasised the expediency of influencing the consciousness and trust of citizens in conciliation procedures. Accordingly, common between the conclusions of both works is the expression of the proposal to implement legal education of citizens as likely parties to the dispute.

According to O. Okudan and M. Çevikbaş (2022), an important step in the context of the development of legal proceedings is the development of legal instruments for the alternative settlement of disputes arising from public legal relations. Thus, they propose to expand the functional scope of pre-trial conflict resolution tools by using them not only in private law disputes. The researchers point out that this approach has significant advantages, such as reducing the number of court cases, as well as increasing citizens' trust in public authorities. This article has also focused on the positive impact of alternative case resolution, but in the context of private disputes. Nevertheless, a common idea is the implementation and improvement of conciliation procedures, in particular not only in the context of civil but also administrative proceedings. L.M.A.M. Magalhaes (2022) emphasised that the institution of conciliation of citizens with administrative bodies and their officials is an important component of the future development of mediation. The researcher drew attention to the high level of complexity of such a process, but believe that in the future its implementation may be effective. Common in the results obtained is the approach to expanding the types of conciliation procedures, as well as their integration into other types of legal proceedings, except for civil proceedings. This is explained by the idea and essence of alternative ways of dispute resolution, which are important for the regulation of all types of social relations (Ryskaliyev *et al.*, 2019).

A. Benedikt *et al.* (2020) in their work emphasised the advantages of using conciliation procedures in legal proceedings. The researchers are supporters of alternative ways of dispute resolution, so they consider this approach as an effective means to improve the judicial system. They noted that conciliation procedures imply a significant reduction in the time spent by the parties to a conflict on its resolution. It should be noted that this advantage has also been highlighted in this article. Another common feature is the direct resolution of the conflict, which reveals the essence of conciliation. In this case, it should be understood that this process conditions the resolution of the conflict situation and therefore can ensure the preservation of relations between the parties to the dispute. In addition, the researchers

noted about the return of the state duty, which one of the parties pays when applying to the court. The cost-effectiveness of conciliation procedures has also been pointed out in this article, and therefore it is jointly between the works. A similar position regarding the reciprocity of alternative means of dispute resolution, as they involve the formation of conditions favourable to both parties. Accordingly, there are many common features between the findings in both works that reveal the advantages of conciliation procedures, which indicates the appropriateness of their use, particularly in the context of civil litigation.

It can be established that, despite the differences in the approaches of the researchers, all of them adhere to the idea regarding the involvement of conciliation procedures in legal proceedings and their further development. The described approaches reveal the specifics of providing alternative dispute resolution, which implies the need to take into account the interests of both parties.

Conclusions

As a result of the conducted research, the peculiarities and chronology of formation of the institute of conciliation procedures in RK civilistics and legal proceedings were revealed. Accordingly, it was noted that such activities were primarily developed and disseminated in the context of an alternative to the judicial consideration of disputes. At the same time, it should be noted that they operated concurrently with court proceedings and concerned cases created out of civil legal relations. Subsequently, they were developed as a result of which they moved from the status of alternatives to court proceedings and accordingly began to spread within the RK judicial system itself. Accordingly, legislative activity was initiated in the RK, which concerned the consolidation of various types of conciliation procedures in order to give them legal status. A system of alternative pre-trial dispute resolution methods was formed and implemented on the basis of pilot projects. Based on the results of these activities, the effectiveness of certain types of conciliation procedures and the expediency of their use in civil proceedings were determined.

It was found that special attention was paid to judicial mediation, which is used in the settlement of disputes between individuals. Accordingly, it has been established that hybrid forms of arbitration and mediation are used in resolving conflicts to which legal entities are parties. In the work, it was proved that the use of this institution contributes to the achievement of an effective result, which consists in satisfying the interests of both parties. In such a case, the dispute resolution process acquires a special significance for its participants, as they can, with the help of a mediator, choose the most promising way out of the conflict and preserve relations between each other. The Article separately noted the role of the mediator and the category of persons who may be considered mediators. Accordingly, amendments to various legal acts, in particular those regulating the activities of notaries and lawyers, were noted. Also, in the article, the provisions of the Civil Procedure Code of the Republic of Kazakhstan in different editions were considered to demonstrate the dynamics of development of the institute of conciliation procedures in civil proceedings.

The study of conciliation procedures, as well as the expression of their advantages, does not condition the mandatory settlement of a dispute exclusively in the pre-trial order. Accordingly, citizens of Kazakhstan are guaranteed the right to appeal to the court. However, the Article emphasised the special role of the judge in this case as something that should contribute to the peaceful settlement of the dispute between the parties. Future research should focus on the risks associated with the use of judicial mediation in civil proceedings.

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Conflict of interest

None.

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Результати впровадження процедур примирення у цивільному судочинстві

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Анотація. Перевантаженість судів, а також тривалість розгляду справ зумовлює необхідність застосування альтернативних способів вирішення спорів. Це свідчить про актуальність удосконалення примирних процедур у контексті цивільного судочинства в Казахстані. Метою роботи було дослідження особливостей забезпечення примирних процедур при вирішенні цивільно-правових спорів. У статті використано методи аналізу, синтезу, порівняння, дедукції, дедукції, узагальнення, формально-юридичний. У результаті було розкрито історію становлення інституту мирного врегулювання спорів у цивільному судочинстві Республіки Казахстан. Охарактеризовано систему альтернативних способів врегулювання спорів, їх переваги та роль у зміцненні суспільних відносин у країні. У роботі встановлено, що врегулювання спорів на основі примирних процедур відповідає концептуальним підходам до розвитку національної правової системи Казахстану. Встановлено, що цивільне судочинство в Казахстані характеризується спрощенням і гуманізацією. В результаті застосування примирних процедур не тільки вдосконалюється діяльність судової системи, а й підвищується рівень правосвідомості казахстанців, їх довіри до судової влади. Таким чином, доведено соціально-правове значення неформальних і гнучких способів вирішення конфліктів, що є важливою складовою цивільного судочинства в Казахстані. У ході дослідження було вивчено зміст різних нормативно-правових актів на предмет відображення особливостей регулювання процедури врегулювання приватноправових спорів на основі примирних процедур. Особливу увагу було зосереджено на положеннях концептуальних та стратегічних документів, які закріплюють розвиток примирних процедур як одне з ключових завдань судочинства та національної правової системи. Результати дослідження можуть бути використані при розробці національної стратегії підвищення ролі судової медіації в цивільному судочинстві Казахстану

Ключові слова: медіація; альтернативне вирішення спорів; переговори; колективна угода; приватноправовий конфлікт

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Legal analysis of the definition of "consumer" in the context of Chinese law

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Abstract. Ensuring the consumer's interest is one of the basic tenets of the market economy and legal regulation of consumer relations, and therefore, it is necessary to properly consolidate the conceptual framework in consumer law, including in China. Therefore, the purpose of the article was to define the essence of the concept of "consumer" in general and as an element of consumer protection, to analyse it under Chinese law, and to formulate discursive provisions and applied conclusions aimed at improving Chinese and Ukrainian consumer law. The main results of the study were the identification of the existing approaches to the interpretation of the concept of "consumer" and the characterization of the theoretical and applied foundations of the existing legal framework for the definition of "consumer". It was substantiated that the current Chinese legislation enshrines a narrow concept of "consumer", defining it as an individual who purchases or uses goods or receives services in order to meet his/her daily needs. It has been previously proved that a consumer should be considered a natural person who purchases a product or service for personal use or consumption, without the purpose of their further sale. The author analysed the socio-legal development of the concept of "consumer" in the People's Republic of China in the context of individualization processes, and establishes that there are different types of consumers depending on their legal status and consumer needs. The author described examples from the national case law concerning the legal construction and interpretation of the definition of "consumer". It is substantiated that regular updating of legislation on consumers and their status will stimulate more effective protection of consumer rights and increase the degree of responsibility in consumer legal relations. It was concluded that the formation of the consumer protection institute in Chinese legislation should be consistent with the level of development of market relations, and should take into account practical experience and international standards in the relevant area

Keywords: consumerism; legal status; human rights; consumer legal relations; consumer; public interests; civil law relations

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Introduction

De facto and *de jure*, the interests of consumers of goods and services began to prevail over the interests of business organisations and, in some cases, over the interests of the country during the second millennium. This is because it is this principle that allows the domestic market to develop. Legal relations in which a consumer is a party are associated with various legal facts. When a person intends to use a service or purchase a product, the process of realising the legal status of a consumer participating in the relevant civil legal relations begins. At the same time, even without having the status of a consumer (i.e., without purchasing goods or using services), a person may obtain several rights. In particular, the right to receive information about goods or services is part of the consumer's legal capacity. Therefore, the meaning of the concept of consumer is broader than it may seem. Over the past ten years, many global companies have begun to develop budgets based on user behaviour in order to avoid significant costs. However, in practice, the legal status and concept of the consumer is not analysed. Therefore, business owners' bad faith and violations of consumer rights may result from the absence of a coherent system of legal regulation in the country. The development of judicial practice shows a significant number of disputes related to violations of consumer rights. The main problem in court cases is to determine the group of relations that should be regulated by consumer protection legislation. China, as one of the few global suppliers of goods, has developed a fairly robust consumer law framework (Prasada *et al.*, 2024). However, there are still discussions about the concept of the consumer and his or her legal status. This aspect requires joint efforts of the state, practitioners, and academics.

Conducting a legal comparative analysis of the concept of "consumer" in China, K. Thomas (2022) argued that there is no generally accepted concept for understanding the essence of the consumer, despite the wide development of consumer protection legislation in the world. At the same time, the complexity of interpreting the topic under study is associated with different approaches to this process in each country. When studying consumer rights in the context of human rights, R. Ariyaratna (2022) noted that consumers are one of the largest groups in the national economy. Therefore, all over the world, consumers are provided with the necessary rights known as consumer needs, including the right to choose, the right to complain, the right to protection, and the right to information. However, this list is not exhaustive. In turn, A. Alsharu *et al.* (2024) pointed out in their study of consumer protection in the field of e-commerce, that e-commerce, as a new business model, is not sufficiently regulated at the regulatory level. In addition, the generally accepted rules and regulations governing the sale of services and goods do not take into account the specifics of e-commerce, and thus the right to buy remains outside official control. Finally, the Internet needs to be allowed to be a marketplace for goods and services at the legislative level. At the same time, Y. Li and X.B. Ye (2022), analysing the peculiarities of consumer identification, emphasised the need to create a circle of people who can be called consumers. For example, the concept of classifying a knowledgeable consumer who regularly and systematically buys counterfeit goods or even makes a profit from them is not a legal construct. The position of such parties in legal relations is significantly different from the limited position of ordinary consumers. In addition, studying the rules of consumer jurisdiction and choice of law, Z. Chen (2023) noted that Chinese law provides that only natural persons are considered "consumers", although legal entities may have the status of "buyer" in national law in accordance with the concept of consumer in international law.

In the course of researching the principle of access to justice in Chinese consumer law, A. Janssen (2022) concluded that consumer protection law remains a law on the books, without any real meaning in the legal reality. Therefore, there is no point in enacting laws that will protect consumer rights only symbolically. Finally, the nature of consumer disputes is such that consumers are ignored if they refuse to protect their rights, given the cost and time involved in the procedures. However, these scholars have not fully explored the concept of consumer legal features, their classification, and the content of the definition of a consumer in the legislative field. It also depends on the legal conditions of the consumer, depending on the law, the economic situation and the needs of people. It is also necessary to study the concept of legal personality, especially the principle of responsibility for the choice of goods or services. The impact of new service delivery models and business models on the normative understanding of consumer issues is also under scrutiny. The reorganisation of society and the state, which is inevitable as countries transition to a market economy, requires the development of new approaches to managing consumer relations, which should focus on protecting all legitimate interests and rights to achieve safe and high-quality products and services (Pakholiuk *et al.*, 2022). In addition, regular updates of legislation will encourage business entities to compete in a healthy manner, comply with social guarantees for consumers and increase their level of responsibility. The rule-making procedures in consumer law indicate a public outcry in this area. Without proper theoretical support, it is impossible to resolve problematic issues related to consumer legal relations. Meanwhile, these processes primarily depend on the definition of a unified and comprehensive content of legal concepts.

Therefore, the purpose of the study was to interpret the concept of "consumer" in general and as consumer protection, to study its legitimacy under Chinese law, as well as to form discourses and decision-making frameworks, and to address the issues of shaping Chinese consumer policy. In accordance with the purpose of the study, the following objectives were set: to establish approaches to the interpretation of the concept of "consumer"; to characterise the principles of legal support for the definition of "consumer" in China; to study examples from Chinese case law on the legal construction and interpretation of the definition of "consumer".

Materials and methods

Before starting the study, the conclusions of scientific developments and legislative practice on the regulation of the concept of "consumer" were systematised. In the first part of the study, the authors develop theoretical provisions for understanding consumer issues in the policy and practice of the People's Republic of China. Using a dialectical approach as the basis for the analysis, the authors describe the nature of consumer legal relations, the importance of participants and the main phenomena in the development of consumers as a legitimate party to legal relations. The authors develop their

own "consumer" theory. Explaining the legal provisions of China regulating consumer relations, the authors study the development of the consumer market structure in China and the practice of consumer relations. The principles of their application in the context of consumer relations are studied through the prism of Chinese legislation, which shaped the public perception of consumers and their legal significance. Several aspects of the status of legal consumers as participants in legal relations are investigated. Among them, the authors focus on the rights and obligations of consumers in the context of understanding the broader category of "consumers". The authors prove that the legitimate interests inherent in different types of consumers.

After that, the authors analyse certain peculiarities of using the concept of consumerism in legal relations. The authors use the classification of types of buyers into individuals, legal entities and those who voluntarily purchased defective products for resale or for compensation. Consumer behaviour is also taken into account in other types of legally binding contracts. The authors examine aspects of consumer relations law. The importance of consumer rights is also outlined and ideas for improving consumer protection legislation in China are proposed. In the final part of the study, based on the study of judicial practice in the People's Republic of China, using a qualitative approach, the authors suggest limitations inherent in the rules and inconsistencies in China's consumer protection laws, as well as measures for reforming the legislation. The authors analyse China's legal mechanisms for consumer protection. In order to achieve the study's objective, the results are used to develop a strategy for improving the existing policy and regulatory framework to support consumers, as well as to develop compliance models.

The regulatory basis of the study is the current legislative acts of China, namely the Civil Code of the People's Republic of China (2020), the Law of the People's Republic of China "On the Protection of Consumer Rights and Interests" (1993), the Law of the People's Republic of China "On the Laws Applicable to Foreign-Related Civil Relations" (2010), policy documents (Resolution of the UN…, 1985), concerning the peculiarities of legal regulation of the concept of consumer and his/her legal status, for further research of problematic issues of consumer protection.

Results

The legislative basis for the definition of "consumer". In the 2020s, consumer law was seen as a separate branch, when in fact consumer law is part of a much larger system and global space through which a wide range of legal relationships can be identified and established. At the same time, the number of areas of regulation continues to grow at the national and international levels. This includes, in particular, the protection of minority rights and the creation of equal opportunities for women and men. The principle of equality should be present in consumer relations, as the creation of absolutely equal socio-economic conditions using available state instruments should be an integral part of the process.

In China, along with individualistic approaches, a consumer- and experience-oriented culture has emerged, especially since the launch of reforms in 1978 (Andersen Øyen, 2013). In a business system without individual consumers, there is no need for consumer protection policies. The social protection movement in China was founded in December 1984 with the establishment of the China Consumers Association (CCA). Later, on 31 October 1993, China adopted the Law of the People's Republic of China "On the Protection of Consumer Rights and Interests" (1993). This law was the first document to explicitly enshrine consumer rights in law. According to Article 2 of the Law of the People's Republic of China "On the Protection of Consumer Rights and Interests" (Chinese CPL), the rights and interests of consumers in the purchase and use of goods or services for daily consumption are protected by this Law, and in the absence of provisions in this Law, by other relevant laws and regulations. The definition of an actual consumer is not provided for in the proposed Law, but only indirectly regulates which participant in social relations it applies to. Therefore, it can be said that the lack of clarity in the Chinese CPL (1993) regarding the extension of its coverage to small businesses leads to the possibility that consumer protection measures can be applied to small businesses. However, it is believed that even if one takes into account local regulations that protect legal entities or organisations, the Chinese CPL (1993) itself is more extensive, designed to protect the individual.

At the same time, Resolution of the UN General Assembly "Consumer Protection" (1985) specified that consumers are often in a less favourable position in terms of economic conditions. Consumers should only include individuals, not legal entities. For the purposes of the Chinese CPL (1993), a consumer is defined as a natural person. Thus, consumers are individuals who purchase or use goods or receive services for daily consumption (Zhihang, 2018). This position is in line with the standardised interpretation of the Chinese CPL (1993). For example, according to Article 7 of the aforementioned Chinese CPL (1993) "Consumers shall, in their purchasing and using commodities or receiving services, enjoy the right of the inviolability of their personal and property safety. Consumers shall have the right to demand business operators to supply commodities and services up to the requirements for personal and property safety". At the same time, according to Article 11 of the Chinese CPL (1993), "Consumers suffering from personal injury or property damage resulting from their purchasing or using of commodities or receiving of services shall have the right to demand compensations in accordance with the law". According to Article 14 of the Chinese CPL (1993), "Consumers shall, in their purchasing and using commodities or receiving services, have the right that their human dignity, national customs and habits are respected". Therefore, these articles refer, in particular, to the personal safety, personal harm and human dignity of consumers, who can only exist as individuals. It can be said that some provisions of the Chinese CPL (1993) support or develop the provisions of its Article 2. Here, it is worth proceeding from the position that provides for the need to protect an individual who is a party to consumer legal relations, rather than a business entity, since it is an individual who may be a consumer under certain circumstances and conditions. In addition, the types of goods/services purchased by legal entities are much more limited than those purchased by individuals. This also suggests that careful consideration should be given to whether consumer protection measures should be extended to such legal entities or other organisational entities. At the same time, the position that there may be an "entrepreneur" entitled to modified special protection suggests that there is no

identity between individual consumers and consumers-enterprises and entrepreneurs.

Another problematic feature of the Chinese definition of a consumer in Article 2 of the Chinese CPL (1993) is the concept of "daily consumption needs", which is unclear and somewhat distinct from the notion of 'consumer' as defined in other legal systems. The wording of Article 2 'when a consumer purchases or uses goods or receives services for the needs of daily consumption' suggests that it is the nature of the transaction that is key rather than the nature of the goods or services themselves. In other words, the wording of Article 2 implies that the crucial question at the heart of who is a 'consumer' is that the putative consumer should be acting for personal or household purposes rather than for commercial purposes (Thomas, 2018). From a scientific point of view, the definition of "daily consumption" is broad enough to cover all types of use: life consumption, such as purchasing clothes, food, accommodation and transport services, developmental expenditure, such as vocational training, and spirituality, such as tourism. The concept of "daily consumption" is also increasingly associated with social progress, whereby a form of behaviour that is not everyday today may become everyday in the future, such as space exploration. Therefore, it is still considered the best way to define the term "consumer" (Ge, 2019). At the same time, the dynamics of this concept is a positive aspect of consumer protection legislation.

At the same time, in terms of "daily consumption needs" for persons who do not meet this criterion, the Chinese CPL (1993) also provides them with similar protection without changes (where applicable). Thus, in accordance with Article 54 of the Chinese CPL (1993), this Law applies the relevant amendments to the purchase or use of inputs directly used by farmers in agriculture. The Article in question is one of two special provisions of the Chinese CPL (1993), which states that a farmer who purchases or uses "agricultural inputs" at the stage of formation is treated as a consumer, even if the agricultural inputs are not ordinary for "vital needs" or "personal, household use" and are widely used in business. Thus, the Chinese CPL (1993) excludes farmers, who are essentially entrepreneurs, as consumers, but provides them with the same protection as a protected individual – a cautious consumer. Meantime, the main driver of consumption – the needs of daily consumption – is also regulated. In addition, the emergence of agricultural workers for the purposes of the Chinese CPL (1993) also demonstrates how the law of protection of rights can support directly these individuals who are perceived as lacking the ability to negotiate (Thomas, 2022). At the same time, in this context, it should be noted that the Ukrainian legislator should take as a basis the acts of the *acquis communautaire*, which deal with dual-purpose contracts where the commercial purpose is insignificant. Therefore, analysing the above circumstances, it is possible to identify some common characteristics of consumers, as shown in Table 1. Therefore, consumers in China should be recognized as a group of natural persons who have a special legal status and who can (or intend to) purchase or order goods, services, products, and other household items for personal (non-commercial) purposes.

Table 1. Characteristics of a consumer under Chinese law

No. p/n	Characteristic of the consumer	Interpretation of the sign
1	Individual	A consumer can only be (with some exceptions) an individual (stateless person, foreigner, or resident)
2	Participant in legal relations (action or intention to act)	A natural person becomes a consumer when he or she purchases or intends to purchase goods or services from a seller (including a manufacturer) or a contractor
3	Objective	A consumer is a natural person who purchases goods or services for everyday (personal) purposes not related to business activities
4	Legal status	Consumers as participants in consumer legal relations are endowed with special rights, have obligations and are liable for breach of obligations

Source: created by the authors based on data from the Civil Code of the People's Republic of China (2020), Law of the People's Republic of China "On the Protection of Consumer Rights and Interests" (1993), Law of the People's Republic of China "On the Laws Applicable to Foreign-Related Civil Relations" (2010)

Legal characteristics of the consumer in the context of judicial practice. Ever since the passage of the Chinese CPL (1993), Chinese consumers have been trying to challenge the country's authorities, which was in line with political changes. But then consumers began to cooperate with the government to control the activities of companies providing goods and services (Liyuan & Tarasenko, 2021). As already mentioned, the CCA has been in place since 1984. At the same time, the CCA is a national organisation which aim is to monitor goods and services; to protect consumer rights and interests; to provide guidance on consumer activities and development and to promote a healthy environment for a socialist market economy. CCA was founded in December 1984 and is made up of 3,279 local and grassroot consumer associations nationwide. With CCA's support, the Law for the Protection of Consumer Rights of China People's Republic was passed on 31st October 1993. CCA publishes the China Consumers magazine and has a website through which they provide up-to-date consumer information and advice. China Consumers Monthly was started in 1994. It features comparative product testing, original research, consumer warnings, and responses to queries (Consumers International, 2024).

According to Guiding Case No. 17: Zhang Li v. Beijing Heli Huatong Auto Service Co., Ltd. (Sales contract dispute) (2013), the plaintiff Zhang Li purchased a Shanghai General Motors sedan called Chevrolet Epica, which was owned by the defendant (Heli Huatong). On 13 May 2007, when Zhang Li sent the car to Heli Huatong's factory for repair, she discovered that the car had been repaired on 17 January 2007. During the proceedings, Heli Huatong argued

that the car purchased by Zhang Li had in fact been damaged in transit and had been repaired on 17 January 2007. Heli Huatong claimed that the information regarding the repair of the vehicle was disclosed to Zhang Li at the time of sale, and that the buyer was given a substantial discount. In October 2007, the District Court of Chaoyang District, Beijing Municipality, issued a judgment cancelling the purchase of the vehicle, effectively applying bilateral restitution, and ordered Heli Huatong to pay Zhang Li an amount equal to twice the value of the vehicle within seven days of the judgment's entry into force. Following the judgment, Heli Huatong appealed on 13 March 2008, and the Beijing No. 2 Intermediate People's Court of Beijing Municipality issued a decision dismissing the appeal and upholding the original judgment.

In its judgement, the court held that the plaintiff, Zhang Li, had purchased the car with the intention of using it to meet his daily needs. The defendant, Heli Huatong, has no evidence that Zhang Li purchased the car for commercial purposes or purposes not related to daily life. Therefore, Zhang Li's purchase of the car is a necessary activity in daily life and the Chinese CPL (1993) should apply to it. The case cited above, in the Supreme People's Court of China, was chosen as a guiding case. Accordingly, it can be noted that a consumer is defined as an individual who purchased a car for personal use, which is considered to be "for daily consumption". In this case, the car should be considered a one-time purchase, and it can be used on a daily basis. Also, on 1 May 2012, the claimant Sun Yingshan purchased 15 packs of Yutu Brand sausages from the defendant, and this was at the Nanjing Auchan Hypermarket Co. Jiangning Store ("Auchan Hypermarket Jiangning Store"), but the warranty period for 14 packs had expired. After paying at the checkout, the plaintiff went straight to the information desk to request a refund. Sun Yingshan filed a lawsuit after negotiations failed, demanding compensation from Auchan Hypermarket Jiangning Store in the amount of ten times the price of the 14 packs of sausages. The defendant argued that the plaintiff had knowingly purchased expired food products, hoping to take advantage of the defendant's mistake. The defendant argued that the plaintiff should not be entitled to a defence (Guiding Case No. 17, 2013).

On 10 September 2012, the People's Court of Jiangning District, Nanjing Municipality, Jiangsu Province, issued an administrative decision in favour of the consumer, according to which Auchan Hypermarket Jiangning Store had to pay the plaintiff RMB 5,586 within 10 days of the decision's entry into force. Supreme People's Court of China at Guiding Case No. 23: Sun Yinshan v. Jiangning Store of Nanjing Auchan Supermarket Co, Ltd. (Sales contract dispute) (2014) recognized that if a person buys food that does not meet food safety standards, he or she has the right to demand from the seller or manufacturer damages of ten times the value of the food (in conformity with the provisions of the Food Safety Law) or compensation (in accordance with other compensation standards established by law), and the people's court should support the consumer, regardless of whether the consumer already knew that the food did not meet safety standards at the time of purchase. Thus, the above case justifies the conclusion that the purpose of purchasing the product is extremely important to the court and that this purpose does not go beyond the needs of daily consumption. Hence, the highest court practice in China defines a consumer as a person who purchases goods for daily consumption. At the same time, the court's approach, which in the relevant cases is based more on the spirit of the law than on its letter, suggests that the enforcement mechanism is simple and effective, even though there is no clear definition of a consumer. In addition, the latest leading case raises another interesting issue related to consumer behaviour, i.e., consumer activism.

Under Article 49 of the Chinese CPL (1993), companies found guilty of fraudulent supply of goods or services must pay the consumer a price that is twice the price paid by consumers for similar goods or services. This provision is also referred to in the academic literature as one of the two special provisions of the Chinese CPL (1993). Generally, under this policy, some individuals in China engage in large-scale buying activities to make a profit in the future. This legally permissible type of behaviour is undoubtedly attractive to people acting for the purpose of consumer activism. In Chinese law, one particular area where it is difficult to apply the definition of "consumer" in Article 2 of the Chinese CPL (1993) is in the case of so-called "counterfeit hunters", "consumer activists" or "professional consumers". Given that those engaged in these activities are seeking monetary gain, it is debatable whether they should fall within the definition of "consumer" in Article 2 of the Chinese CPL (1993), as they do not purchase goods or services for everyday needs. Anti-fake news activists believe that they have a duty to highlight potential dangers in the market, disseminate legal knowledge and, crucially, encourage the government to enforce existing laws to better protect consumers and promote national development (Kuever, 2019). At the same time, for example, cryptocurrency operators believe that they have a duty to highlight potential market risks, share legal knowledge and, most importantly, persuade governments to enforce existing laws to better protect consumers and promote national development. In any case, this is a very complex issue, because consumer behaviour is changing, or even violating the principle of good faith, which implies the need to take their responsibilities more seriously (Heymann, 2022). Thus, when the courts take into account the different ways in which people are attracted to purchase a product or service, the legislator will also have the opportunity to rethink the scope of legal gaps.

Content of the legal status of the consumer. The structure of the unique legal status of the consumer is of considerable scientific interest. This status is a legally recognized position that entitles the consumer to a special role in society. Legal status is not a philosophical concept, as it includes specific legal constructs, such as rights, duties, and responsibilities. At the same time, a special legal status does not cancel the general status, but is a supplement to it. In other words, a person's status as a legal consumer does not prevent him or her from acquiring citizenship, but is, of course, part of the status of a citizen. At the same time, the more important it is to establish the legal status of a person, the more effective his or her right is. The legal status of a consumer should be understood as the legal status of a person, including, in particular, legal mechanisms for protecting the rights of such a person.

Special consumer obligations and rights are essential components of legal powers that can be granted to any individual. Thus, the association of persons belonging to a separate social group is included in the scope of community capacity, which is different from others and is not identical to the institution of legal capacity. A clear definition of the

consumer's legal capacity is one of the most crucial indicators of his or her legal status. At the same time, legal status cannot be understood in the same way as mere rights and obligations, as it includes the responsibility of a person as a party to legal relations. The same applies to the concept of consumers through the prism of their legal capacity. In other words, the legal status of a consumer should be defined as a separate concept with independent legal content.

Figure 1 shows that legal status includes three main elements: rights, duties and responsibilities. These concepts necessarily depend on each other; their existence is impossible without each other. For the existence of rights without responsibility gives rise to arbitrariness, and responsibility must follow from the failure to fulfil duties. At the same time, improving consumer welfare as part of human rights has a positive impact on consumer protection as a legal issue of consumer relations. Therefore, consumers are considered to be one of the most critical groups in any country's economy worldwide (Ariyaratna, 2022). Consumers have rights to their legitimate needs. One of the most important principles of the state and most state laws is the right of citizens to purchase quality products. These rights are classified as socio-economic rights, as they can only be realized if a high level of social relations and material resources are achieved. However, these measures cannot force any state to provide quality services and goods to its citizens. In the meantime, government institutions, including those in China, should introduce additional quality standards for suppliers and producers of services and goods. Consumers can be endowed with the following rights: the right to information, the right to be heard, the right to protection. But in science, consumer rights have received less attention than human rights. However, the ability to protect other consumers by providing feedback on the quality of a product or service is part of consumer rights. Although this is still not an effective way to prevent consumer rights violations, especially online, where negative reviews can be corrected or even deleted (Dammann, 2021).

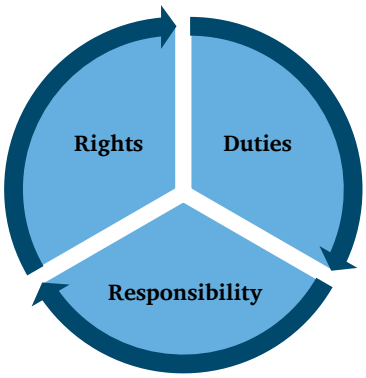

Figure 1. Components of the legal status of a consumer
Source: created by the authors

Accordingly, the legal status of a person may also include mechanisms for protecting their rights. Consumers have a weak position in contractual relations, and their protection involves a whole range of means and mechanisms of control and liability. Consumer protection usually involves the following procedures: criminal law, civil law, and administrative law (Alsharu *et al.,* 2024). Consumer legal relations are considered in two ways, namely as: relations arising from the protection of consumer rights; contractual relations between a company and a consumer. These principles provide for the conclusion of a written contract or an oral agreement between the parties to consumer relations. The clearest indicators of such relations are the ultimate goal (personal use of a product or service) and the group of stakeholders (buyer and seller). At the same time, in addition to rights, another aspect of the legal status of consumers is obligations, which are rarely mentioned in the scientific literature. They are unique and special. If a buyer breaches its contractual or legal obligations, it may be held liable. Consumer obligations are restrictions on behaviour that are required in a legal consumer relationship. Thus, the main obligations of consumers are: paying for the purchased goods or services, knowing the instructions for the goods or the method of delivery, using the goods for their intended purpose, following safety rules (Kolieb, 2022).

Violations of consumer rights and obligations can result in civil, administrative or criminal liability. In general, the duty of the state is to protect the welfare of people and to protect the fundamental rights and freedoms of people. The consumer's responsibility implies the use of coercion if he or she violates his or her obligations. The shortcomings in the theory of consumer interaction have common features (based on the unique characteristics of the concept under study), and thus they are easier to distinguish from other types of relations. At the same time, consumer offences committed by individuals should be considered actions or omissions that pose a threat to society, are illegal, unethical or violate consumption standards, for which the perpetrators of the relevant offences are held liable. As for consumer rights offences, they can be quite different. They include: failure to disclose prices, production rules, inconsistencies in the quality and quantity of products (services), incorrect information about goods or services, negative impact on consumer health. Thus, legitimacy is related to and further defines the identity of an individual. Consumers as natural persons with special legal capacity are characterized by the following features: the legal capacity of a consumer is lower than that of a business; the means of circulation is money; the requirement is a product or service; and an individual interest (need) exists. Thus, the definition of a consumer and his or her legal status plays a pivotal role in limiting the range of people whose rights are violated and preventing human rights violations, which should be addressed through the relevant provisions of the country's consumer legislation.

Discussion

As one of the main parties in business relations, the consumer has very limited personal rights, although there are exceptions in all developed countries. These principles shape the relations that arise in the context of the exercise of rights and their protection. Thus, the legislation, including Chinese law, contains some provisions on the legal status of the consumer, but the definition of the person is vague and broad, although the consumer should be clearly identified as the main party to the legal relationship. At the same time, the consumer is a very complex subject, which, depending on the circumstances, may be related to different branches of law. Thus, the issue of consumer rights regulation remains relevant, as consumer relations are developing faster than the laws that can regulate them.

Given the rapid development of international trade and services, a consumer in one country can exercise his or her legal capacity in the legal space of other countries

(Spytska, 2023). However, the issue of ensuring compliance with the principles of international law remains unresolved. At the same time, according to J. Kolieb (2022), it is legally impossible for an individual consumer to comply with international law. This is due to the fact that a person who buys goods or services that are acquired or provided illegally is not an accomplice to a crime and does not violate any law. However, this does not refer to compliance with international law, but rather to the consumer's influence on the operation of international law in general. The content of the concept of "consumer" should also include the ability of a person with the appropriate status to protect his or her rights, not just to exercise them. This is due to the fact that a formal approach to the interpretation of the concept of consumer may in the future lead to unlawful restrictions in the field of consumer relations. At the same time, B. Schmitz (2022) noted that without proper regulation of consumer relations, there may be more disadvantages than benefits. This can lead to higher costs for stakeholders, resulting in a loss of protection for the consumer. In other words, the autonomy of the parties to consumer relations is indeed very limited. In other words, granting the necessary independence to the parties to consumer relations will, in practice, simplify dispute resolution for everyone: courts, consumers, and business entities.

It is worth agreeing with F. Al Samarea (2023), who noted that there is no permanent definition of a consumer. Moreover, it is constantly changing over time, depending on the development of the society of each state. To eliminate the ambiguity of the content of the concept under study, it is necessary to consolidate at the legal level in all countries a common understanding of the concept of consumer, based primarily on the fact that it does not imply commercial interests. It is also important to regulate static consumer behaviour using special rules. After all, the characteristics of such behaviour can be useful for adjusting or modifying marketing strategies and services, taking into account the interests of the majority of consumers. In this regard, B. Uduakabasi (2022) argued that such a fixation is incorrect, as there is no universal type of consumer, as consumer behaviour can vary greatly depending on individual needs, environment and economic growth in a particular area. That is why there are constant discussions on this issue. In turn, H. Schebesta and K. Purnhagen (2020) argued that virtually everyone who acts in appropriate circumstances can be protected as a consumer. Thus, the concept of the average consumer is primarily a means of organising various forms of the national economy and a way of adapting the economy to the diverse needs of consumers, which should be carried out not only by the legislator but also by the courts.

In different jurisdictions, approaches to the legal interpretation of the concept of "consumer" are based on different ideas. Typically, in the United States, the definition of "consumer" is defined from a producer's perspective, focusing on the nature of the goods or services that are at the heart of the transaction. On the contrary, in the European Union, such a definition is based on the consumer perspective, focusing on the competence of the party entering into the contract (Gnatenko *et al.*, 2020). This was also noted by K. Thomas (2022) in her research. It is also interesting to consider the content of the concept of consumer within e-commerce, as opposed to the established understanding of the consumer in conventional legal relations. These factors are related to the fact that in the online environment it is very difficult to find out all the information about the seller, the purchase process is simplified, and there are fewer mechanisms to protect the rights of buyers than in the process of a "live" purchase or service. Studying consumer relations in the electronic environment, A. Alsharu *et al.* (2024) found that the existing legal provisions governing e-commerce in the world are insufficient. Placing orders "online" can lead to fraud and deception, as well as harm, as consumers cannot see whether the service or product is of good quality. In addition, consumers thus have a new opportunity to buy a product or service directly from the manufacturer rather than from a supplier. However, M. Durovic and C. Willett (2023) noted that electronic consumer contracts, which have emerged recently, can radically change the existing legal relations and harm the basic principles of consumer law. Thus, in general, countries that plan to protect consumer rights and promote a market economy should develop a compliance policy for e-commerce.

It should be noted that the interpretation of the consumer as a legal institution is based on the rights of the consumer and his or her capabilities as a participant in consumer relations (Liu *et al.*, 2024). Thus, R. Ariyaratna (2022) believed that the concept of consumer rights should be based on human rights. However, the moral dilemma of this approach is that human rights are universal and can be granted to everyone, while consumer rights are only the rights of a separate group of people that recognizes the specific needs of consumers. Therefore, consumer rights should be based on the principles inherent in human rights, but human rights and consumer rights should not be confused. As for the concept of "consumer", this concept is developing much faster in the scientific space than in the legislative sphere. Marketing practices that manipulate consumer psychology and create a sense of choice are a common problem, especially in online communities. Therefore, the response of legislative authorities to such behaviour should be unconditional. Otherwise, the normativity of the essence of the consumer is neglected. Instead, M. Brenncke (2024) concluded that legal theory and consumer behaviour should be determined by the interpretation of their key terms. In other words, in order to improve consumer law, philosophical discourse alone is not enough, it is necessary to reduce the risk of their disconnection, as shown in practice. In addition, there is a clear distinction between a seller and a consumer, since the seller knows everything about his product or service, including its shortcomings, which may not be known to the buyer. In this context, J. Dammann (2021) suggests that this problem can be solved with the help of consumer feedback, which is very important for bridging the information gap. However, this situation can be considered adequate only if the consumer's perception includes an indirect way of obtaining information about the quality and characteristics of a product or service.

Public-private partnerships should be on the same level as business-government relations and contribute to improving the relationship between business, companies, and the state. Perhaps the unique relationship between government and consumers and business is that corporations bring more benefits to the government by paying more taxes than consumers do (Kalchenko *et al.*, 2018). Exploring this issue, Z. Liyuan and I. Tarasenko (2021) found that such interaction should not be just a set of relationships, but should include the processes on which these relationships are built

for the quality development of the consumer market. In China, despite the existence of national legislative peculiarities, there is an increasing discussion of developments in defining the consumer as a participant in legal relations, taking into account his or her rights and obligations. One of them is the interpretation of the subject to which consumer protection legislation applies. Speaking in more detail about Article 2 of the Chinese CPL (1993), it is worth supporting K. Thomas (2018) that it is unclear whether legal persons such as small businesses or work units may be categorised as consumers or whether the designation is restricted to natural persons only. As noted by the author, some local and provincial level regulations on consumer protection explicitly include 'units' as well as individuals within the definition of a consumer. However, because many other provincial and local level consumer-related regulations simply duplicated the definition to be found in Article 2 of the Chinese CPL (1993), the question of whether legal persons such as work units could ever qualify as consumers under Chinese law remains unclear. Instead, L. Shigang and Z. Guangyan (2012) considered that pursuant to Article 2 of the Chinese CPL (1993), a consumer is defined as a person who buys or uses goods or receives services in order to satisfy individual life consumption. At the same time, the authors argued that the very definition of a consumer is unclear. The above points to an important aspect of the subjective point of view that should be taken seriously. According to the theory, it can lead to inconsistencies.

The idea that the Chinese consumer should be only an individual is quite progressive in scholars. Thus, Y. Zhihang (2018) believed that the scope of the concept of a consumer should be limited to an individual. However, in his opinion, it was unfair to allow a legal entity to become a consumer. At the same time, Z. Liao (2014) pointed out that the Chinese CPL (1993) does not explain the meaning of "vital consumption needs". However, it is unlikely that at first glance the argument "for daily consumption needs" is weak and should be considered as proof of status. Z. Chen (2023) noted that, unlike the negative definition of a consumer in the European Union, the definition of a consumer under Article 2 of the Chinese CPL (1993) is a positive definition, as it transfers the right to refuse assistance to the consumer in meeting his or her daily needs. However, science often presents a lot of ambiguity on this issue. Y. Li and X.B. Ye (2022) pointed out that there are many problems with the use of the criterion "for daily consumption needs". The judicial use of the phrase "for daily consumption needs" is inconsistent. As for the latter, it really depends on the motives for the purchase. That is, a person buys something for his or her daily needs and then starts using it in business. In this regard, it is worth noting that the change in purchase motivation is not significant. If a person buys food every day, he or she is a consumer. On the other hand, the actions of consumers with the intention of reselling a product or service are, according to the general principle of civil law, illegal, and therefore, these persons should not receive any other protection. At the same time, such consumer behaviour has a positive impact on the economy and allows them to be an effective stakeholder, partially eliminating government response measures. For example, such incentives for consumers can remove the burden of imposing administrative and economic sanctions on businesses for violating business rules.

Returning to the ambiguity of the concept of "consumer" in China, it is worth citing some scholars' thoughts on how to improve it. For example, Z. Liao (2014) believed that to address the problem of uncertainty, an objective standard should be included in the definition. Given the difficulty of defining "vital consumption needs", as defined in section 2 of Chinese CPL (1993) and the difficulty of establishing intent, the subjective standard should be formulated negatively so that the burden of proof shifts to producers and suppliers. Thus, the author proposes to define a "consumer" as "a person who purchases from a supplier goods or services of a kind normally acquired for personal, household or domestic use or consumption; and does not purchase goods or services for the purpose of re-supplying them to trade or consuming them in the course of production or repair in the trade of others". This is similar to the European definition of a consumer. At the same time, the nature of Chinese law is interesting, where the criterion "for daily consumption" is defined, which should be retained, as it allows for the application of not only the letter but also the spirit of the law.

Instead, a different opinion is held by L. Shigang and Z. Guangyan (2012), who concluded that in addition to meeting everyday needs, the scope of consumers should be expanded to include individuals as buyers of antiques for their appreciation or collection. It should also include household consumption, consumption of medical services, consumption of transport tourism, and consumption of financial insurance services. It also implies that the unit, although not the final group of consumers, should be considered as consumers for their behaviour (unique purchases) or as consumer representatives to resolve disputes with businesses. In this aspect, it is possible to support the scholars in extending consumer protection to units (legal entities, units), as the authors have repeatedly justified the expediency of extending protection exclusively to individuals. In general, from the moment when consumer law began to develop in a broad sense, its rulemaking has been very variable and selective between states. According to D. Wei (2020), factors related to insufficient local enforcement and ineffective domestic legal mechanisms as such have led to the introduction of legal measures by international organisations, the private sector. Consumer protection is at the centre of globalization, which requires the regulation of these systems, especially in China, as the country is in transition. Taking into account the results of the study, it can be concluded that China is trying to modernize its consumer policy and has made progress in the field of consumer legislation. However, regulatory harmonization should be achieved not only through consistency, but also through a mechanism for monitoring compliance.

Conclusions

Based on the findings of the study, it is established that the characteristics of consumers are that all consumers (with certain exceptions) are individuals and direct participants in consumer legal relations; a natural person becomes a consumer when he/she purchases (orders) or intends to purchase (order) goods and services; a consumer is a person who purchases goods or services for everyday (personal) purposes not related to business activities; consumers are endowed with special rights, burdened with certain obligations and responsible for breach of their own obligations.

The authors determine that the Law of the People's Republic of China "On Protection of Consumer Rights and Interests" has become the main legal act regulating the concept of "consumer" and regulating consumer relations in

China. In general, the problems of regulating the concept of "consumer" in China are the absence of a de facto definition of consumer and clarification of the possibility of adopting the concept for legal entities; the concept of consumer is not spelled out in a separate section of the Chinese CPL, but is distributed within the Chinese CPL; the needs of daily consumption are not fully understood. However, in general, the concept of "daily consumption needs" is relevant and can have a strong practical effect. Consumption, in turn, is a multi-stage process that includes the choice of a service or product, the intention to purchase, acquisition, use and certain disposal. At the same time, consumer rights may be violated at any of these stages. As an individual, a consumer has legal capacity and as a natural person with a special status, he or she is endowed with legal capacity. It is fair to say that the Chinese judicial system in relevant cases is based more on the spirit of the law than on its letter. Consequently, the behaviour of the judiciary is changing and effective, despite the lack of a clear definition of a consumer.

It is determined that in China, consumers should be recognized as individuals who have a special legal status and who can (or intend to) purchase or order goods, services, products, and other household items for personal (non-commercial) purposes. The authors prove that the legal status of a person is related to his/her external manifestations and additionally defines him/her. The concept should enshrine that the consumer has the relevant rights, duties, and responsibilities. The definition of a consumer in China is imperfect and contains legal uncertainty, as there is no clear understanding of it. This is especially important in terms of ambiguity regarding the range of participants in consumer legal relations, given that, as the relevant case law also shows, it mostly applies to individuals. At the same time, the product itself (goods, services) also contains, *prima facie*, the usual concept of "the need for vital consumption". This theory makes more sense (and is easier to modify), as it reflects the essence of legal relations between the parties to consumer legal relations, and therefore it can be one of the means of establishing the essence of legal relations when there are doubts about consumer protection. And we are convinced that these conclusions will also be useful for the legal regulation of consumer relations in Ukraine.

The study raised new issues that needed to be addressed. In particular, this concerns the definition of legal characteristics of the consumer, their classification; establishment of legal conditions for the consumer; study of the concept of legal personality of the consumer and the principles of his/her responsibility. It is necessary to continue researching consumer legislation in China and identify potential legal and social reforms of consumers, their problems, and solutions.

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Conflict of interest

None.

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Юридичний аналіз дефініції “споживач” у контексті законодавства Китаю

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Анотація. Забезпечення інтересів споживача є одним з основних постулатів ринкової економіки та правового регулювання споживчих відносин, а отже, необхідним було належне закріплення понятійного апарату у споживчому праві, в тому числі і в Китаї. Тому метою статті є визначення сутності поняття «споживач» загалом та як елемента захисту прав споживачів, його аналіз за законодавством Китаю, а також формулювання дискурсивних положень і прикладних висновків, спрямованих на вдосконалення китайського та українського споживчого права. Основними результатами дослідження було виявлення існуючих підходів до тлумачення поняття «споживач» та характеристика теоретико-прикладних засад існуючої нормативно-правової бази щодо визначення поняття «споживач». Обґрунтовано, що чинне законодавство Китаю закріплює вузьке поняття «споживач», визначаючи його як фізичну особу, яка купує або використовує товари чи отримує послуги з метою задоволення своїх повсякденних потреб. Раніше було доведено, що споживачем слід вважати фізичну особу, яка купує товар або послугу для особистого використання або споживання, без мети їх подальшого продажу. Проаналізовано соціально-правовий розвиток поняття «споживач» у Китайській Народній Республіці в контексті процесів індивідуалізації та встановлено, що існують різні типи споживачів залежно від їх правового статусу та споживчих потреб. Наведено приклади з національної судової практики щодо правової конструкції та тлумачення визначення поняття «споживач». Обґрунтовано, що регулярне оновлення законодавства про споживачів та їх статус сприятиме більш ефективному захисту прав споживачів та підвищенню рівня відповідальності у споживчих правовідносинах. Зроблено висновок, що формування інституту захисту прав споживачів у законодавстві Китаю має відповідати рівню розвитку ринкових відносин, а також враховувати практичний досвід і міжнародні стандарти у відповідній сфері

Ключові слова: консьюмеризм; правовий статус; права людини; споживчі правовідносини; споживач; суспільні інтереси; цивільно-правові відносини

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Institutional space of sustainable development: Structure, motives, and conditions of development in Ukraine

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Abstract. The massive destructive processes and security challenges faced by Ukraine in defending its right to choose a development model have heightened the problem of defining institutional conditions for the structural transformation of the economy and aligning its parameters with sustainable development priorities. The purpose of this study was to model scenarios for the development of the business environment under various types of institutional structures and to determine the possibility of creating an institutional basis for Ukraine's sustainable development in the face of global security challenges. The study was based on the conceptual framework of the institutional environment. The study identified institutional gaps in the business environment that distort the motivational foundation of Ukraine's sustainable development concept and lead to the dominance of corrupt elements in the decisions and actions of economic actors. The consequences of the influence of extractive institutional factors on the choice of behaviour strategies by economic entities were systematised. The study characterised the differences in the impact of extractive and inclusive institutions on economic processes. Using the motivation vectors of business representatives, government authorities, and the public, scenarios for the development of the business environment were modelled, and their results were presented from the perspective of sustainable development goals. The concept of developing an environment of "entrepreneurial inclusivity" as an institutional basis for sustainable

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development was conceptualised, emphasising its role as a stimulator of proactive and effective innovative activities. The goals of developing innovative infrastructure were defined as a set of institutions of collective action that enable the reduction of risks in the innovative activities of enterprises and enhance their efficiency. The conditions under which the business community will be motivated to develop such institutions were identified. The role of civil organisations in institutional change processes and the development of institutions of collective action was emphasised. The findings of this study have practical significance for shaping the institutional mechanism to implement innovation and technological structural shifts in Ukraine's economy in the context of sustainable development goals during its post-war revival

Keywords: extractive institutions; inclusive institutions; entrepreneurial inclusivity; scenarios of economic behaviour; innovative infrastructure; structural changes in the economy

Introduction

The concept of sustainability preservation has become a priority for most economically advanced countries that have solidified their positions in global markets, amassed considerable resource potential, and primarily view progress through the lens of enhancing the quality of life and the activities of most society members. At the same time, countries that do not belong to the "golden billion" strive to improve their position in the global distribution of labour, resources, and civilisation's benefits. One of the ways to achieve progress is to implement structural shifts in national economies, considering global technological trends and accumulated economic potential. This process is quite complex, requiring an in-depth analysis not only of the strategic development perspectives of the economy in new structural contours but also the identification of necessary institutional conditions to minimise the risks of the transitional period and achieve better competitive positions in pursuing sustainable development goals.

This is crucial for Ukraine, whose economy has been characterised by predominantly raw material export orientation with a low level of added value for many years. Clearly, its post-war recovery will not occur in the previous format. Radical structural changes are necessary, which, on the one hand, would compensate for the losses of economic potential through the development of more technological sectors, and on the other hand, would eliminate the monopoly control in areas that determine the level of national security. The predominance of economic egoism among powerful business players hinders the achievement of maximum social benefit from the activities of their business structures. Overcoming this egoism in a market economy is only possible through institutional regulation. Institutional factors are now unquestionably recognised as determinants of scenarios and dynamics in the development of national economies. Therefore, when developing vectors for institutional changes and forming mechanisms for ensuring compliance with formalised institutions defined in relevant laws, it is important to align the institutional environment with the country's strategic development goals. The relevance of these issues is not only for Ukraine but also for the global economic community, and it has shaped the goals, tasks, structure, and content of this study.

The impact of institutions on the development of societies and economies is a subject of scientific interest for many contemporary researchers, as world history provides rich material for this purpose. In the context of forming institutional conditions to achieve sustainable development goals, research by D. Acemoglu and J. Robinson (2012) is valuable. By analysing the institutional environment of many countries, the researchers identified a connection between the dominant type of institutions in this structure and the pace of economic growth. Their study concluded that economic institutions, by their nature, can serve various roles (regulatory-constraining or motivating), providing a basis for their typological division into extractive and inclusive. D. Acemoglu and J. Robinson (2012) discovered a pattern: countries with a prevalence of inclusive institutions in the legislative regulation of economic processes achieve higher rates of economic growth.

The concept proposed by D. Acemoglu and J. Robinson (2012) has gained widespread academic recognition and has become the basis for analysing the quality of various institutions of public governance. For instance, I. Asei (2018) relied on it to analyse the reasons and identification of accelerators of economic development in Japan and China. When assessing the effectiveness of institutional means of economic development management, M. Zhang *et al.* (2023) placed particular emphasis on incorporating safeguards against corrupt activities of officials into these institutions. The institutional nature of corruption is unquestionable, and its prevalence in various spheres of human activity reduces the effectiveness of regulatory norms and mechanisms in the country's institutional field.

Such a conclusion was drawn, for example, by S. Pyasetska-Ustych (2018), indicating that the high level of corruption in Ukraine has formed a kind of "corruption trap" hindering the development of entrepreneurial activity. V. Blikhar *et al.* (2022), examining the level of corruption in EU countries and comparing their manifestations with the reality of Ukraine, noted that for Ukraine to join this European community, it is necessary to significantly strengthen the fight against illegal activity schemes.

Moreover, corrupt schemes are most widespread in the domain of state interaction with entrepreneurs, substantially exacerbating the operation of small and medium-sized businesses. Corruption risks particularly affect the dynamic capabilities of small and medium-sized businesses, washing away resources that could be invested in scaling the business or its development through the implementation of innovative projects. This contradicts the sustainable development goals, which declare the interconnectedness of economic, social, and environmental priorities in all their complexity. Such interconnectedness is recognised as a defining feature of sustainability. Therefore, in recent times, an increasing number of researchers have been considering the concept of inclusive growth in the context of achieving sustainable development goals. Thus, A. Uniyat and Z. Yuzvin (2019) emphasised the need to involve as many layers of the population in entrepreneurial activity as possible, operating with the concept of "inclusive economy". S. Didukh (2020) uses the term "inclusive development" for the same purpose.

The purpose of this study was to outline the contours and model scenarios of business environment development under diverse types of institutional structures and to identify possibilities for creating an institutional foundation for Ukraine's sustainable development in the face of global security challenges.

Literature review

In the scientific literature, the terms "inclusiveness" and "inclusive development" are mostly used concerning the unhindered fulfilment of opportunities for individuals of different race, physical characteristics, gender, ethnicity, income levels, etc. Specifically, this perspective defines the Inclusive Development Index (Menendian *et al.*, 2021). Many researchers emphasise the need for state support for social entrepreneurship from this perspective, highlighting its significance for the harmonious development of society (Schin *et al.*, 2023).

Such focus solely on this understanding of inclusion is debatable. While it aligns with the goals of sustainable development (promoting social progress), it narrows the scope of research to the analysis of human resource structures and does not provide analytical material for addressing the issue of designing progressive structural changes sector by sector. Such changes should enhance the national economy's ability to increase the complexity of its production, adding greater value, and forming competitive advantages for global markets. This increases the country's participation in international trade of high-margin goods and services, economically supporting the achievement of other sustainable development goals – both social and environmental (Zamazii *et al.*, 2021).

Tax instruments can play a pivotal role in facilitating structural changes that stimulate development through innovation. This emphasis is highlighted by L. Buiak *et al.* (2020), T. Gross and P. Klein (2022). D. Stoilova (2017) also points out the expediency and priority of tax regulation for economic growth, aiming to incentivise capital flow into sectors driving technological change trends. Numerous researchers from various countries have undertaken the task of examining the impact of economic institutions on the dynamics of economic growth. E. Liko and L. Shahini (2023) synthesised studies spanning from 2008 to 2022 across 24 European and Asian countries. Notably, their research delves into global processes associated with the financial crisis and the repercussions of COVID-19 pandemic. E. Liko and L. Shahini (2023) narrowed the focus of economic institutions to those related to taxation, whether direct or indirect. In their conclusions, they highlighted the positive impact of tax policies on economic growth. These findings are crucial in the context of optimising tax instruments concerning the balance between extractive and inclusive institutions, especially considering the significant variations in tax policies across the studied countries based on their levels of economic development.

Specific aspects of using institutional influence for implementing structural changes in line with defined priorities can be found in the studies of Ukrainian researchers. Thus, P. Putsenteilo *et al.* (2020), emphasising the crucial role of agriculture in Ukraine's economy, analysed the institutional framework of this market segment. The researchers highlighted the need to develop criteria for assessing the effectiveness of economic institutions in terms of their motivating (regulatory) power on market participants' behaviour. However, their recommendations primarily concern the agrarian sector of the economy and do not focus on the effects of extractive and inclusive institutions on the processes of structural change that align with the goals of sustainable development. These changes relate to both the structure of the consumer market and the ways agricultural products are presented, collectively affecting economic efficiency, and influencing farmers' decisions regarding business development and diversification. Therefore, institutional support for agribusiness development should be multifaceted and balanced based on criteria of synergy in creating consumer value (Stadnyk *et al.*, 2020).

I. Zvarych and O. Zvarych (2021) set the task of forming the institutional foundations of an innovative model for the development of the national economy at the regional level. However, the researchers considered institutions not in terms of rules of economic behaviour but as organisations that contribute to the implementation of the state's strategic priorities. Specifically, in terms of increasing the level of innovation in the results of economic activities, the researchers focused on the development of innovation infrastructure. I. Zvarych and O. Zvarych (2021) noted the need to accommodate the resource specifics of regions and considered several types of innovation systems that could be useful considering this specificity. These findings are valuable in terms of determining ways to increase the rationality of structural changes at the regional level – their implementation will contribute to improving the efficiency of innovation activities and better utilisation of the resource potential of regions. Therewith, to build and operate such innovative systems, it is vital to create relevant organisational and economic conditions that will promote the implementation of inclusivity principles.

In this context, research by the Institute for Economics and Forecasting of the National Academy of Sciences of Ukraine deserves attention (Bobukh *et al.*, 2020; 2022). The purpose of the cited study was to substantiate the institutional changes necessary to improve the structure of the national economy, identify groups of extractive and inclusive institutions in Ukraine's institutional field. The researchers acknowledged the problem of preserving an extractive economic structure, which carries significant corruption risks, and identified key areas for increasing its inclusivity. Recommendations were made for improving state structural policy using an institutional approach. However, their recommendations primarily relate to the pre-war economy. The current state of Ukraine's economy has dramatically deteriorated, with extensive damage to the industrial sector, transportation, and energy infrastructure, substantial loss of the country's intellectual potential, and more than a third of the productive results of economic activity. Furthermore, changes have been introduced to the institutional field, aimed at accumulating resources for defence needs, which enhance its extractive nature, fail to stimulate entrepreneurial initiative, and expand the opportunities for corrupt schemes. This, alongside physical destruction, threatens the stability of the national economy, its ability to sustain life and development. The danger of preserving the dominant role of extractive institutions in Ukraine's institutional field in the post-war period requires further investigation to develop ways to eliminate it. This defined the purpose of current study.

Materials and methods

The theoretical and methodological foundation of this study is based on institutional economic theory, particularly the concept of the institutional environment proposed by D. Acemoglu and J. Robinson (2012). The methodology of this study relied on researchers' findings regarding the impact of a country's institutional structure (the balance between extractive and inclusive institutions) on its economic dynamics. To further develop this conclusion in the context of ensuring economic stability amid destructive structural changes, the study employed scientific approaches from the theory of the entrepreneurial society and the theory of value. The research hypothesis was as follows: To achieve the post-war revival of Ukraine's economy on the principles of sustainable development, an institutional environment of "entrepreneurial inclusivity" must be established. To identify the characteristics of this environment, the conditions, and processes of its development, the following methods were employed. Institutional analysis – to identify the primary gaps in Ukraine's institutional environment that distort the motivational influences on economic actors, thereby hindering the achievement of sustainable development goals. Graphical modelling – to determine scenarios for the development of the business environment under different types of institutional structures. Analysis, synthesis, a systemic approach, and scientific abstraction – to formulate the concept of the "entrepreneurial inclusivity" environment as the institutional foundation for Ukraine's economic sustainability during a period of global security challenges.

The official statistical reporting (State Statistics Service of Ukraine, 2023; The shadow economy…, n.d.) served as the statistical basis for the thesis on the need for substantiated changes in the institutional field of economic activity from the standpoint of their compliance with the sustainable development goals of Ukraine. The material framework of the study included the analysis of a series of adopted laws and regulations of the Government of Ukraine. Specifically, the analysis of changes in the current legislation of Ukraine regarding the terms of registration (correction) of tax invoices in the Unified Register (ERPN) (Law of Ukraine No. 2260-IX, 2022) helped it possible to illustrate their negative impact on economic activity. Their implementation sharply worsened the regulation of these processes and led to the freezing of significant business funds. This caused a massive increase in court appeals by entrepreneurs to unblock activities and necessitated additional legislative adjustment of these processes (Resolution of the Cabinet of Ministers of Ukraine No. 1428, 2022). To assess the potential ability of state institutions to provide significant economic preferences to business entities in priority sectors for the sustainable development of Ukraine, the legal framework for the functioning of industrial parks formed in 2021-2022 was analysed (Law of Ukraine No. 1710-XX, 2021; Law of Ukraine No. 2330-IX, 2022; Law of Ukraine No. 2331-IX, 2022). This gave reason to claim that the state has taken justified steps towards increasing the level of inclusiveness of the business environment, since the preferences fixed in the package of institutional support for the activities of participants of industrial parks allow expanding the circle of industrial producers at the expense of small and medium-sized businesses that have limited investment resources.

Results and discussion

D. North (1990) emphasised the need for institutional regulation of economic processes in a market economy. The researcher noted that institutions, comprising formal and informal norms and rules of social behaviour, serve as the environment for economic laws to manifest. He underscored that economic policy of a state is expressed through institutions and recommended considering their regulatory capabilities when substantiating institutional changes in countries with transitional economies. Considering the sustainable development goals, D. North's (1990) recommendations can be interpreted as the necessity to create a suitable institutional environment within a country. From the standpoint of the cumulative motivational vectors of institutions and their influence, this environment should be conducive to the achievement of sustainable development goals. Robust institutional support should also be provided to sectors crucial for ensuring the competitiveness of the national economy.

Unfortunately, the process of institutional change in Ukraine occurred without a clear understanding of the connection between legislative instruments governing economic activity and the overall socio-economic development outcomes. The institutions were formed under the powerful lobbying of the interests of economic players who could utilise specific leverage over authorities to create preferences for affiliated business structures. Such preferences were embedded in certain laws or subordinate regulations, forming the basis for unequal resource exchanges in economic processes (extractive institutions) (Acemoglu & Robinson, 2012).

Extractive institutions are "designed to extract incomes and resources from one group of people to benefit another" (Acemoglu & Robinson, 2012). Often, they relate to systems of licensing, taxation, and transfer pricing, where corresponding preferences can be established. This creates conditions for certain economic agents to appropriate maximum income from the utilisation of limited natural resources. Additionally, the application of some laws may contain reservations (e.g., restricted access to e-declarations of government officials), making it challenging for society to effectively monitor their activities and giving rise to corrupt practices.

Inclusive economic institutions "encourage large numbers of people to participate in economic activities" (Acemoglu & Robinson, 2012). From the definitions provided by researchers, three crucial conditions that motivate economic activity emerge: "respect for private property, an unbiased legal system, and the provision of public services to create a competitive environment where individuals can exchange and contract" (Acemoglu & Robinson, 2012). Institutions protecting private property in conjunction with an impartial judicial system stimulate asset accumulation and business development. Meanwhile, institutions limiting monopoly rights in rent-seeking businesses, combined with a simplified regulatory framework for small and medium-sized enterprises, create an environment of competition for resources and markets. This enhances the utilisation of the country's resource potential and increases the capacity to generate added value within the national economy.

However, market reforms in Ukraine were accompanied by the fusion of political power and capital, leading to the emergence of business players whose interests shaped the institutional landscape. This resulted in the monopolisation of resource utilisation in the country in favour of the least efficient technological segments (with minimal added value).

Additionally, the changing of political elites only worsened the legislative situation, as the legislative field was reconstructed in favour of new players. Consequently, with each iteration of power, new institutional gaps appeared. This amplified the extractive nature of regulatory norms in favour of selected business groups rather than the broader society. Moreover, shortcomings in enforcement (where there is almost no accountability for the outcomes of decisions made by regulatory authorities) continue to motivate public officials to create corrupt schemes, further diversifying their means of extracting additional streams of economic results.

The mentioned phenomena and processes illustrate the deliberate and incentivised formation of corrupt schemes at the legislative level. Combating them can only be achieved through introducing necessary institutional changes to laws and other regulations, requiring significant efforts and time to overcome legislative opportunism. Therewith, corrupt schemes are caused not only by the imperfections of the legal framework for economic activities or its intentional distortion in favour of certain individuals. Much more manifestations of corruption are observed in the implementation of regulatory functions of public administration – due to inadequate incentives and punishments for unlawful actions in the "state-business" relationship. According to M. Kopytko *et al.* (2022), during 2019-2021, considerably less than half of the officials accused of corrupt acts received confirmation of their guilt in the court process and were convicted.

A. Abramova *et al.* (2022) considered the improvement of regulatory policy as an effective means of combating corruption – both by ensuring the stability of taxation conditions and by differentiating tax rates and limiting their maximum value to 30%. At the same time, researchers also suggest improving the system of tax regulation, striving for its maximum depersonalisation through digitalisation. Such recommendations are sound and extremely relevant considering the urgent need to intensify economic activity in Ukraine so that the economy can sustain the burden of military expenditures. However, changes in the regulatory mechanism must be justified not to cause a deterioration of the economic situation due to the deformation of the control system (when minor violations in financial reporting automatically block further transactions of enterprises, making their further activities impossible). An example of such "depersonalised regulation" is the change in the deadlines for the performance of tax obligations, which occurred at the end of 2022, causing the blocking of almost 2 million tax invoices. According to the Law of Ukraine No. 2260-IX (2022) dated May 12, 2022, new deadlines for registration (correction) of tax invoices in the Unified Register have been established for value added tax (VAT) payers. The law was adopted to prevent the so-called "tax optimisation", but even minor transactions were affected by it, which substantially complicated the work of accountants. Therefore, a month later, approximately 11,000 VAT payers received the status of risky, which makes their further business activities impossible and causes the destruction and bankruptcy of the business itself. On average, unblocking a business through the court takes 1.5 years, during which funds are frozen, do not take part in circulation, reducing the ability of the enterprise to effectively conduct business. And only after numerous complaints of business owners and public participation to solve the problem, in December 2022, the Resolution of the Cabinet of Ministers No. 1428 (2022) amended this law, excluding from monitoring the tax invoices with the volume of supplies under UAH 5,000. This alleviated the problem slightly but did not solve it entirely.

It is important to emphasise that the significant inertia in eliminating such evident "failures" in administering certain aspects of economic activity is a consequence of the lack of comparable responsibility of the executor of regulatory functions for the results of the implementation of his decisions. This collective administrative irresponsibility serves as an effective motivator for representatives of domestic officials to create different corruption schemes. Such schemes diversify the ways in which they extract additional streams of economic results that are created by others.

Such relations between representatives of the government and business represent a clear threat to the economic security of Ukraine, which was emphasised by Y. Rudnichenko *et al.* (2020) and I. Nestoryshen *et al.* (2021) in their studies. They back up their conclusions by modelling scenarios of the influence of state institutions on the ecological niche of business entities, predicting the possible results of management decisions under the current institutional environment considering the evolution of the business environment (both internal and external). Therefore, even the most promising areas of economic activity in Ukraine such as the IT industry (it has shown the greatest stability in security challenges, providing up to 44% of the total export of services by Ukraine in 2022) in 2023 began to stagnate as a result of the removal of benefits from value added tax. The volume of revenues from the sale of services in the industry decreased by 16% in the first quarter against the same period in 2022 (State Statistics Service of Ukraine, 2023), and its participants began to move business abroad more intensively. And if at the beginning of the war such experts still maintained Ukrainian jurisdiction, such manipulations with taxes motivate them to abandon it.

From the standpoint of the economic security of Ukraine in its current state and in the post-war period, it is also problematic to preserve of the current structure of the agricultural sector, which is focused on large-scale production of goods with a low degree of processing (Pushak *et al.*, 2021). And the transition from January 1, 2024, to the next stage of land reform, which allows legal entities to purchase land plots of up to 10,000 hectares, poses a major threat to the development of farms, which will become unable to compete with large agricultural companies. Under these conditions, the practice of monocultural land use will be established, which may pose a threat to Ukraine's food security. However, the attempts of small businesses to suspend the introduction of the second stage of the reform until the end of war (since the current deterioration of the financial condition of farms does not allow them to compete with large agricultural companies in land purchase) were not successful. The motivators (arguments) of big agrarian business turned out to be stronger than the arguments of the farming community.

Overall, based on the conclusions of behaviourism, it can be argued that corruption on the executive level is a manifestation of the extractive feature of economic institutions in matters of regulatory function implementation. If the incentives and disincentives embedded in the regulatory mechanism (the enforcement mechanism) are not sufficiently significant to influence the behaviour of economic agents (in this case, government officials) in the specified regulatory field, they will primarily be guided by their

personal interests.Due to the flaws in the existing legislation, which inadequately defines the conditions for classifying the actions of public servants as corrupt, they cannot be subject to effective penalties. This opens wide opportunities for some of them to intervene in business activities without just cause, disrupting the established business processes. In the long term, due to the substantial inertia of legislation, such practices will adversely affect the economic processes. Summarised below are the causal relationships between the content of extractive institutions and their impact on economic processes:

- non-transparent public procurement system – shadowed misappropriation of funds from budgets at all levels reduces resources for the implementation of socially significant programs;
- unjustified tax privileges for specific economic sectors – gaining additional competitive advantages inhibits innovation renewal in the industry;
- informal "taxation" of businesses by regulatory authorities – "resolving issues" with regulatory authorities hinders the reform of economic activities and the transition of businesses from the "shadow" sector;
- non-transparent tariff-setting system for housing and communal services – leads to the effective subsidisation of energy companies at the expense of the population and absence of positive improvements in the provision of quality services;
- artificial restrictions on participants in investment and privatisation competitions during tender procedures – limits access to markets for more efficient participants and leads to budget overruns;
- insufficient property rights protection – risks of hostile takeovers of successful businesses and disregard for innovative development factors;
- lack of transparency in the control of state credit guarantees and the refinancing of troubled banks – illegal misappropriation of credit funds results in budget losses due to reduced profitability of the banking sector;
- weak control over "off-the-books schemes" for withdrawing funds from state-owned enterprises through affiliated intermediary structures – low efficiency of state-owned enterprises reduces revenue for budgets;
- underdeveloped information infrastructure – information asymmetry regarding the market conditions leads to the proliferation of cyberattacks to obtain insider information.

The cumulative result of the action of extractive economic institutions in Ukraine not only leads to an increase in income inequality among the population and a reduction in consumer demand but also hinders the prospects for economic growth. Businesses are not motivated to invest capital in innovative activities due to uncertainty concerning the asset preservation in the future. In wartime, the opportunities for business development are further compromised by the risk of physical destruction, leading to a complete lack of allocation of funds for innovation. In other words, the motivational priorities of economic actors do not focus on long-term business development goals but shift towards short-term gains. The most active market participants seek to engage in the acquisition of illegitimate rent income (in 2021, the size of the shadow economy in Ukraine ranged within 31-33%, according to various estimates, and during times of war, it has become even larger) (The shadow economy…, n.d.).

Conversely, a completely different set of motivational priorities arises with the dominance of inclusive institutions. These institutions not only create a space of equal opportunities for economically active individuals but also, through organisational and economic means, support the aspirations of societal members with limited natural capabilities. As a result, the potential for creativity and diversity within the entire socio-economic system increases. Such an environment can be referred to as an environment of "entrepreneurial inclusion", which operates based on the value-oriented management (management that aims to create consumer value). Its development changes the nature of structural processes in the economy (Table 1).

Table 1. Motivational accents of extractive and inclusive institutions and their influence on socio-economic processes in the country

Characteristics of the socio-economic system	**Motivational determinants in an institutional environment with different dominance of formal institutions**	
Type of institutional structure	Dominance of extractive institutions	Dominance of inclusive institutions
Predominant type of economic behaviour among the most active market participants	Rent-seeking, innovation-destructive (seeking opportunities to gain status, administrative, and political rent and appropriating illegitimate income from it)	Innovation-active, constructive (seeking sources of innovation and technological rent formation to obtain legitimate rent income)
Social response in society and the broader business environment	Negative (unjustly) – proliferation of entrepreneurial opportunism	Positive (justly) – fostering entrepreneurial creativity
Motivational vector of structural changes	Hindrance to progressive structural changes in the socio-economic system	Stimulating progressive structural changes in the socio-economic system
Structural processes in the national economy	Unbalanced structuring of the national economy by sectors and sources of growth based on restricting access to the country's natural resources potential	Balanced structuring of the national economy by sectors and sources of growth, considering the potential of the country's resource diversity

Source: developed by the authors of this study

In Figure 1, the possible scenarios for the development of the economy with the dominance of extractive and inclusive institutions are outlined, based on the motivational response of entrepreneurs to the methods of gaining competitive

advantages in business development processes. Like most motivational processes, this response is shaped by the external stimuli and prompts actions considering the value preferences of the economic participant. Since economic institutions are functionally designed to regulate the behaviour of economic players, their content should encourage choices that align with the goals of system sustainability (or its development). Let us briefly characterise these scenarios, relying on the main conclusions of the theory of the entrepreneurial society, which places entrepreneurial interests at the core of economic behaviour.

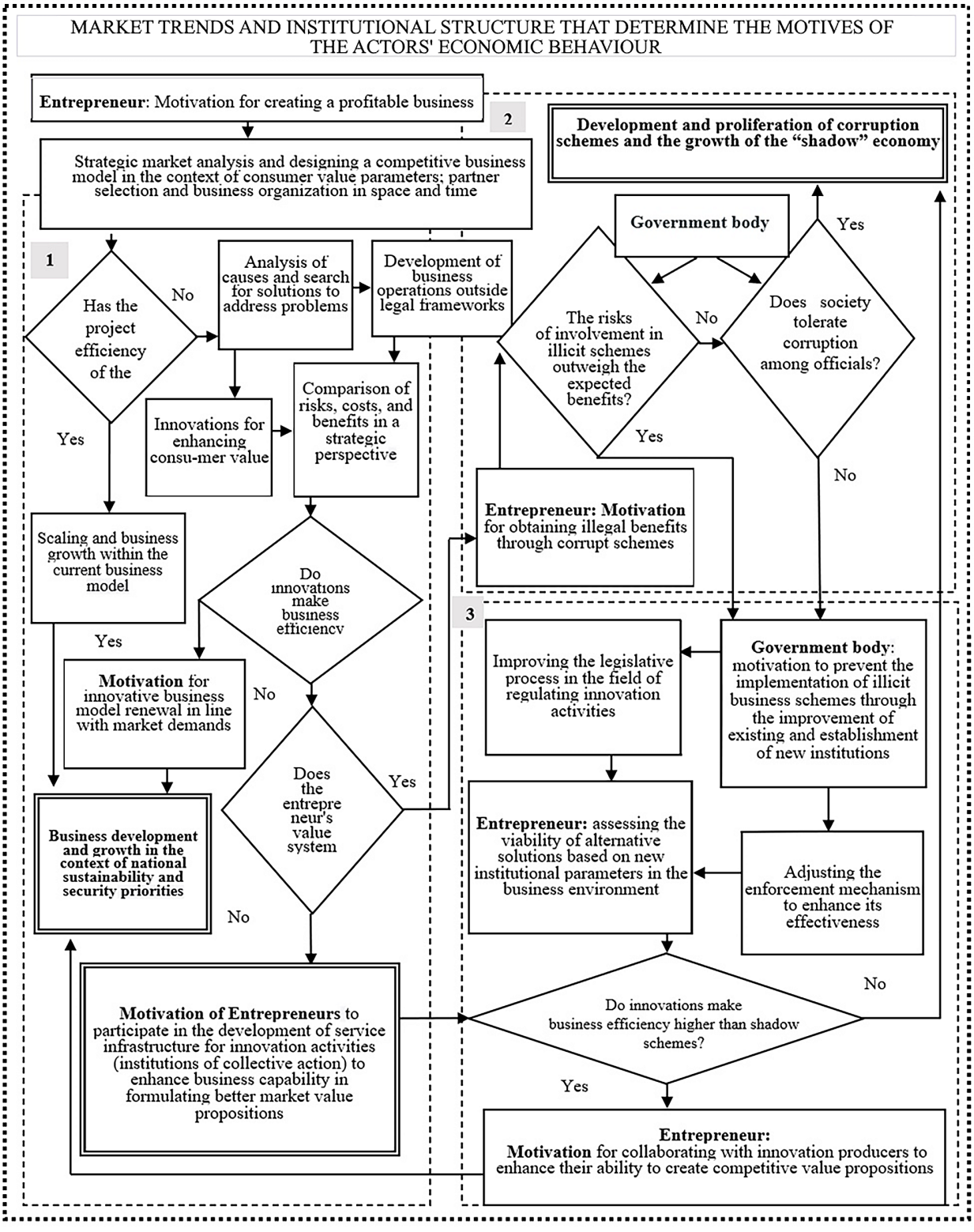

Figure 1. Modelling of the economic behaviour of market agents under distinct types of institutional environment structure

Source: developed by the authors of this study

Scenario 1. This scenario is implemented through high activism of civil society, which contributes to the development of a robust institutional environment with an effective enforcement mechanism. This environment fosters the institutional alignment of interests between businesses, government authorities, and society around the sustainability goals.

This is reflected in the current rules of economic behaviour that do not contain unjustified exceptions. It is inherent in countries with a prevalence of an individualistic and risk-taking behaviour among economic agents, leading to an innovative and dynamic economic development. In such an environment, entrepreneurs and managers make decisions based on their personal understanding of market trends and the ability of their business models to generate competitive value propositions, considering the specifics of target consumer groups. Competitiveness of value propositions requires technological excellence in business processes and innovation in creating new products and services. This creates a demand for intellectual labour and increases the value of service innovation infrastructure, which can enhance the innovation process through information enhancement, thereby improving its efficiency. Both aspects stimulate the society's interest in acquiring new knowledge, consequently fostering the creation and practical application of new knowledge, providing a new impetus to economic growth and social progress.

Scenario 2. This scenario is implemented through a paternalistic-communal behaviour archetype of society members, resulting in the weakness or underdevelopment of civil influence institutions. The institutional environment in such a society is developed based on the consensus between an oligarchic business and a political elite (whose interests are fulfilled through legislative and executive authorities) regarding the distribution of public goods through extractive institutions. The interests of society are nominally considered (based on a conscious lowering of social standards of living). With each political manoeuvre, adjustments are made to institutions (including enforcement mechanisms) in favour of other privileged individuals. The cyclical and irreversible nature of this mechanism for redistributing public goods leads to structural economic imbalances, with an overemphasis on low-risk activities that do not require long-term investments. The country's export potential mainly relies on primary raw material processing products.

An unreasonably low rent for the consumption of natural resources results in irrational and even predatory resource utilisation, harms the environment, and does not encourage deeper processing, which provides higher added value. In such an economy, complex intellectual labour is not valued, reducing the value of education and increasing the risks of further degradation of the workforce. In summary, the economic system ceases to be competitive, while the country's social progress becomes unattainable.

Scenario 3. Increasing the role of civil society while adhering to the established rules of economic behaviour and forming new institutions is aimed at reducing the extractive nature and corruption in the enforcement mechanisms of old institutions and transitioning to an institutional space of "entrepreneurial inclusion". This structure is dominated by institutions ensuring an equal access to limited resources for the economic actors, transparency in competitions for the best project formation of "economic growth points", and "joint action" institutions for information support of innovation and technological renewal (development) of operational/production systems of small and medium-sized forms of entrepreneurship. The significance of innovative infrastructure and its role as "institutions of collective action" for many participants in economic relations is highlighted. These institutions can provide valuable informational support for restructuring business processes and transitioning businesses into new models of creating consumer value.

Based on tax and other economic or organisational preferences, economic entities can undergo innovative restructuring of production with lower capital expenditure. Such preferences can increase the interest of strategic investors in implementing more extensive innovative projects, enriching the economy with innovative solutions – both in terms of technologies and environmentally friendly resource utilisation, as well as more competitive propositions of consumer values for target markets. Clearly, innovation and technological upgrading of production need to be organisationally prepared according to criteria aligning with international quality standards. It should also be supported by sufficient economic preferences (e.g., easy access to credit resources and production infrastructure, preferential tax regimes, etc.).

In Ukraine, such preferences are available in industrial parks, for the functioning of which the corresponding legislative framework was formed in 2021-2022 (Law of Ukraine No. 1710-IX, 2021; Law of Ukraine No. 2330-IX, 2022; Law of Ukraine No. 2331-IX, 2022). According to the Law of Ukraine No. 5018-VI "On Industrial Parks" (2012), their residents are granted the following preferences: exemption from import VAT and customs duties on equipment listed in the Ukrainian Classification of Goods for Foreign Economic Activity (UCC FEA); exemption from income tax for 10 years for specified types of activities; the right of local self-government bodies to establish benefits on local taxes, and more.

Industrial parks can serve as a platform for the technological upgrade of relocated enterprises, fostering the processes of innovative restructuring of outdated business models. According to K. Larionova *et al.* (2022), innovative restructuring should be performed considering the strategic priorities of national economic development, ensuring its competitiveness in the international economic space.

Relocation/establishment of high-tech industrial enterprises within industrial parks can create so-called "growth points" in the region by involving local producers in the creation of consumer values. Such collaboration will not only result in more efficient utilisation of the region's resource potential but also address social issues, such as the creation of additional jobs, income growth, and the development of civil infrastructure. Moreover, participants can obtain the status of a strategic partnership, increasing their investment opportunities and accelerating business development in promising areas.

Furthermore, thanks to the localisation of manufacturing entities in industrial parks, regional government authorities can better monitor businesses' compliance with environmental safety requirements. Such safety is an integral component of sustainable territorial development, and its level should be evaluated based on parameters established for the region, the aggregate of which is substantiated and sufficient to ensure the economic stability of the region (Hryhoruk *et al.*, 2021).

The third scenario of development in Ukraine is entirely feasible. Considering the rapid growth of civic engagement

among Ukrainians united by the goal of victory, they can be motivated to unite around the goals of sustainable development. This requires reducing the level of regulation in the economic interaction space by fiscal and procedural elements. By provoking corruption, these elements diminish the resource potential of businesses and limit entrepreneurial initiative, which is crucial for the country's survival and development in times of war and post-war recovery.

Catalysts for transformational processes should be civil society organisations. It is through their efforts that changes in the vectors of economic behaviour of major economic players towards sustainable development priorities can be achieved. At its core is the motivation of the entrepreneurial community to take an active part in the design and creation of value propositions for the market, in line with the concept of value-oriented management (Stadnyk & Zamazii, 2015). This will shift the focus of government entities at various levels of management from designing more powerful extractive institutions for budget replenishment to creating an institutionally favourable environment for effective interaction among all economic actors, referred to as the "entrepreneurial inclusion" environment. In this environment, new business ideas will be generated, and new financial flows will be formed.

In this environment, inclusive economic institutions should dominate. They will not only create equal opportunities for economic activity for all market participants in terms of competitive conditions but also provide additional incentives (through reasoned benefits) for the economic involvement of vulnerable segments of society. In Ukraine, there are already many people who need such support due to partial physical disability resulting from the ongoing war. Most of them are economically active individuals who can fulfil themselves even in such a state. Some support (economic or organisational) at the initial stage of starting their business will enhance their motivational aspirations for self-fulfilment. This will increase the economic and social activity of the population and expand the potential for the growth of Ukraine's intellectual capital. The development and utilisation of creative potential by individual workers and creative teams will contribute to increasing the economic complexity of domestic enterprises, transforming the entire entrepreneurial sector into a creative one in terms of seeking ways to create competitive advantages for companies. In this context, innovative infrastructure plays a crucial role, acting as "institutions of collective action" for consumers of their services. Staying outside direct competitive struggle, these institutions can provide them with the necessary informational support for reconfiguring existing business processes or radically transforming businesses into a new model of creating consumer value.

In the context of sustainable development goals, the focus is primarily on providing informational and legal support for the transfer of advanced technologies that can be utilised by business entities for business development. Small businesses, particularly those lacking their own analytical centres, are especially interested in such services. At the same time, their activities would be beneficial not only for society overall but also for stimulating economic activity, creating new jobs, and ensuring the effective and environmentally sustainable utilisation of regional resource potentials. Therefore, the emergence of such institutions (as components of market infrastructure) can occur not only as a result of structuring the market space through various transformational projects but also through the self-organisation of the interested individuals.

According to K. Arrow (1974), the societal need for the emergence of collective action institutions can be assessed through the costs associated with their creation and functioning, known as "collective action costs". These costs result from the imperfections of the institutional environment, where market institutions inadequately guide the behaviour of economic agents towards acceptable forms of market interaction. The necessity for the formation of collective action institutions arises to safeguard against breaches of agreements between entities, requiring the establishment of institutions that reduce risks in market transactions. Specifically, qualified legal aid contributes to lowering transaction costs, such as non-payments, contract breaches, or increased expenses for insurance and guarantees. The activity of a patent office can ensure the protection of intellectual property rights for innovative products through the registration and use of trademarks, patents for inventions, acquisition, and sale of licenses, among other measures.

The development of elements of innovation infrastructure now falls under the responsibility of regional government authorities and local self-government. The demand for their services is negatively influenced by institutional factors, including public loyalty to the shadow activities of entrepreneurs and the low efficiency of regulatory structures tasked with controlling entrepreneurial activities and combating shadow schemes (figure 1; scenario 2); inconsistency between the functions performed by infrastructure elements and those actually needed to expedite the process of business establishment or development (due to the lack of proper material and technical base and insufficient efficiency of advisory services).

Minimising the influence of these factors also lies in the motivational plane – at the intersection of the interests of entrepreneurs and the bearers of the power of state administration. It is necessary for these interests to be complementary, increasing the overall social profit. For example, the benefit from the operation of technology transfer centres (TTCs) is manifested in the following: for manufacturing enterprises carrying out innovative restructuring – in increasing the validity of decisions related to the transfer of technologies that meet the criteria strategically important for the development of competitive advantages for successful operation in the selected market segment, while reducing their costs associated with technological renewal of production; for the region – in increasing the revenues to local budgets due to the increase in the number of profitable enterprises. In addition, the technological advantage of such enterprises can expand their market opportunities and will improve the general dynamics of socio-economic development of the region.

Therefore, one of the criteria for evaluating the effectiveness of the operation of the TTCs at the regional level should be the excess of revenues to the local budget from production enterprises (clients of the TTCs) over the costs of its creation incurred by local budgets. Formally, this can also be expressed through the value of net present value (NPV):

$$NPV = \sum_{t=0}^{T} (\Delta D_t - E_t)\alpha_t = II, \quad (1)$$

where T is the period of operation of the TTC; D is the additional revenues to the local budget from TTC clients in the t^{th}

year; E is the current expenses for the operation of the TTC in the t^{th} year, financed from the local budget (e.g., rent of premises); α_t is the discount factor; II is the initial investments in the creation of the TTC, financed from the local budget.

Therefore, the economic profitability of the operation of the TTC for the region can be partially estimated by the value of the aggregate NPV in the planned period, received from enterprises that carried out the technological transfer. Partly because the development of high-tech entrepreneurship can act as a catalyst for integration processes in the business environment, increasing the overall resource and market opportunities of the participants of such associations and increasing the amount of added value in the regional dimension.

In the conditions of war, the task of developing innovation infrastructure is not considered a priority for regional management authorities. Therefore, the leading role in this development lies with the entrepreneurial environment. The motivational basis for the self-organisation of businesses in creating and developing innovation infrastructure is the expectation that the benefits derived from using their services (D_i) will exceed the income they would have by operating independently within the current legal framework D_p:

$$D_i > D_p. \quad (2)$$

Such expectations will serve as the basis for expanding the functional purpose of innovation infrastructure elements towards the qualitative development of services that will be more in demand by the business environment of a particular region, considering the structure of its resource potential. Overall, the development of an "entrepreneurial inclusion" environment requires active dialogue, interaction, and partnership within the "business-government-society" triad. This allows for a focus on concrete issues, participants, available resources, and opportunities for the development of local communities and regions and can become an effective institutional mechanism to achieve post-war recovery and sustainable development goals in Ukraine.

Conclusions

The massive destructive processes and security challenges faced by Ukraine in defending its right to choose a development model have heightened the problem of defining institutional conditions for the structural transformation of the economy and aligning its parameters with sustainable development priorities. In the context of the necessary institutional changes, the study analysed the development of Ukraine's institutional environment. It was concluded that its structure is saturated with extractive institutions formed at the legislative level and further reinforced by corruption schemes for the redistribution of financial flows. The consequences of the influence of extractive institutional factors on the behaviour strategies of economic entities were systematised. The main motivational factors of the institutional environment were identified, with a focus on the dominance of extractive and inclusive institutions from their impact on social and economic processes in the country.

Using graphical modelling, scenarios for the development of Ukraine's economy were presented, highlighting key motivational vectors of the economic actors influencing this process. The authors' position was expressed that for Ukraine to transition to sustainable development, there should be a predominance of inclusive institutions in the structure of the institutional space, which create favourable conditions for the establishment and functioning of entrepreneurship in line with sustainable development priorities. Such an institutional space is referred to as the "entrepreneurial inclusion" environment. In this environment, a special role is assigned to the service infrastructure of innovation activity as an information platform for the effective creativity of entrepreneurial structures in creating high-value consumer values. The study outlined conditions under which economic actors would be motivated to develop such institutions. It was emphasised that through the cooperation of the entrepreneurial community, civil organisations, and government bodies, a consensus can be reached in defining key points of economic growth for Ukraine in its post-war recovery and resource synergy in achieving sustainable development goals. Future research will cover the development of recommendations for strengthening the inclusive component of the institutional environment of Ukraine in the context of improving the conditions for the establishment and functioning of entrepreneurship following the sustainable development goals.

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Conflict of interest

The authors of this study declare no conflict of interest.

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Інституційний простір сталого розвитку: Структура, мотиви та умови розвитку в Україні

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Анотація. Масштабні деструктивні процеси та безпекові виклики, з якими зіткнулася Україна, відстоюючи своє право на вибір моделі розвитку, актуалізували проблему визначення інституційних умов структурної трансформації економіки та узгодження її параметрів з пріоритетами сталого розвитку. Метою статті було моделювання сценаріїв розвитку бізнес-середовища за різних типів інституційних структур та визначення можливості створення інституційного підґрунтя для сталого розвитку України в умовах глобальних безпекових викликів. Дослідження ґрунтується на концептуальних засадах інституційного середовища. Виявлено інституційні прогалини в бізнес-середовищі, які спотворюють мотиваційну основу концепції сталого розвитку України та призводять до домінування корупційних елементів у рішеннях і діях економічних суб'єктів. Систематизовано наслідки впливу екстрактивних інституційних чинників на вибір стратегій поведінки суб'єктами господарювання. Охарактеризовано відмінності у впливі екстрактивних та інклюзивних інститутів на економічні процеси. З використанням векторів мотивації представників бізнесу, органів влади та громадськості змодельовано сценарії розвитку бізнес-середовища та продемонстровано їх результати з точки зору цілей сталого розвитку. Концептуалізовано концепцію формування середовища «підприємницької інклюзивності» як інституційної основи сталого розвитку, підкреслено його роль як стимулятора проактивної та ефективної інноваційної діяльності. Визначено цілі розвитку інноваційної інфраструктури як сукупності інститутів колективної дії, що дозволяють знизити ризики в інноваційній діяльності підприємств та підвищити її ефективність. Визначено умови, за яких бізнес-спільнота буде мотивована до розвитку таких інститутів. Підкреслено роль громадських організацій у процесах інституційних змін та формуванні інститутів колективної дії. Результати дослідження мають практичне значення для формування інституційного механізму реалізації інноваційно-технологічних структурних зрушень в економіці України в контексті пріоритетів сталого розвитку під час її післявоєнного відродження

Ключові слова: екстрактивні інститути; інклюзивні інститути; підприємницька інклюзивність; сценарії економічної поведінки; інноваційна інфраструктура; структурні зміни в економіці

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Comparative analysis of mediation in the legislation of Kazakhstan and the People's Republic of China

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Abstract. This study addressed the growing importance of mediation in the legal frameworks of Kazakhstan and the People's Republic of China, focused on the need for more efficient conflict resolution methods in both countries. The aim of this research was to explore the specific features of mediation as defined by the laws of these two nations, highlighting the similarities and differences in their legal systems. A variety of methods were employed in the study, including the comparative legal method, formal-legal analysis, and the method of synthesis and comparison. The analysis revealed that both Kazakhstan and China have developed robust frameworks for mediation, though they differ significantly in their cultural and legal approaches. In Kazakhstan, the mediation process is formalized and heavily regulated, with a strong emphasis on the certification and professionalization of mediators. In contrast, China's system, rooted in Confucian traditions, allows for a more community-based approach with a broader scope, including minor criminal cases. The study found that while both countries value mediation as a non-adversarial means of conflict resolution, there is a need for further legislative development, particularly in Kazakhstan, to enhance public understanding and prevent potential abuses of the mediation system. Additionally, the study highlights the role of public education and the importance of integrating mediation into state-citizen dispute resolution processes. The practical value of this research lies in its potential use by policymakers and legal professionals in Kazakhstan and China, as it provides insights into improving mediation frameworks and ensuring their effectiveness in addressing modern societal conflicts

Keywords: conflict; laws; intermediary; Confucian norms; settlement of disputes

Introduction

The number of disputes is increasing daily, which can be explained by dynamic changes in society, including both economic and political ones. Accordingly, the public relations are only developing and expanding, so there is an increase in the level of the likelihood of conflicts. Thus, a very wide range of relations can be the object of the dispute, which requires their qualitative settlement. At the same time, the high relevance of studying the institution of mediation is

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explained by the fact that the increase in the number of conflicts between citizens is not proportional to the number of courts that can consider and resolve them. In addition, this is also due to other properties of the judicial method for resolving disputes, in particular, their duration and complexity of the procedure.

The problem of this study is revealed in the fact that at the moment there is a quantitative lack of special state institutions that could execute justice in accordance with the dynamics of conflicts. In addition, it should be kept in mind that mediation is a more humanistic approach, since its foundations are somewhat different from the general foundations on which the legal proceedings are based. In this context, it is worth paying attention to the final result of the dispute resolution. In particular, in general jurisdiction, the purpose of resolving a conflict is to identify the perpetrator and the victim, re-educate the perpetrator, as well as apply coercive measures against him (Horislavska, 2023). In turn, mediation involves the reconciliation of the parties in dispute, that is, the formation of a dialogue between them and the achievement of a consensus, and moreover, the perpetrator should also compensate for the damage caused to the victim. The described difference has been repeatedly investigated by scientists (Karipova & Romanova, 2021; Ospanova, 2021; Satriana & Dewi, 2021).

T. Whatling (2021) proves that the institution of mediation cannot replace the classical form of conflict resolution between citizens. In particular, she notes the ineffectiveness and high danger that may result from its use, for example, due to the mediator's preconception. In this case, the author does not give negative examples of dispute resolution with the help of mediation. In addition, she did not reveal the main reasons for the formation of the potential danger of using such an approach. M. Wang *et al.* (2020) came to an unusual conclusion, because they both analysed the legislation of the People's Republic of China (PRC) in the field of out-of-court dispute resolution, and established a connection between the traditions and principles of Chinese society regarding this process. Thus, they managed to substantiate the prospects of using mediation in the PRC, while describing the approaches that characterise the readiness of the population for this. However, in this context, it would also be advisable to study the previous regulatory documents in order to approve the legal nature of the mediation category directly in the PRC.

A. Holtzworth-Munroe *et al.* (2021) managed to consider the main social conditions that are necessary for the use of mediation in the course of conflict resolution. However, they did not substantiate the need to create such conditions, in particular in the context of preparing the consciousness of citizens and their readiness to use such an instrument. J. Feng and P. Xie (2020) and Y. Zhao (2022) share a somewhat similar opinion, since they compare the various approaches that are used in society for resolving disputes and emphasize the need to create favourable conditions for the implementation of mediation in it. Despite this, the obtained conclusions should be finalized, in particular, they should be considered from the point of view of dividing them into those belonging to the legal area, as well as those ones that are resolved by citizens on their own.

Thus, the purpose of this study is to determine the specific features of the implementation of mediation, arising from the current norms of Chinese and Kazakhstan law. For this purpose, a set of tasks has been completed in the work, namely: the concept of mediation has been studied; its signs are considered, regulatory documents of the PRC and Kazakhstan are investigated; the common and distinctive features between it are established; the need to make changes in Kazakhstan to improve the efficiency of using the institution of mediation is substantiated.

Materials and methods

In this study, Kazakhstan and China are compared due to their distinct legal systems and the growing importance of mediation in both countries. Kazakhstan has been actively reforming its legal frameworks, particularly in the context of dispute resolution, while China has a well-established mediation system with a rich history of alternative dispute resolution. The comparison is significant because Kazakhstan seeks to improve its mediation practices, and China's experience offers valuable insights. China's success in implementing mediation, especially in commercial disputes, can provide a relevant model for Kazakhstan as it refines its own legislative framework. Moreover, China's involvement in global trade and mediation practices makes its legislation particularly applicable for Kazakhstan, given their geographical proximity, economic cooperation, and mutual legal influences in areas such as trade, investment, and cross-border disputes.

The work can be conditionally divided into internal and external parts. Accordingly, the method of analysis was taken as the basis for the formation of the internal structure. This methodological tool made it possible to divide the general issue under study into separate parts, which in cooperation form the object of this study. Accordingly, the direct concept of "mediation" was analysed on its basis, and it was conducted a study of the legal acts that regulate it. Among them, it is worth noting the following: Law of the Republic of Kazakhstan No. 401-IV "On Mediation" (2011), Decree of the Government of the Republic of Kazakhstan No. 770 "On Approval of the Rules for the Passage of Training Under the Training Program for Mediators" (2011), Law of the People's Republic of China "On Mediation and Arbitration of Labor Disputes" (2007), Law of the People's Republic of China "On People's Mediation" (2010), Constitution of the People's Republic of China (1982), Civil Procedure Code of the People's Republic of China (1991). In addition, the comparative legal method allowed identifying the common and distinctive features that are characteristic of approaches to the introduction and implementation of the institution of mediation in Kazakhstan and the People's Republic of China.

Comparison of approaches and methods of using mediation to resolve disputes was carried out using the comparison method. Based on it, it was possible to determine the positive and negative features of each of them and, accordingly, to summarize them in the form of recommendation. In addition, the method of comparison formed the basis for the process of determining the features of the legislation of the People's Republic of China and Kazakhstan. The formal-legal method was used in the article. This method was used for a qualitative and correct interpretation of the content of legislation, in particular, both in Kazakhstan and in the People's Republic of China. In addition, this method was used to form recommendations based on the analysis carried out during the process of conducting the scientific work. The study was carried out in three stages. At the first stage, the main organisational aspects related directly to the work process

were identified, in particular, the goal, objectives and plan. A general theoretical analysis of the main elements underlying this study was also initiated. At the second stage, it was summarized the characteristics of the mediation category and the main legal acts that are regulated both in Kazakhstan and the People's Republic of China were determined. At the third stage, the obtained results were investigated and a conclusion was formed on their basis.

Results

The formation of the modern mediation institution can be traced back to key developments in the 20th century, particularly after the 1976 Pound Conference in the United States. This event marked a pivotal moment in the promotion of alternative dispute resolution (ADR), including mediation, as a response to the increasing burden on court systems. Since then, mediation has become a typical and widely recognized practice in the U.S. legal system (Yasinovskiy, 2014). At the same time, its primary direction was the settlement of family and labour conflicts between citizens. However, it should be kept in mind that today the mediation has significantly expanded its range of influence and application. This is explained by the fact that in most developed countries, in particular the USA, Canada, China, Japan, Germany, the mediation is an effective way to resolve disputes in civil, administrative, criminal proceedings, that is, in all spheres of public life (Sitabuana *et al.*, 2020). Moreover, in some of them it is already a well-established one, in particular in the field of business conflicts and labour disputes, as well as in the field of family, inheritance, land, residential conflicts. Based on the above-mentioned classification, it can be stated that mediation is most often used in the process of resolving civil disputes.

A general theoretical analysis of the category of mediation allows for the identification of its advantages in comparison to other methods of dispute resolution. First of all, attention should be paid to such an indicator as efficiency, which concerns both the time of the participants and their financial assets. This is due to the fact that usually the resolution of a dispute in court is based on the observance of a certain procedure, which in most cases is lengthy, since it includes different stages. In addition, there is a need for the parties to the dispute to pay a court fee, as well as the lawyer services, if necessary. The advantage of mediation is the ability of its participants to influence the final result (Nuryshchenko, 2024). As it was noted above, the goal of mediation is not only to identify the perpetrator and punish him, but also to achieve mutual understanding between the participants. Because of this, they can independently choose the best variant for completing the mediation process, as well as choose the appropriate measures regarding each other. In addition, unlike the judicial method of resolving a conflict, mediation can provide its participants with confidentiality and, accordingly, less stress (Spytska, 2023). This is explained by one of the mediation principles, namely its informality. The confidential data of the participants during the conflict resolution are not disclosed, which helps to narrow the number of people who can monitor this process. Furthermore, attention should be paid to the fact that mediation can provide its participants with the opportunity to maintain business and other relations between them, which is a very important factor. This is because such an approach will allow avoiding the formation of new disputes in the future, for example, in the field of business or labour relations.

It should be understood that mediation has gained legal status as a result of the adoption of the Law of the People's Republic of China on Mediation and Arbitration of Labor Disputes (2007), as well as the Law of the People's Republic of China "On People's Mediation" (2010). At the same time, it is worth noting that the PRC is the only country in which the mediation is provided for by the highest regulatory document, namely the Constitution of the People's Republic of China (1982) in Art. 111. Since the observance of traditions in the PRC is one of the foundations of the existence of society that mediation is intertwined with the foundations of Confucianism and the practices of Taoism. In this context, it referred to the "golden mean", which was developed by Confucius, and which formed the basis of the mediation institution (Berthrong, 2014). This factor also affects the high prevalence and priority of mediation directly among the people, since it appears as a continuation of something natural for the Chinese, which is described by Confucian philosophy. Analysing the provisions of the above-mentioned legal documents, it can be distinguished five characteristic features of Chinese mediation (Berthrong, 2014). First of all, from the standpoint of international law, it is necessary to separate the concept of mediation that is reflected in China. Thus, "people's mediation" is responsible for the settlement of civil law conflicts, some criminal acts. The second interpretation of mediation occurs on the basis of labour conflicts that precede arbitration and court proceedings. In Western legal systems, mediation is often seen as a neutral, voluntary, and non-binding process primarily aimed at resolving civil and commercial disputes. In contrast, Chinese mediation, specifically "people's mediation" is deeply intertwined with cultural traditions and is often seen as a natural extension of Confucian values like harmony and social order (Berthrong, 2014; Ren & Lu, 2020). This form of mediation handles not only civil conflicts but also some criminal matters, which is quite different from the approach in most other legal systems where mediation in criminal cases is far less common. Additionally, in labour disputes, mediation in China serves as a formal step before arbitration or litigation, whereas in many other countries, labour mediation is often a voluntary alternative to court proceedings, not a mandatory pre-litigation process.

The second feature of mediation in China lies in its unique position within the state executive system, while remaining distinct from the judiciary. In comparison to other countries, particularly Western legal systems, mediation is typically part of the judicial system or operates independently through private mediation services. In contrast, Chinese mediation is state-driven, funded by the government, and has a compulsory aspect, which distinguishes it from the voluntary and privately funded nature of mediation in countries like the United States or the UK (Alternative Dispute Resolution Act, 1998; Directive of the European Parliament and of the Council No. 2008/52/EC, 2008; CPR – Rules and Directions, 2023). Regarding the regulation of mediators' activities, the laws of the PRC stipulate that mediation must adhere to a voluntary-compulsory approach, meaning that participation is voluntary, but the process is structured and time-limited by law. In other countries, such as the U.S., mediation is generally more flexible in terms of time, and participation is often completely voluntary,

without a state-imposed time limit for negotiations (Alternative Dispute Resolution Act, 1998). This gives Chinese mediation a more structured and time-efficient framework, which can be seen as an advantage in judicial proceedings where timely resolution is critical. The fifth feature of "popular mediation" refers to its constitutional and legal foundation. The fact that mediation is enshrined in both Art. 111 of the Constitution of the People's Republic of China (1982) and Art. 16 of the Civil Procedure Code (1991) highlights its significance in the legal and societal framework of the PRC. This dual legal recognition ensures that mediation is not just an optional process but a formalized and integral part of China's dispute resolution mechanisms, offering it broader legitimacy and authority than in many other legal systems, where mediation is often supplementary or informal. Finally, the term "mass organisation" in this context refers to the widespread and state-supported nature of mediation in China, where it functions as a public, state-driven service accessible to the general population. Unlike in many countries where mediation services are typically privatized or localized, in China, mediation is organized on a large scale, with significant state involvement, making it widely available as part of the governmental legal framework. This large-scale approach contrasts with the more individualistic and ad hoc mediation practices common in other nations.

Turning to the analysis of the institution of mediation in the context of the public life of Kazakhstan, it can be noted that the turning point in this process was the adoption of the Law of the Republic of Kazakhstan No. 401-IV "On Mediation" (2011). Accordingly, prior to this, Kazakhstan did not have a clear regulatory legal act regarding the implementation of the mediation process, as well as its further development. Thus, this document consolidates the principles of mediation listed in the work, as well as the features of the procedure for its implementation and the legal status of the mediator. This development not only advanced the social integration of citizens in Kazakhstan by providing a structured legal framework for dispute resolution but also facilitated alignment with international mediation practices, enhancing Kazakhstan's ability to engage effectively in cross-border legal processes.

Both China and Kazakhstan have introduced significant legislation to formalize the practice of mediation. In Kazakhstan, the adoption of the Law of the Republic of Kazakhstan No. 401-IV "On Mediation" (2011) was a turning point, as it introduced a clear legal framework regulating mediation. This law consolidated key principles such as voluntary participation, neutrality, and confidentiality, all of which are similar to international mediation standards. One notable provision is the establishment of the Register of professional mediators (2020), which includes specialised mediators and outlines their training requirements. Mediators in Kazakhstan are required to undergo training according to the Decree of the Government of the Republic of Kazakhstan No. 770 (2011), after which they are certified as either professional or non-professional mediators. In contrast, China also has a well-established framework for mediation that operates on both state and community levels. According to Article 111 of the Constitution of the People's Republic of China (1982), "people's mediation" is recognized as a means of resolving civil disputes and even some minor criminal acts. This is further elaborated in Article 16 of the Civil Procedure Code of the People's Republic of China (1991), where mediation is a required step in resolving conflicts before resorting to litigation. However, unlike Kazakhstan, where training and certification of mediators are handled by specific government regulations, mediation in China often occurs through community-based committees, which do not always require formal training, though certain high-level mediators do receive specialised training under the supervision of the Ministry of Justice.

In Kazakhstan, mediation is characterized by a formalized and centralised system, where mediators are regulated by the state through specific laws and licensing. By contrast, China's mediation system is deeply rooted in its cultural tradition and largely operates on a decentralised basis, particularly at the grassroots level with people's mediation committees that are more informal. However, the two systems converge in their shared goal of resolving disputes through non-adversarial means, with both countries emphasizing the role of the state in promoting mediation. The definitions of mediation in both countries also show some key differences. In Kazakhstan, mediation is explicitly defined and governed by a distinct legal framework, which regulates every aspect of the process, including the training, licensing, and ethical responsibilities of mediators. In China, the practice of mediation has a broader scope. As stated in the Mediation Law of the People's Republic of China (2011), mediation covers civil and minor criminal cases, and its purpose is to maintain social harmony by resolving disputes without resorting to litigation. While Kazakhstan focuses on professionalizing mediation with specific qualifications, China's approach, especially in people's mediation, relies heavily on the cultural notion of harmony and the informal resolution of disputes by respected community members.

In Kazakhstan, the Government Decree No. 770 (2011) regulates the professionalization of mediators, requiring them to undergo formal training and pass specific courses. After completing these courses, mediators receive either a professional or non-professional license, a system not seen in China. In China, while certain types of mediators receive formal training, especially those dealing with international or commercial disputes, community-based mediators in people's mediation committees often rely more on social reputation and practical experience than formalized education. Thus, while both Kazakhstan and China have implemented legislative frameworks to regulate mediation, Kazakhstan's system is more centralised and professionalized, whereas China's system remains deeply rooted in cultural practices with a decentralised structure for people's mediation. Both approaches, however, aim to promote harmony and prevent litigation, reflecting the importance of mediation as a dispute resolution method in their respective societies.

However, the fundamental difference between these countries is the attitude towards mediation and its use by ordinary citizens. It was stated in the work that the role and effectiveness of mediation is clear to the population. The Law of the Republic of Kazakhstan No. 401-IV "On Mediation" (2011) outlines the legal structure and framework governing the mediation process, clearly defining the role of mediators and the various stages involved. A key component of the law is its emphasis on the voluntary nature of mediation, where parties must agree to the process without coercion, which is in line with international standards. However, the law also includes provisions for cases where mediation may be recommended by the court, reflecting a

more integrated approach to dispute resolution in Kazakhstan's legal system. Article 14 of the law, in particular, details the rights and obligations of mediators, emphasizing their neutrality and impartiality in the resolution process. Mediators are tasked with facilitating dialogue between the parties, ensuring that communication remains respectful and productive. The law also specifies that mediators must remain independent of both parties and must not have any personal or financial interest in the outcome of the dispute. Furthermore, mediators are bound by confidentiality, a principle reinforced throughout the law to ensure that sensitive information shared during mediation cannot be used in subsequent legal proceedings.

The law also defines the stages of mediation, starting with the initiation of the process, where parties agree to mediation either voluntarily or through a court recommendation. This is followed by the preparatory stage, where the mediator gathers information from both parties, ensuring they fully understand the process and the issues at hand. The mediation process itself is a structured dialogue facilitated by the mediator, aimed at helping the parties reach a mutually acceptable resolution. If the parties come to an agreement, the mediator assists in drafting a mediation agreement, which, according to Article 26, holds legal force and is enforceable in court if necessary. The law also regulates the training and certification of mediators. Government Decree No. 770 (2011) sets forth the requirements for mediators to complete a specific training program, after which they may be certified as either professional or non-professional mediators. The distinction between these two categories is based on the level of training and experience, with professional mediators often handling more complex cases. This formalized system of certification ensures that mediators in Kazakhstan meet a standard of competency, which is crucial for the credibility of the mediation process. In comparison, China's mediation system, as outlined in the Mediation Law of the People's Republic of China (2011), similarly stresses the importance of voluntary participation, neutrality, and confidentiality. However, the Chinese system allows for a broader application of mediation in both civil and minor criminal disputes, and mediators often come from community-based organisations, particularly in people's mediation. While China's system is more decentralised and less dependent on formal training than Kazakhstan's, both countries share a commitment to integrating mediation into their legal systems to improve dispute resolution efficiency.

The legal frameworks regulating mediation in Kazakhstan and China offer distinct approaches that reflect the historical, cultural, and judicial contexts of each country. While both nations have adopted mediation as a formal process for conflict resolution, the specifics of their legal systems highlight notable differences in structure, application, and public integration. In Kazakhstan, the introduction of the Law of the Republic of Kazakhstan No. 401-IV "On Mediation" (2011) marked a significant turning point in formalizing mediation as an alternative dispute resolution mechanism. This law is comprehensive in outlining the principles that guide mediation, such as voluntariness, confidentiality, and the neutrality of mediators. These principles are meant to ensure that all parties enter the mediation process willingly and that the mediator remains impartial throughout the proceedings. Importantly, mediators in Kazakhstan are required to undergo formal training, a process governed by the Government Decree No. 770 (2011). This decree establishes the criteria for becoming a certified mediator, which can be professional or non-professional, depending on the level of training and experience. The certification process ensures that mediators possess the necessary skills to facilitate discussions and help disputing parties reach mutually acceptable agreements. The Article 26 of the law further strengthens mediation by stating that agreements reached through mediation are legally binding and enforceable in court, thereby giving legal weight to the outcomes of mediation sessions.

By contrast, China's approach to mediation is deeply rooted in its Confucian traditions and has a longer historical trajectory. The Constitution of the People's Republic of China (1982) and the Civil Procedure Code (1991) both enshrine mediation as a key element in resolving disputes, especially at the community level. People's mediation, a system formalized by the People's Mediation Law of 2011, emphasizes the resolution of civil disputes within local communities, often involving mediators who are respected community members rather than formally trained professionals. This form of mediation is designed to promote social harmony, a core principle of Confucian philosophy, where collective resolution of conflicts takes precedence over individual litigation. In this way, mediation in China extends beyond civil cases and can also address minor criminal matters, an application that is less common in Kazakhstan's legal framework. One of the most significant differences between the two countries lies in the regulation and certification of mediators. In Kazakhstan, the process is highly formalized, with mediators required to complete specific training programs and acquire a certification to practice. This system professionalizes the role of mediators, ensuring that they are equipped with legal and conflict resolution expertise. China, on the other hand, allows for a more flexible system, particularly with community-based people's mediation. While some mediators dealing with commercial or cross-border disputes may undergo formal training, many community mediators rely on social capital and local trust rather than formal certification. This reflects China's emphasis on the cultural and social aspects of mediation, where resolving conflicts through consensus and preserving relationships is prioritized over formal legal proceedings.

Another key point of comparison is the integration of mediation into the judicial system. In Kazakhstan, mediation remains a largely voluntary process, although courts may recommend it in certain cases. The Law on Mediation provides for voluntary participation, allowing the parties to choose whether to engage in mediation. However, this may limit the extent to which mediation is used in practice, as the legal system does not compel parties to mediate before proceeding to litigation. By contrast, in China, mediation is more fully integrated into the judicial process. Courts in China often require parties to engage in mediation before proceeding with formal litigation, especially in civil and family law cases. This system is designed to reduce the burden on courts and to encourage parties to resolve disputes amicably outside the courtroom. The legal foundation of mediation in China is broader in scope, as seen in its application to both civil and minor criminal disputes. The People's Mediation Law allows for disputes that involve social and family conflicts, as well as minor criminal offenses, to be handled through mediation. In contrast, Kazakhstan focuses more narrowly on civil disputes, with less emphasis

on using mediation for criminal matters. This difference in scope reflects the broader role that mediation plays in Chinese society, where maintaining social order and harmony is a key objective, compared to Kazakhstan's focus on formalizing the process as part of its legal reforms.

The role of the state in both systems also highlights significant differences. In Kazakhstan, mediation is supported by the state but is largely driven by certified professionals who operate within a clearly defined legal framework. The Government Decree No. 770 (2011) ensures that mediators are properly trained and licensed, which reflects the state's commitment to professionalizing mediation. In China, while the state supports mediation, particularly in the context of people's mediation committees, the process is more decentralised. Mediators often operate as volunteers within their communities, without the need for state certification. This decentralization makes mediation more accessible, particularly in rural and less developed regions, where formal legal services may be limited. Despite these differences, both countries share the objective of promoting mediation as a way to reduce the number of cases that go to court, improve access to justice, and provide a more cost-effective and time-efficient means of resolving disputes. The legal enforceability of mediation agreements in both countries ensures that the outcomes of successful mediation sessions are recognized by the courts, giving parties confidence that their agreements will be upheld.

At this stage it is advisable to develop both the legislative framework and the subjective attitude of citizens towards the institution of mediation. To effectively address the public's limited understanding of the mediation process in Kazakhstan, it is crucial to implement concrete educational initiatives such as national webinars and training programs. These initiatives should be held in both educational institutions and workplaces, targeting both the youth and adult population. Empirical evidence from similar programs in other countries, such as the National Mediation Training Program in the United States, has shown that structured educational efforts can significantly enhance public understanding and trust in mediation as a method for dispute resolution. The primary goal of these activities should be to build public confidence in the process of mediation and to shift societal attitudes towards resolving conflicts amicably, especially in civil law cases. As demonstrated in countries like Germany, where public mediation campaigns have reduced the burden on the judicial system, education plays a crucial role in normalizing the use of mediation in society.

Regarding legislative recommendations, it is advisable to amend specific articles of the Law of the Republic of Kazakhstan No. 401-IV "On Mediation" (2011). For instance, Article 14, which outlines the principles of mediation, should be expanded to better regulate the interactions between state agencies and civil society. This could include provisions ensuring that state-citizen disputes are handled with enhanced transparency and oversight, drawing from the Mediation Act of Singapore (2017), which has successfully integrated mediation into public sector disputes, leading to faster and more amicable resolutions. Additionally, Article 26 of Kazakhstan's mediation law, which addresses the enforceability of mediation agreements, could benefit from clearer guidelines on how these agreements are recognized and enforced in administrative law cases, ensuring that both citizens and state agencies have equal standing in mediation processes. The implementation of these legislative changes could be supported by the development of state-run mediation centres, similar to the Community Mediation Centers (CMC) in Singapore, where mediation between citizens and state agencies is handled efficiently. Research from the European Institute for Conflict Resolution indicates that such centres improve access to justice and build trust between citizens and the state. In Kazakhstan, establishing such centres could enhance the public's engagement with mediation and ensure that the process is accessible to all, particularly in disputes involving government bodies.

Discussion

Having carried out an analysis of the theoretical foundations and features of the Kazakh and Chinese legislation on the mediation procedure, it is worth proceeding to a discussion of the obtained results based on the positions of other scientists. In particular, W. Gu (2021) also researched the mediation approaches in China. Her opinion is correct concerning the fact that the principles and procedure of mediation in China are based not only on the international legal norms, but are also intertwined with the mediation traditions of Kazakhstan. In this context, it is about the presence of criminal mediation, which is not typical for a number of other countries. Consequently, in both Kazakhstan and China, some criminal disputes can be resolved through the mediation, with the exception of corruption issues and those ones related to the regulation of public affairs. C. Menkel-Meadow (2020) also has an interesting opinion, which he preaches in his study, by emphasizing the characteristic features of the mediator. First of all, he managed to prove the necessity of the mediator role in the process of conflict resolution. It is argued that successful mediation is contingent upon the mediator's adherence to all necessary conditions, as outlined in the results of this work. Any deviation from these foundational principles undermines the entire mediation process and renders it ineffective. This view is supported by the findings, which emphasize that compliance with these conditions is crucial to maintaining the integrity and purpose of mediation.

The position of T.A. Dronzina and G.N. Musabaeva (2021) is rather contradictory, as they prove in their work that mediation is not an effective form of conflict resolution in Kazakhstan. According to the authors' opinion, it is possible to partially agree with it. In particular, due to the fact that the institution of mediation in Kazakhstan is not a new one, it has been operating since 2011, but its share of using is not as high as in other countries, such as China, which has been studied as part of this work. Therefore, it is impossible to indicate the inefficiency of mediation, but it is necessary to agree that this institution needs further development, both in terms of the regulatory framework and the subjective attitude of citizens towards it. Raising public awareness about mediation's benefits and enhancing the regulatory framework are crucial for its growth. Thus, while the authors' concerns are valid, it is important to recognize the potential of mediation as a valuable tool for conflict resolution, provided that efforts are made to improve its implementation and public perception. In turn, C.K. Lee *et al.* (2020) state that other participants should also be included in the mediation procedure. Such a position contradicts the principles established in the Law of the Republic of Kazakhstan No. 401-IV "On Mediation" (2011). The legislation

emphasizes the importance of mediation as a viable conflict resolution mechanism, advocating for its use as a means to promote peaceful settlements. A critical examination of the challenges and potential for improvement within the mediation framework is essential to align practices with the law's intent. The legislative framework for mediation in the People's Republic of China also underscores its significance as an effective conflict resolution mechanism. China's approach incorporates mediation as an integral part of its legal system, encouraging the resolution of disputes through informal channels before resorting to litigation. This emphasis on mediation is reflected in various laws and regulations that promote its utilization across different sectors.

O. Melenko's (2020) argument for expanding mediation into a wider range of public relations, justified by the growing complexity of societal interactions, aligns with the broader development trends observed in both Kazakhstan and China. O. Melenko's (2020) highlights the increasing consciousness of citizens, which, in turn, creates opportunities for mediation to resolve conflicts in areas beyond those traditionally regulated by courts. This is particularly relevant in the Kazakhstani context, where the Law of the Republic of Kazakhstan No. 401-IV (2011) defines a limited scope of mediation. However, while the expansion of mediation presents clear benefits, such as relieving court backlogs and promoting faster resolutions, O. Melenko's (2020) point raises valid concerns about potential abuses, especially in sensitive areas like criminal law.

E.P. Ermakova *et al.* (2020) further elaborate on this issue, arguing that mediation, if not properly regulated, could be misused as a tool to evade legal consequences, particularly in criminal cases. Their work underscores the thin line between mediation serving as a constructive conflict resolution mechanism and being exploited to avoid statutory punishments. This concern is particularly pertinent in China, where people's mediation is often used even in minor criminal cases. In Kazakhstan, where mediation is more formalized, the current legislation could benefit from further safeguards to prevent such abuses (Abdrasulov *et al.*, 2024). This includes strengthening oversight of mediation processes and ensuring that mediation agreements reflect the genuine will of both parties, free from coercion or manipulation.

In light of these concerns, L. Adrian (2021) proposes that mediation should maintain its current scope while gradually expanding into new areas. However, L. Adrian (2021) emphasizes that any expansion must be accompanied by public education campaigns and training programs to ensure that citizens fully understand the benefits of mediation. In Kazakhstan, such initiatives could build on the Government Decree No. 770 (2011), which regulates the training of mediators, by integrating mediation awareness into school curriculums and professional development programs. Similarly, in China, where Confucian principles of harmony underlie much of the mediation process, public education could play a vital role in further embedding mediation into everyday conflict resolution practices.

The fact that the mediators are the specialised persons is subject to discussion. Y.M. Abiyev *et al.* (2020) study this statement in their scientific work, they consider the classification of intermediaries in Kazakhstan and abroad. Thus, indeed, in Kazakhstan there are intermediaries who have received special licenses. However, this should not be identified with the professional activities of persons who acquire knowledge in higher educational institutions in the relevant specialty. It is the factor that is an important feature of mediation, which is an informal nature. Thus, if there is a requirement for the mediator to master special professional skills, the process of conciliation or dispute resolution cannot be interpreted as mediation. This is explained by the fact that conditions are put forward to the mediator, which are mostly subjective and relate to his personality. At the same time, it should be understood that a civil servant or other person with an appropriate education can also be a mediator, however, in the process of mediation, they cannot implement the professional powers granted to them, but they must act as impartial third parties (Ryskaliyev *et al.*, 2019).

Based on the discussion, it can be established that the category of mediation still remains a debatable issue in the legal scientific field. This is mainly due to the constant socio-economic changes and the views of scientists on this issue. However, the author believes that the institution of mediation needs to be developed, which should be implemented by both the public and the state. Of course, this form of conflict resolution will ensure the establishment of relations between the potential conflict parties. In addition, the stress will decrease, which is now a characteristic of the courts. Nevertheless, the institution of mediation needs to be developed to increase the level of self-awareness of citizens. It is important to understand that dispute resolution should be aimed at establishing communication, namely dialogue. Such an approach is necessary so that the perpetrator can fully understand the perniciousness of his actions, by communicating with the victim and analysing his psycho-emotional state. In turn, the victim must achieve the reconciliation and mutual understanding, which is equally important in order to avoid further conflicts or violations, for example, on the basis of vengeance.

Conclusions

The article set out to explore both the theoretical and practical aspects of mediation, particularly in the context of the People's Republic of China (PRC) and Kazakhstan. The aim of the research was to analyse the similarities and differences in the legal frameworks of mediation in these two countries and to understand how these frameworks impact the implementation and effectiveness of mediation as a conflict resolution tool. This objective has been successfully achieved by providing a detailed comparative analysis of the legislation governing mediation in both nations. Throughout the study, the key principles of mediation in the PRC and Kazakhstan were examined. The analysis demonstrated that while both countries emphasize impartiality, voluntariness, and confidentiality as core tenets of mediation, the implementation of these principles varies, reflecting cultural and legal differences. In Kazakhstan, the formal certification and training of mediators is strictly regulated by law, which aligns with Western legal practices. In contrast, China's system includes community-based mediators who may not always require formal certification, which emphasizes cultural trust and societal harmony. Additionally, both countries ensure the enforceability of mediation agreements through their legal systems, but China's approach to integrating mediation into criminal disputes, particularly minor offenses, contrasts with Kazakhstan's focus on civil cases.

The study's findings underscore the importance of legal frameworks in shaping the success of mediation. The

comparison reveals that while the PRC and Kazakhstan have made significant strides in establishing mediation, there is still room for development. In Kazakhstan, further work is needed to enhance public understanding and acceptance of mediation, which remains limited despite a well-established legal structure. The results also show that China's mediation system, deeply rooted in cultural practices, is more accessible but may benefit from further formalization in certain areas. In summary, this research contributes to a deeper understanding of how mediation functions within different legal and cultural contexts. It highlights the need for continued efforts to strengthen the mediation process, particularly in Kazakhstan, where public education and legislative amendments could improve its effectiveness. Future research should focus on exploring the role of mediation in criminal disputes, an area where both countries could benefit from further development. Additionally, the integration of mediation into public and state-citizen conflicts remains an area that requires more thorough exploration to enhance the mediation framework's overall impact.

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Conflict of interest

None.

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Порівняльний аналіз медіації в законодавстві Казахстану та Китайської Народної Республіки

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Анотація. У цьому дослідженні розглянуто зростаючу важливість медіації в правових системах Казахстану та Китайської Народної Республіки, зосереджуючись на необхідності більш ефективних методів вирішення конфліктів в обох країнах. Метою цього дослідження було вивчення особливостей медіації, як це визначено законодавством цих двох країн, підкреслюючи схожість і відмінності в їхніх правових системах. У дослідженні використовувалися різноманітні методи, зокрема порівняльно-правовий метод, формально-юридичний аналіз, метод синтезу та порівняння. Аналіз показав, що і Казахстан, і Китай розробили надійні рамки для медіації, хоча вони значно відрізняються своїми культурними та правовими підходами. У Казахстані процес медіації офіційно оформлений і суворо регламентований, з великим наголосом на сертифікації та професіоналізації медіаторів. Навпаки, система Китаю, що ґрунтується на конфуціанських традиціях, дозволяє використовувати підхід, орієнтований на громаду, із ширшим охопленням, включаючи незначні кримінальні справи. Дослідження показало, що хоча обидві країни цінують медіацію як неконфліктний спосіб вирішення конфлікту, існує потреба в подальшому розвитку законодавства, особливо в Казахстані, щоб покращити розуміння громадськістю та запобігти потенційним зловживанням системою медіації. Крім того, дослідження підкреслює роль громадської освіти та важливість інтеграції медіації в процеси вирішення спорів між державою та громадянином. Практична цінність цього дослідження полягає в його потенційному використанні політиками та юридичними фахівцями в Казахстані та Китаї, оскільки воно дає змогу зрозуміти шляхи вдосконалення систем медіації та забезпечення їх ефективності у вирішенні сучасних суспільних конфліктів

Ключові слова: конфлікт; закони; посередник; конфуціанські норми; вирішення спорів

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Analysis of the admissibility of establishing the circumstances of intentional deprivation of life of the testator by the heir in a civil case through the lens of the presumption of innocence, the practice of the European Court of Human Rights, and the social consequences of such a court decision

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Abstract. The relevance of the subject under study is conditioned by the fact that in Ukrainian judicial practice, both judges and experts who are members of the Scientific Advisory Council of the Supreme Court have differed in their

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opinions regarding the possibility of disqualifying an heir from inheritance based on the requirements of Article 1224, Part 1 of the Civil Code of Ukraine. The purpose of this study was to clarify such general legal issues as the applicability and extension of the presumption of innocence in civil proceedings, and protection against violation of this principle in the resolution of certain civil law disputes. The methods of analysis, synthesis, comparison, generalisation, and case study were employed to examine the decisions of national courts of general jurisdiction of various instances, the Constitutional Court of Ukraine, and the European Court of Human Rights. It was stated that the deceased heir – the accused, who inflicted serious bodily injuries to his father – the testator, as a result of which the latter died, cannot be considered as having no right to inheritance, based on the analysis of the content of Article 1224, Part 1 of the Civil Code of Ukraine. The study proved that a form of condemnation by public authorities and posthumous conviction outside the scope of due process of law would be establishment by a court in a civil case of the circumstances of intentional deprivation of the testator's life by an heir, where the former died at the time of the consideration of a civil dispute. It is unacceptable for a civil court to rely on the circumstances of the indictment and the grounds for closing criminal proceedings against a deceased defendant – an heir. Only a guilty verdict establishes a person's guilt. If it is referred to in other procedural decisions, it is probable that the person will be socially stigmatised. A civil court may not assume the powers of a court that are exercised only in criminal proceedings when resolving a dispute over inheritance. The practical value of the study lies in the development of arguments for the court and participants in the trial

Keywords: dispute over inheritance; court verdict of guilty; closure of criminal proceedings; Article 6 of the European Convention on Human Rights; right to a fair trial; social harmony; social stigma

Introduction

The relevance of the problem lies in the fact that different branches of law have developed their respective approaches to solving certain issues. Accordingly, the civil and criminal procedural laws and their codes mandate the procedure that is specific to them. In the case at hand, in resolving an inheritance dispute, the civil court was faced with the issue of finding legal mechanisms to answer questions relating to the presumption of innocence. It is not only the basis of criminal proceedings, but also a component of the right to a fair trial under the European Convention on Human Rights (1950). As of May 2024, there is no final decision of the cassation instance, nor is there a corresponding legal position of the Grand Chamber of the Supreme Court, which is necessary for the unity of judicial practice.

Researchers such as O. Kaluzhna and M. Shevchuk (2022) construct a theory, supported by facts from judicial practice, including the European Court of Human Rights (ECHR), on how to protect those who conduct trials from unfairness – judges. The recommendations of these researchers provide valuable insights into how the death of a person can generally affect the fairness of criminal and civil trials and how to prevent judicial bias and violations of the right to a fair trial, which includes the presumption of innocence. The presumption of innocence as a component of a fair trial is also mentioned by the authors of basic textbooks on criminal procedure in Ukraine, specifically, V. Kivalov and M.S. Tsutskiridze (2023). But admittedly, they consider this principle of criminal proceedings to be constitutional and without regard to civil aspects, including exclusion from the right to inheritance.

More specialised studies by researchers such as O. Drozdov *et al.* (2021) shed light on how the proper quality of investigation can ensure that there is no doubt that a person has or has not committed a crime, and therefore, that they are guilty or acquitted, and how to interpret the doubts that remain. In unison with these approaches, V.V. Vapniarchuk *et al.* (2020) developed an entire concept of the purpose of proof in criminal proceedings. Such a procedural "beacon" for each subject should be the truth, and without properly conducted criminal proceedings, its establishment is impossible, including by "transferring" these powers to a court in a civil case. V.I. Borysova *et al.* (2019) argue that any reform of the judicial process should be based on the need to improve human rights and strengthen the effectiveness of the components of the presumption of innocence. Without such measures, the justice function cannot be more effective. D.L. Abbasova (2024) examined the presumption of innocence from the standpoint of ethical principles. This researcher draws a solid conclusion that the institution of preventive measures and the institution of punishment are not properly placed on the same scale. Considering this, it is inadmissible to refer to a person as "guilty" in court decisions on the application of preventive measures. Such decisions should refer to a "state of suspicion". Only a court verdict establishes a person's guilt; otherwise, when it comes to guilt in other procedural decisions, social stigma is highly probable. That is, the public perception of a person as having committed a criminal offence. While this problem is only being discussed at the national level, albeit for a long time, in American and other academic schools there are results of comprehensive psychological, sociological, and criminological studies based on multiple empirical findings on the depth of damage caused by criminal justice policies due to stigmatising attitudes towards those who have been prosecuted. J.R. Silver *et al.* (2024) summarise proven ways to move away from "punitive justice" and thus reduce the prevalence of social stigma. K.E. Moore *et al.* (2024) conclude that stigma does not end with criminal prosecution, and in fact, it can undermine a person's mental health. E.R. McWilliams and B.A. Hunter (2021), analysing the forms of stigma, sharpen the perception that each of them destroys the quality of human life.

Civil rights researchers also spoke out on the declared issues. There are two scientific conclusions, specifically, by O. Pechenyi (2022) and Yu. Zaika (2022), where in the former case, the researcher believes that the presumption of innocence does not apply to civil proceedings. Another well-known researcher, Yu. Zaika (2022) argues that only a guilty verdict, which confirms the guilt of a person in committing a crime, can be the starting point for further disinheritance by a civil court.

None of the above-mentioned researchers has formulated an answer to the question whether it is permissible to establish in a civil case the circumstances of intentional

deprivation of life of the testator by the heir through the lens of the presumption of innocence. Therefore, the purpose of this study was to clarify such general issues as the applicability and extension of the presumption of innocence in civil proceedings; protection against violation of this constitutional principle in criminal proceedings when deciding on the issue of disinheritance of an heir based on the requirements of Article 1224, Part 1 of the Civil Code of Ukraine (2003); and court decisions in unison with the public perception of fair justice.

This study aimed to establish what course of action a court should take when, in resolving a civil dispute, it is also required to answer questions relating to compliance with the principles of criminal proceedings. How, without violating the right to a fair trial under the ECHR and using criminal and criminal procedural arguments, can a civil court decide, within the framework of the already formed condemnatory public opinion, on the situation of the probable (but not stated by the court verdict that has entered into force) deprivation of life of the testator by his heir.

Literature review

The list of studied aspects of the presumption of innocence given in the introduction is not complete, since a considerable body of research was also carried out under the previous Criminal Procedural Code of Ukraine (1960). Thus, H.I. Yudkivska (2008) defended her thesis, wherein she studied in depth not only the effect of the principle of criminal proceedings under consideration at the national level, but also the presumption of innocence in the practice of the European Court of Human Rights. The researcher provided recommendations on how to avoid the identified violations in practice, such as the statement of a person's guilt during a pre-trial investigation and without a court verdict. A series of scientific studies by V.T. Nor (2011a; 2011b) are devoted to the practice of the ECHR in relation to violations of this component of the right to a fair trial. Violations analogous to the above-mentioned ones were also noted. In continuation of his scientific research and following the beliefs and arguments to substantiate the scrupulous observance of the presumption of innocence, the aforementioned O. Kaluzhna and M. Shevchuk (2022) are already conducting their scientific research. These researchers justifiably criticise judges for violating the presumption of innocence. O. Kaluzhna and M. Shevchuk (2022) build an algorithm for judges to ensure the fairness of the trial and its impact on public perceptions of justice and fairness. Another representative of the Lviv Law School, Kh.R. Sliusarchuk (2017), argues that among the standards of proof, such as "reasonable suspicion" or "reasonable suspicion" do not yet establish the guilt of a person. This refers only to "standards of persuasion". Only a court verdict in which a person has been found guilty and the time limits for appealing against it have expired is the legal and factual basis for such a statement. In the same spirit, A.S. Stepanenko (2017) discussed the connection between the presumption of innocence and the standard of proof "beyond reasonable doubt". V.V. Kryzhanivskyi (2007) considered such an aspect of the presumption of innocence as the prohibition to call the accused a criminal as part of the two-component "protective function". The research-to-practice advice of T. Slutska (2018; 2019) is aimed at how not to violate the presumption of innocence in the situation of release of persons from serving a sentence with probation. The researcher also reviewed the ECHR's position on this principle of criminal proceedings and unequivocally states that guilt cannot be summarised without a court verdict. The task of N. Syza and O. Matokhniuk (2018) was to understand the content of the principle under consideration and, as a result, to formulate substantive recommendations for improving the Ukrainian criminal procedural legislation. These researchers quite fairly concluded that content is not only a theoretical category since high-quality practical activity of a law enforcement officer implies mastering doctrinal approaches to the components and aspects of such a procedural guarantee as the presumption of innocence. As an author's advice, in case of violation of the presumption of innocence by officials, these researchers suggest that the officials should publicly apologise to the person concerned. In addition, N. Syza and O. Matokhniuk (2018) formulated a mechanism for refuting information when certain persons have made unreasonable statements about the guilt of a person. Such stigmatisation is unacceptable for civil society in a state governed by the rule of law. Therefore, this is also the case of the negative social consequences of unsuccessful procedural decisions in these civil cases when it comes to disinheritance as a result of the intentional deprivation of life of the testator by the heir, which was not confirmed in the court's guilty verdict.

Materials and methods

The study employed the systematic analysis to identify the components of the presumption of innocence which allow denying the admissibility of establishing the circumstances of intentional deprivation of the testator's life by the heir in a civil case. The deductive method was used to investigate the use of Item 5 of Part 1 of Article 284 of the Criminal Procedural Code of Ukraine (2012) as a ground for closing the proceedings by the court. The method of induction helped to formulate the thesis on stigmatisation as a consequence of unsuccessful procedural decisions in the circumstances of a civil case on deprivation of the right to inheritance.

To substantiate the conclusion based on the thesis that the deceased heir, the accused, inflicted serious bodily harm on his father, the testator, as a result of which the latter died, used the formal logical method. The systematic analysis helped to summarise the scientific positions and practice of the ECHR (by studying the following decisions: Cleve v. Germany (2015), Pasquini v. San Marino (no. 2) (2020), Farzaliyev v. Azerbaijan" (2020), "G.I.E.M. S.R.L. and Others v. Italy" (2018); the materials of the manual (Council of Europe, ECHR, 2020) on Article 6 of the European Convention on Human Rights (1950) were studied. This method also helped to formulate the relevant arguments to form the belief that there is a possibility of violations already identified by the ECHR.

The case study approach, methods of comparison, and generalisation were used to properly process the decisions of national courts available in the Unified State Register of Court Decisions. Thus, the most recent case of the Shepetivka City District Court of Khmelnytskyi No. 688/2840/22 (2023) on this issue was heard in the first instance. Subsequently, the judgement dated 16 March 2023 was appealed, and a cassation appeal was filed with the Cassation Civil Cour of the Supreme Court (CCC SC) against the judgement dated 8 June 2023 (Judgement of the Khmelnytsky Appeal Court in Case No. 688/2840/22, 2023). The judges of the CCC SC had different positions on the resolution of the dilemmas

under consideration. The chairman appealed to the members of the Scientific Advisory Council of the Supreme Court (SAC SC) to obtain scientific opinions (Judgement of the Panel of Judges of the First Judicial Chamber..., 2024). A need for a scientific solution to the following two legal dilemmas occurred, namely: 1) what to do with the enforcement of Article 1224 of the Civil Code of Ukraine (2003), and 2) how will the presumption of innocence "react" if a court in a civil case takes up the task of clarifying circumstances that were not established and confirmed by a guilty verdict in criminal proceedings, since it was never delivered at all? Scientific conclusions were prepared in the above and comparable proceedings (Zaika, 2022; Scientific conclusion by Associate Professor O. Pechenyi..., 2022; Drozdov, 2024).

Comparing and summarising the available legal positions of the Supreme Court, it was established that on 13 March 2024, the panel of judges of the First Judicial Chamber of the CCC SC, considering that an exceptional legal problem arose in the case regarding the resolution of both issues cited above (Decision of the Grand Chamber of the Supreme Court…, 2024), referred case No. 688/2840/22 to the Grand Chamber of the Supreme Court by its decision (Decision of the panel of judges of the First Judicial Chamber..., 2024). On 3 April 2024, the Grand Chamber returned the same case to the panel of judges of the First Judicial Chamber of the CCC SC for consideration because "the reasons stated in the judgement dated 13 March 2024 do not indicate the existence of an exceptional legal problem (Item 62) (2024) (Decision of the Grand Chamber of the Supreme Court..., 2024). On 29 May 2024, the First Trial Chamber of the CCC SC re-scheduled the hearing by the joint chamber (Judgement of the Supreme Court of Ukraine in Case No. 688/2840/22, 2024b).

Results and discussion

To analyse the problem, the study employed a scientific approach based on the analysis of constitutional, criminal procedural, civil, and conventional provisions – "*In dubio pro persona*" or "*in dubio pro* homine" (in substantial doubt – in favour of the person). Overall, the approach of scientific interpretation has been chosen, which has already been described from different perspectives by Y. Yevgrafova (2010) and O.V. Kaplina (2012). V. Lemak and A. Badyda (2019) have already emphasised that this "interpretation" should not be considered as an avoidance of the law. The point is that the court must interpret how to act in a situation where certain legal provisions are applied, when there is a conflict or gap. To clarify the meaning of the above articles of the Civil Code of Ukraine (2003) and the Criminal Procedural Code of Ukraine (2012), the court in the situation described above should specify how to apply them. The relevant "rule" should guide how to do this correctly: for the benefit of the individual. The Supreme Court also chose this "method". In January, the Judgement of the Supreme Court of Ukraine in Case No. 688/2840/22 (2024b) once again emphasised this (Items 47-49 of the judgement). This is how further arguments will be formed.

The ruling to close criminal proceedings based on Item 5 of Part 1 of Article 284 of the Criminal Procedural Code of Ukraine (2012) does not refute the presumption of innocence of a person and is not a ground for stigmatisation. A crime committed by an heir against the testator or other heirs is referred to in Part 1 of Article 1224 of the Civil Code of Ukraine (2003), since intentional deprivation of life, within the meaning of the Criminal Code of Ukraine (2001), is murder, which is criminalised under Article 115 of the Criminal Code of Ukraine (2001). This provision also refers to attempted murder (which is divided into completed and unfinished), which constitutes an unfinished criminal offence.

In turn, the actions of the deceased heir were not classified as murder (a crime against human life), but under Part 2 of Article 121 of the Criminal Code of Ukraine (2001) as grievous bodily harm (a crime against human health), which resulted in the death of the father, the testator, in hospital. The pre-trial investigation in this criminal proceeding resulted in the drafting of an indictment, its approval by the prosecutor and submission for trial. On the last day of October 2019, the court of first instance made a procedural decision on the fate of the criminal proceedings. The heir was previously charged under Part 2 of Article 121 of the Criminal Code of Ukraine (2001). However, due to the death of the accused heir, the criminal proceedings were closed. The court decision does not mention any appeals from his relatives regarding his rehabilitation. This fact is emphasised in the Decision of the Shepetivka City District Court of Khmelnytskyi Region in Case No. 688/2840/22 (2023), which was adopted by the first instance upon consideration of a civil case on disinheritance.

A literal interpretation of the provisions of Part 1 of Article 1224 of the Civil Code of Ukraine (2003) suggests that persons who have committed a crime such as intentional murder – Article 115 of the Criminal Code of Ukraine (2001) – or attempted murder – Articles 15 and 115 of the Criminal Code of Ukraine (2001) – are not entitled to inheritance. The commission of a crime such as causing grievous bodily harm to a person, which resulted in the death of the victim, due to a different focus of the criminal intent – to "harm" the health of a person, rather than to deprive them of life – is not covered by the content of Part 1 of Article 1224 of the Civil Code of Ukraine (2003). Accordingly, the deceased heir – the accused, who inflicted grievous bodily harm on his father – the testator, as a result of which the latter died, cannot be considered as having no right to inheritance, based on the analysis of the content of Part 1 of Article 1224 of the Civil Code of Ukraine (2003). Thus, the qualification of the committed unlawful act is decisive, which, logically and among other things, should be stated and confirmed in the court's guilty verdict based on the court's review of the totality of evidence.

To understand the depth of the issue, it is necessary to consider such components as the characteristics of the specified grounds (Item 5, Part 1, Article 284 of the Criminal Procedural Code of Ukraine) for closing criminal proceedings as a final procedural decision and its consequences; it is necessary to consider the issue of continuation of the trial despite the death of the accused and whether the presumption of innocence is "consistent" with such a final procedural decision to close based on Item 5, Part 1, Article 284 of the Criminal Procedural Code of Ukraine (2012).

During the period of the Criminal Procedural Code of Ukraine (1960), the conventional approach to criminal procedural doctrine was to divide all grounds for closing a criminal case into two groups – rehabilitating and non-rehabilitating (Goncharenko *et al.*, 2012). However, the current Criminal Procedural Code of Ukraine (2012) has forced

adjustments to these established doctrinal views. The impact of these changes on the classification of grounds for closing criminal proceedings was one of the first to be clarified by A.O. Lyash and S.M. Blahodyr (2013) when the new criminal procedural legislation had only entered into force. Since 2012, the national legislator no longer accepts the approach that the grounds for closing criminal proceedings are also grounds for refusing to initiate criminal proceedings. Moreover, the very institution of refusal to initiate criminal proceedings under the current Criminal Procedural Code of Ukraine (2012) is not prescribed, while many researchers even speak of its inadmissibility. However, there are researchers who enter the debate, providing strong counterarguments. Thus, Y.P. Alenin (2012) argues that the law should mandate at least some procedural possibility to verify information before it is registered in the Unified Register of Pre-trial Investigations. The researcher advises on how to avoid unreasonable commencement of pre-trial investigation by introducing relevant changes and amendments to the Criminal Procedural Code of Ukraine (2012). The conventional form of refusal to initiate criminal proceedings under the Criminal Procedural Code of Ukraine (1960) should not be mentioned, but its modernised version should be regulated. Such a balanced scientific approach, based on relevant empirical data on the state of pre-trial investigation for 2012-2024, should be fully supported.

Thus, there are more grounds for making a procedural decision on closure, and their wording is partly more extensive and not always correct for understanding. I.V. Basysta *et al.* (2022) noted the validity of the opinion of V.M. Tertyshnyk (2017) regarding the division of all grounds for closing criminal proceedings into four groups, namely, the allocation of such grounds as rehabilitating, post-rehabilitating, non-rehabilitating, and formal procedural. Item 5, Part 1, Article 284 of the Criminal Procedural Code of Ukraine (2012) refers to those "that entail the closure of criminal proceedings due to the existence of decisions on a certain fact that have entered into legal force" (Tertyshnyk, 2017), i.e., it is a formal procedural ground. Notably, "these facts that have become legally binding" must be documented (Basysta *et al.*, 2022). However, as of mid-2024, there is no unity in investigative and judicial practice regarding the document used to confirm the fact of a person's death (Tumanyants, 2000). Therewith, Kh.M. Lepka (2014), with proper argumentation, recommends considering such documents the following: "a death certificate issued according to the procedure established by law or an act record (extract), as well as a court decision declaring a person dead, which has entered into force".

The next aspect that needs to be clarified is the continuation of the trial in circumstances where the closure of criminal proceedings on this formal procedural ground is not allowed. Even though Item 5, Part 1, Article 284 of the Criminal Procedural Code of Ukraine (2012) contains a legislative instruction to continue the proceedings for the rehabilitation of the deceased, the law enforcement agencies do not have reliable standardised guidelines on what actions and documents should be used to confirm the need to continue the proceedings for further rehabilitation and who should initiate such proceedings (Basysta *et al.*, 2022). Clearly, as Kh.M. Lepka (2014) correctly states, some of the provisions of the Criminal Procedural Code of Ukraine (2012) should have referred to the filing of a relevant petition or appeal by "close relatives of the deceased, as well as the defence counsel". Such an appeal or petition should contain a description of the circumstances that may indicate the existence of grounds for the rehabilitation of the deceased. In response to them, the court's activities should be focused on conducting the relevant checks (Basysta *et al.*, 2022). However, such research initiatives have not yet been successful, even though the draft laws on the rehabilitation of the deceased in criminal proceedings have been available since 2014 (Draft Law of Ukraine No. 4504, 2014).

Another prominent aspect is the presumption of innocence and the closure of criminal proceedings based on Item 5, Part 1, Article 284 of the Criminal Procedural Code of Ukraine (2012). Overall, the logic underlying the effect of the presumption of innocence on those criminal proceedings in which procedural decisions to close them (including those that "reflect the opinion of the person's guilt" without being a guilty verdict (Nor, 2011a)) were made under the rules of national criminal procedural law (Nor, 2011b). Thus, as V.T. Nor (2011b) correctly concludes, when it comes to non-rehabilitative grounds for closing criminal proceedings, in such a case, although the court's decision "does not state a conclusion of innocence, but rather assumes it, the presumption of innocence applies to such a defendant".

In the case under consideration, it was stated that the grounds for closing criminal proceedings, which are mandated in Item 5, Part 1, Article 284 of the Criminal Procedural Code of Ukraine (2012), are not rehabilitative. There is no information that the relatives of the deceased defendant applied to the court to continue the proceedings to rehabilitate the deceased. As a result, the deceased heir stayed in the criminal proceedings initiated against him under Part 2, Article 121 of the Criminal Code of Ukraine (2001) in the status of an accused at the time of the final decision to close the criminal proceedings under Item 5, Part 1, Article 284 of the Criminal Procedural Code of Ukraine (2012). In other words, the deceased accused heir did not acquire the procedural status of a convicted or acquitted person, depending on the type of sentence and the fact that it entered into force (Basysta *et al.*, 2022). Because only in such a final court decision as a guilty verdict that has entered into force, the court finds a person guilty, and this already entails the relevant legal consequences for that person. In this way, society can ensure legal stability.

Thus, as stated in the Judgement of the Constitutional Court (CC) of Ukraine No. 1-r/2019 (2019), the guilt of the deceased defendant was not established by a court verdict that entered into force, and therefore, by virtue of the principle of presumption of innocence, "a person is presumed innocent of committing a criminal offence" according to Parts 1 and 4, Article 17 of the Criminal Procedural Code of Ukraine (2012). It is also worth noting the mandatory requirement "*in dubio pro reo*" – when assessing the evidence, all doubts are "in favour of her innocence", as also emphasised by the CC of Ukraine in its decision (Judgement of the Constitutional Court of Ukraine No. 1-r/2019, 2019). The provisions of Article 17 of the Criminal Procedural Code of Ukraine (2012) are an implementation of the constitutional requirement, specifically Article 62 of the Constitution of Ukraine (1996). The existing practice of the CC regarding the interpretation of the principle of presumption of innocence and its application suggests that, like the ECHR, the CC considers the presumption of innocence as a mandatory

component of a fair trial (Decision of the Constitutional Court of Ukraine No. 3-r(II)/2022, 2022). The same fundamental provision permeates the entire text of the EU Directive 2016/343 (2016). The Constitutional Court also states that the presumption of innocence applies at all stages of criminal proceedings, even when they have already been exhausted, and is not limited to them.

Part 5 of Article 17 of the Criminal Procedural Code of Ukraine (2012) also mandates that "treatment of a person whose guilt in committing a criminal offence has not been established by a court verdict that has entered into force shall be consistent with the treatment of an innocent person". In unison with this, the CC in its decision of 2022 clarified that regardless of the grounds for closing criminal proceedings against a person, after such a procedural decision, the public authorities cannot perceive this person as having not committed a crime (Decision of the Constitutional Court of Ukraine No. 3-r(II)/2022, 2022).

In turn, Article 6 § 2 of the European Convention on Human Rights (1950) states that "everyone charged with a criminal offence shall be presumed innocent until proven guilty according to law". Therewith, the European Convention on Human Rights (1950) does not object to presumptions of fact and law, "...for the right of everyone charged in a criminal case to be presumed innocent and of the prosecution to bear the burden of proving all allegations of guilt is not absolute" (Item 355) (Council of Europe, ECHR, 2020).

Accordingly, the ECHR case-law on criminal proceedings contained in the relevant manual on Article 6 of the ECHR (Council of Europe, ECHR, 2020), systematised and analysed, does not contain a case analogous to the situation under consideration. Although pp. 68-69 of the Ukrainian translation of the said manual on Article 6 of the ECHR (Council of Europe, ECHR, 2020), namely, Item 326 contains a list of situations and court decisions where the ECHR "examined the application of Article 6 § 2 to judgements rendered after the closure of criminal proceedings, specifically, Allen v. the United Kingdom (2013)" (Council of Europe, ECHR, 2020). The guidelines on "subsequent proceedings" describe the prohibition of treating a person in respect of whom proceedings have been closed as guilty of offences for which they were previously charged (Council of Europe, ECHR, 2020). Notably, Item 324 of the manual quoted above is formulated simultaneously and analogously to the situation with the acquittal of a person in Allen v. the United Kingdom (Council of Europe, ECHR, 2020), i.e., procedural decisions on closure and acquittal are put on the same level. It should also be remembered that if the applicant was not tried and convicted posthumously (§ 284) (Judgement of the European Court of Human Rights in Cases Nos. 32631/09 and 53799/12, 2019), the presumption of innocence is violated (Item 316**)** (Council of Europe, ECHR, 2020). With all of the above, one should also be aware of the conceptual impact of these judgements, and admittedly all ECHR judgements overall, on national criminal procedure legislation (Kaplina & Tumaniants, 2021) and court practice. The national state of affairs in this area is an illustration of how the legislator has implemented and continues to implement (or acts contrary to) the ECHR standards.

Thus, considering the above interpretations of the CC, constitutional and criminal procedural provisions that are part of the presumption of innocence and ensuring proof of guilt, as well as the ECHR practices, it is clear that by issuing a ruling to close criminal proceedings due to the death of a person, in our case, a person who was in the status of an accused and died, the court does not resolve the charges on the merits. The court also did not refute the presumption of innocence. The presumption of innocence can only be rebutted by a court verdict of guilty, and then only if it enters into force. For the ECHR practice, this legal presumption is helpful in situations where the court needs to decide on an unknown fact. For Ukrainian courts in criminal proceedings, the situation is analogous. That is why there is a system of proving the guilt of the accused. It is built by the prosecution based on the totality of evidence collected and verified following the procedure established by the Criminal Procedural Code of Ukraine (2012). The court also directly receives, verifies, and evaluates such evidence. And only when there are indisputable grounds to hold the accused criminally liable for this fact, already known and proven by irrefutable evidence, the court issues a guilty verdict. In this way, the presumption of innocence is refuted. If the presumption of innocence is not rebutted in court proceedings, it becomes "*praesumptio iuris et de iure*". In other words, the accused is deemed not to have committed a crime and is not subject to criminal liability, i.e., they "fall out" of the status of an accused. As a result, in any trial, those components that have been assessed by the court in favour of a person's innocence cannot continue to stigmatise such a person, and therefore they are presumed innocent (Judgement of the European Court of Human Rights in Cases Nos. 32483/19 and 35049/19, 2024).

Thus, the possibility of stigmatising such an accused in any way is unacceptable. The mere raising of the issue of the possibility of depriving an heir of the right to inheritance based on being found guilty of intentionally taking the life of the testator, without a court conviction, is the beginning of stigmatisation. Moreover, the current Criminal Procedural Code of Ukraine (2012) not only requires a court verdict against such an heir, but also that this verdict must enter into force. An heir who was in the procedural status of an accused in criminal proceedings and died cannot be perceived by society as a criminal in the circumstances of the situation under consideration. We cannot and must not continue the shameful tradition of "punitive justice". The existing amount of social stigma should be reduced, and court decisions should be fair, as should any court proceedings in which an impartial attitude towards the individual is dominant. All this, in its positive totality, will contribute to the growth of public trust in the judicial system, and as a result, will create a state of social harmony and reduce deviations.

Establishing the circumstances of a criminal offence in a civil case, and as a result, in a court decision, and assessing them would be a violation of the European Convention on Human Rights (1950). Civil inheritance cases are not complicated in themselves, but the issue of atypical inheritance situations is already a challenge for both researchers who thoroughly advise on how to act in different scenarios (Diakovych *et al.*, 2020) and judges. Overall, the issues declared in this study are covered by the general approach described by V.V. Vapniarchuk *et al.* (2019) regarding the inviolability of private property rights and protection against encroachments on property, and these issues are especially acute when the property owner died.

A. Goncharova *et al.* (2022) and M.O. Mykhayliv (2023) thoroughly and meaningfully covered the general principles

of adaptation of civil law in the field of inheritance to the law of the European Union and how inheritance is ensured under the law of the European Union. Thus, based on their beliefs, let us ask ourselves how to establish inconsistencies in our reality. Specifically, when a court in a civil case tries to take over the powers of a court in criminal proceedings.

Considering all the above and answering this question, it is necessary, first of all, to come to the understanding that the court in a civil case cannot take over the powers inherent in the court and the prosecutor during the criminal proceedings. The presumption of innocence of a person, among other things, also implies that the burden of proving the person's guilt rests with the state, represented by its authorised bodies. However, different principles apply in civil proceedings. V. Vapniarchuk *et al.* (2020) and O. Drozdov *et al.* (2021) have already noted that neither the truth can be established based on objectively proven facts nor the proper standard of proof, which is different in criminal proceedings, can be ensured by a court in a civil case. In addition, the only state body in this civil case is the court, which does not and cannot under any circumstances exercise its uncharacteristic prosecutorial function of maintaining the prosecution (Basysta *et al.*, 2023).

The presumption of innocence is not only a mandatory element of the constitutional right to judicial defence, without which a fair trial is impossible, but also an important constitutional guarantee that requires a fair trial and effective judicial defence. This necessitates the need to ensure that a person can express their opinion regarding their innocence and prove this position in court, otherwise the basic principles of judicial proceedings, namely those set out in Part 2 of Article 129 of the Constitution of Ukraine (1996) regarding equality (Item 1) and competition (Item 3), will be violated. It is clear that in the above civil case it will be impossible to follow the quoted principles of judicial proceedings, as well as to ensure the above guarantees if the civil court undertakes to clarify the circumstances that were not established and confirmed by the guilty verdict in the criminal proceedings, since it was not delivered at all.

Within the framework of the existing regulatory model embodied in Part 1 of Article 1224 of the Civil Code of Ukraine (2003) and in the situation when a civil court undertakes to clarify circumstances that were not established and confirmed by a guilty verdict in criminal proceedings, there will be violations already known from the ECHR practice identified by this court. This is a form of condemnation by public authorities and posthumous conviction outside the framework of due process. Such violations of the European Convention on Human Rights (1950) have already been established by the ECHR as a violation of its Article 6 § 2 (Judgement of the European Court of Human Rights in Cases Nos. 32631/09 and 53799/12, 2019).

Thus, it is unacceptable that the violations of Article 6 § 2 of the European Convention on Human Rights (1950), which have been repeatedly stated by the ECHR, will occur again in national court practice. And this is quite predictable if the CCC SC resorts to establishing in a civil case, and as a result of such consideration – in a court decision, the circumstances of intentional deprivation of life of the testator in the above procedural situation.

Conclusions

Society is entitled to expect justice from the court and its decisions. Achieving this result is the task of the judiciary and a guarantee of social harmony. The legislative division of courts into those that conduct civil, criminal, administrative, and commercial proceedings is not baseless. The system for collecting, verifying, and assessing facts in these proceedings is not uniform, and different procedural codes regulate and enforce it. Derogations are unacceptable. Thus, in the situation under consideration, according to the rules of criminal proceedings, the accused son was prosecuted for intentionally taking his father's life. The death of the son (heir), who was in the criminal procedural status of the accused, led to the closure of the criminal proceedings. As a result of severe bodily injuries inflicted on him by his son, the father, who was the testator, died. Thus, both the heir and the testator had already died at the time of the court hearing of the dispute over disinheritance. Based on the totality of the investigated circumstances, it was proved that the deceased heir – the accused, who inflicted grievous bodily injuries to his father – the testator, as a result of which the latter died, cannot be considered as having no right to inheritance, based on the analysis of the content of Part 1 of Article 1224 of the Civil Code of Ukraine. First of all, it follows from the analysis of the content of the provision that the qualification of the committed unlawful act as murder or attempted murder is decisive, which is not the case in the situation under consideration here; secondly, the presumption of innocence does not cease to apply to such an accused; thirdly, since the guilt of the deceased accused was not established by a court verdict that entered into force, and therefore, by virtue of the principle of the presumption of innocence, the person is considered innocent of committing a criminal offence.

Based on the analysis and synthesis of criminal procedural provisions, it is stated states that by making a procedural decision to close criminal proceedings due to the death of a person, in the case under consideration – a person who was in the status of an accused and died, the court does not resolve the charges on the merits. In addition, the court does not refute the presumption of innocence by such a procedural decision, since it can only be refuted by a court verdict that has entered into force.

If a civil court takes up the task of clarifying circumstances that were not established and confirmed by a criminal conviction, there will be violations of Article 6 § 2 of the European Convention on Human Rights, which are already known from the ECHR practices. When considering the dispute on disinheritance described above, the court is not entitled to rely on the circumstances of the indictment and the grounds for closing the criminal proceedings against him (the heir who was accused of causing grievous bodily harm that resulted in the death of the testator) under Item 5, Part 1, Article 284 of the current Criminal Procedural Code of Ukraine. Such "assumption" of the powers by a civil court, which are exercised only in criminal proceedings, is not allowed when resolving a dispute over inheritance. It was stated that even raising the issue of the possibility of depriving an heir of the right to inheritance based on being found guilty of intentional deprivation of the testator's life, without a court conviction, is the beginning of stigmatisation of a person.

Prospects for further research into the issue are to develop an algorithm of actions for judges in analogous situations where violations of the European Convention on Human Rights and stigmatisation of a person due to the criminal orientation of criminal justice are clear and predictable.

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Conflict of interest

The authors of this study declare no conflict of interest.

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Аналіз допустимості встановлення у цивільній справі обставин умисного позбавлення життя спадкодавця спадкоємцем крізь призму презумпції невинуватості, практику Європейського суду з прав людини та соціальні наслідки такого судового рішення

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Анотація. Актуальність тематики обумовлена тим фактом, що в українській судовій практиці як судді, так і фахівці які входять до складу Науково-консультативної ради при Верховному Суді розійшлися у своїх поглядах щодо можливості усунення від права на спадкування спадкоємця на підставі вимог частини 1 статті 1224 Цивільного кодексу України. Метою цієї публікації було з'ясування таких загальних правових питань, як: застосовність та поширення презумпції невинуватості у перебігу цивільних проваджень, убезпечення від порушення цієї засади при вирішенні окремих цивільно-правових спорів. Методи аналізу, синтезу та порівняння, узагальнення та case study стали у нагоді при дослідженні рішень національних судів загальної юрисдикції різних інстанцій, Конституційного суду України та Європейського суду з прав людини. Констатовано, що померлого спадкоємця – обвинуваченого, який наніс тяжкі тілесні ушкодження своєму батьку – спадкодавцю, внаслідок яких останній помер, не можна вважати таким, що не має права на спадкування, виходячи із аналізу змісту частини 1 статті 1224 Цивільного кодексу України. Доведено, що формою осуду від публічної влади та засудженням посмертно поза межами належної правової процедури буде встановлення судом у цивільній справі обставин умисного позбавлення життя спадкодавця спадкоємцем, померлим на час розгляду цивільного спору. Для цивільного суду неприпустимо виходити з обставин обвинувального акту та підстав закриття кримінального провадження щодо померлого обвинуваченого – спадкоємця. Лише обвинувальним вироком суду констатується винуватість особи. Якщо про неї йтиметься у інших процесуальних рішеннях, то цілком ймовірна соціальна

стигматизація особи. Взяття на себе цивільним судом при вирішенні спору про спадкування повноважень суду, які реалізовуються лише у кримінальному провадженні, не допускається. Практична цінність роботи полягає у напрацюванні аргументів для суду та учасників судового розгляду

Ключові слова: спір про спадкування; обвинувальний вирок суду; закриття кримінального провадження; стаття 6 Європейської конвенції прав людини; право на справедливий суд; соціальна злагода; соціальна стигматизація

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Modern environmental, economic, and legal challenges of tourism enterprises

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Abstract. Choosing the best strategy for the functioning of a tourism enterprise is a considerable factor that affects its safety and development. Such choices depend on a considerable number of variables, including environmental, economic, and legal challenges, which are exacerbated by the hyper-dynamic environment. The purpose of this study was to develop a methodical approach to evaluating the strategies of functioning of a tourism enterprise. The key research methods were the expert analysis method, which helped to determine the impact of certain challenges, and the BOCR method, which formed the basis for modelling. The study created a model for evaluating the proposed two variants for the strategy of functioning of a tourism enterprise according to the four BOCR criteria: positive effects, costs, opportunities, and risks of environmental, economic, and legal nature. Thus, it was possible to create a basis for building an information framework for the development and implementation of an optimised strategy that will satisfy all the environmental, economic, and legal needs of the modern tourism industry. It was found that martial law in Ukraine leads to an increase in the dynamism of the external environment, wherein an adaptive approach allows such open socio-economic systems as modern tourism enterprises to function safely. The study found that the best strategy for tourism enterprises as of 2024 is a dynamic adaptive one, which involves dynamic actions and allocation of own resources for the development of domestic tourism with the expansion of international corporate cooperation and partnership. The study described how the proposed strategy of operation affects the legal security of tourism enterprises. The practical value and significance of the findings obtained is that the proposed methodological approach to assessing the strategies of functioning of a tourism enterprise can be used by the subjects of both economic and legal security, which include the management of the enterprises themselves and persons making managerial decisions in the field of ensuring their securityl

Keywords: strategy choice; environmental dynamics; environmental and economic aspects; martial law; project management; legal security

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Introduction

Since the events of 24 February 2022, the issue of security in Ukraine has been considered in many ways, both at the level of an individual enterprise and at the level of the state. The political and economic situation in Ukraine has undergone rapid changes, making security aspects that were previously less important almost critical. Strong shocks were felt at all levels: economic, legal, and environmental. Businesses have had to adapt to a new legal environment where typical contractual obligations have been abandoned for reasons of national security. Intense pressure on the legal security of businesses has led to increased government control and monitoring of business activity. However, while these measures were important from a national security perspective, they introduced uncertainty and restrictions for businesses, jeopardising their ability to act in line with forecasts. This was especially noticeable for the tourism industry, which is directly involved in operations abroad. New challenges and threats have emerged that have had a substantial impact on the activities of every open socio-economic system, including enterprises. Various businesses have been affected by the hyper-dynamic environment in diverse ways, but the tourism industry has experienced the most catastrophic problems. Under martial law, problems with the stability of businesses and the safety of tourists have increased. As of the beginning of 2024, there were no public-private partnerships in the tourism sector in Ukraine, as the state focused on ensuring national security. The functioning of tourism enterprises depended on their ability to ensure their existence. This required the development of new strategies that would not only optimise their operations, but also find new opportunities for development. Thus, there was a need for an adaptive strategic approach that would consider the critical components of the functioning of any tourism enterprise: ecology, economics, and law.

B.C. Ibanescu *et al.* (2018) analysed the impact of tourism on sustainable rural development in Romania. The researchers point out that tourism can contribute to economic growth and social development, but also poses risks to the natural environment and local cultures. The researchers employed quantitative methods to assess the impact of tourism activities on environmental sustainability and offered recommendations for implementing sustainable practices in tourism, i.e., attracting regular customers. Y. Kozak *et al.* (2019) focused on the development of a strategy for the integrated development of tourism enterprises. The researchers investigated the methods of strategic analysis and planning that can be used to ensure the harmonious development of the tourism industry, specifically through integration with other sectors of the economy.

Notably, when investigating the tourism industry, one should consider various socio-political, socio-economic, and environmental challenges that affect the choice of functioning strategies. According to V. Lagodiienko *et al.* (2022), it is environmental challenges that have the most significant impact. Therefore, the researchers analysed how environmental initiatives can be integrated into the business models and development strategies of tourism enterprises, affecting their economic attractiveness and social responsibility. O. Svatiuk *et al.* (2023) addressed the management of a rural tourism cluster based on an economic and mathematical model of cash flows. The researchers' approach helps to optimise financial results and develop effective management strategies that accommodate the specifics of the region and customer needs.

C. Aldao *et al.* (2021) considered the specifics of crisis management modelling and the impact of the crises of the 21st century on tourism, specifically the COVID-19 pandemic. The researchers emphasised the significance of rapid adaptation to crisis conditions and the development of flexible management strategies to change operational plans in response to unforeseen events. M.A. Bhuiyan *et al.* (2021) analysed research on tourism, the economic crisis and loss mitigation processes, considering the situation before, during, and after the pandemic. The researchers pointed to the need to develop long-term strategies to minimise losses and restore the tourism sector after crisis episodes. P. Popek Biškupec *et al.* (2022) joined the discussion on macroprudential measures to mitigate the impact of such crises on tourism. Their study examined regulatory and policy initiatives that can be leveraged to stabilise the tourism market in times of economic uncertainty. Y. Yang *et al.* (2020) applied a dynamic stochastic general equilibrium modelling approach to the analysis of the pandemic, which allowed them to investigate the interaction between tourism and the spread of infectious diseases. This study is important for understanding how various economic factors can affect not only the tourism industry itself, but also its customers. Thus, it can serve as a basis for the development of preventive strategies in the industry.

All the studies cited above have in common that they are irrelevant today for Ukrainian tourism businesses, which managed to adapt to the post-pandemic conditions but were not ready for wartime conditions. O. Sylkin *et al.* (2023) investigated the impact of international tourism on regional sustainable development using a methodological approach to efficiency improvement. Their methods and conclusions were aimed at developing strategies for managing tourism enterprises in crisis regions where active hostilities are taking place. F.A.F. Alazzam *et al.* (2023a; 2023b) and H.J.M. Shakhatreh (2024) analysed the management of the state environmental management system in the context of commercial bioeconomy development. The studies focused on the significance of environmental aspects in strategic planning, which is key in wartime to minimise negative environmental impact and preserve natural resources.

The conducted literature review on the subject under study suggests that there are understudied aspects, including the dynamics of changes in tourism strategies. While the existing literature covers strategic management in the tourism industry, it often does not focus on how these strategies adapt to hyper-dynamic environments, especially those affected by acute geopolitical or environmental shocks, such as the situation in Ukraine as of 2024. Most studies ignore a sizeable share of environmental, economic, and legal problems of strategic planning of tourism enterprises.

Based on the results of the analysis of scientific literature on the development of tourism enterprises, the following purpose of the study was formed – to develop a methodology for evaluating the strategies of functioning of a tourism enterprise in a hyperdynamic environment.

Materials and methods

Fulfilling the stated purpose of the study required the use of various analysis methods. The method of expert evaluation requires the most attention. An essential component of the methodology was the involvement of a group of 30 experts from Ukraine in the fields of tourism management, ecology, economics, and law. The sample was formed based on reading the biographies of the respondents, which are freely available. The selection criteria were based on their experience, contribution to their respective fields of operation, and the use of innovative approaches to solving complex problems related to the operation of tourism enterprises. The experts were contacted via online meetings in the format of video conferences, which provided a series of structured interactive sessions. This digital format helped to achieve wide geographical representation and flexibility, ensuring a comprehensive contribution to the overall result. The Delphi method was also used as a structured and effective communication technique that is particularly well-suited to handling complex issues where subjective assessments are required. This integrative multi-round method helped to clarify the opinions of experts. Each round consisted of a questionnaire, and subsequent rounds were adapted according to the answers from the previous session.

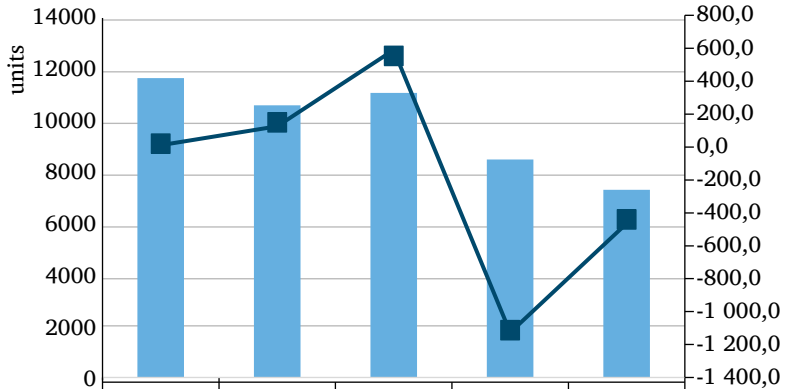
Using a questionnaire as the main data collection tool, the first round included open-ended questions aimed at identifying the main challenges and opportunities facing tourism enterprises in the context of environmental and economic changes and legal restrictions. The questions included the following: "What are the main environmental challenges affecting your business?", "What legal changes have the greatest impact on your business?", and "What adaptation strategies do you consider to be the most effective in the current hyper-dynamic environment?". In subsequent rounds, the questions became more specific and focused on clarifying the answers provided in the previous round to elaborate on the themes that emerged. The survey was conducted following the rules and provisions of the European Commission Guidance Note on Ethics and Data Protection (2021). All respondents were informed of the purpose of the study, the risks involved, and how their anonymity would be ensured.

To prioritise the strategies and assess their relative importance using several criteria, the BOCR method was applied, which should be understood as an assessment of the following factors: the relative environmental, economic, and legal advantages of one strategy over another; the possibilities of environmental, economic, and legal action; the different forms of costs for developing comparative strategies; and the environmental, economic, and legal risks posed by each strategy. Therefore, each strategy ("S") was assessed against these four criteria to reflect the global impact of potential consequences. The experts used their industry knowledge and insights gained from the Delphi rounds to rank the strategies against each of the BOCR criteria. This approach helped to identify and choose the strategy that fits best in a hyperdynamic environment. Therewith, for further analysis and formation of the relevant comparison tables, a scale from 1 to 9 was used. Where at 1 the objects of comparison are equivalent, and at 9 one is absolutely superior to the other.

In the study of the legal aspect of the problem, the regulations of Ukraine were examined, including the Law of Ukraine No. 324/95-BP "On Tourism" (1995), which defines the legal framework for regulating tourism activities, as well as the norms on the safety and quality of tourism services, the Law of Ukraine No. 2469-VIII "On National Security of Ukraine" (2018) and the Law of Ukraine No. 389-VIII "On the Legal Regime of Martial Law" (2015), the Draft Law of Ukraine No. 4162 "On Amendments to the Law of Ukraine "On Tourism" and Some Other Legislative Acts on the Basic Principles of Tourism Development" (2020). Thus, the study employed formal legal analysis and analysed the sources that, as of 2024, directly affect the functioning of tourism enterprises in Ukraine.

Results

According to Article 1 of the Law of Ukraine No. 324/95-BP "On Tourism" (1995), tourism is a temporary departure of a person from the place of residence for recreational, educational, professional, business, or other purposes without carrying out paid activities. As noted above, tourism in Ukraine is in a deep crisis. The decrease in the number of operating tourism businesses in 2020 can be explained by a series of factors, but most of them were caused by the COVID-19 pandemic. First of all, the implementation of severe restrictions on international and domestic tourism has led to a substantial decline in demand for tourism services. From a legal standpoint, the main measures were restrictions on international travel, including border closures, entry bans for foreign tourists, and quarantine or self-isolation for arriving citizens of other countries. Domestically, the government has imposed restrictions on the movement of people between regions, and limited the operation of public places, including hotels, restaurants, and tourist attractions. Thus, one of the key regulations that governed restrictions in Ukraine during the COVID-19 pandemic was the Resolution of the Cabinet of Ministers of Ukraine "On Prevention of the Spread of Acute Respiratory Disease COVID-19 Caused by the Coronavirus SARS-CoV-2 in Ukraine" (2020). This resolution introduced the "Temporary Recommendations on the Organisation of Anti-Epidemic Measures", which established quarantine and other restrictive measures throughout Ukraine. Businesses were forced to cease operations due to restrictions on the movement of people and reduced financial capacity of customers. During the period of martial law in Ukraine, the number of tourism businesses declined further. The martial law has led to uncertainty in the country, which has resulted in a decline in the confidence of both local and foreign tourists in the tourism sector. This influenced the decision of entrepreneurs to open tourism businesses (Fig. 1).



	2019	2020	2021	2022	2023	
Operating tourism enterprises in Ukraine, units	11576	10520	11004	8429	7254	million
Financial performance (net profit/covered loss), UAH million	11,1	126,2	589,4	-1126,4	-463,9	UAH

Figure 1. Key performance indicators of Ukrainian tourism enterprises for two periods of major crises (COVID-19 pandemic and martial law)
Source: calculated according to data from the State Statistics Service of Ukraine (2023)

Restrictions on international and domestic tourism have led to a sharp decline in sales and services, which has directly affected businesses' revenues. Consequently, according to the State Statistics Service of Ukraine (2023), many tourism businesses have been forced to cut costs, including staff reductions and marketing spending, to maintain financial sustainability. This resulted in a decrease in the efficiency of operations and affected the overall profitability of the companies, leading to a decrease in net profit. The sharp decline in tourist demand caused by the escalation of hostilities and the decline in overall economic activity resulted in large amounts of uncovered losses. Tourism businesses have faced significant costs in maintaining safety for staff and guests in the face of instability and the threat of conflict. Furthermore, the war has resulted in losses for tourism businesses due to a decline in tourist flows, restrictions on access to certain regions, and a decline in confidence in travel safety overall.

Thus, there is a need for new strategies for the functioning of tourism enterprises in such complex hyper-dynamic conditions:

S1. Static adaptive strategy. It involves the adaptation of a tourism enterprise to changes in the environment, but with a greater emphasis on maintaining stability and a conservative approach to change. The focus of this strategy is to respond quickly to concrete challenges and circumstances, but without pronounced changes in the strategic vectors of the business. For instance, such an enterprise can quickly change its marketing strategies or range of services in response to unforeseen events, but it stays within the overall strategic business line.

S2. Dynamic adaptive strategy. It implies a more active response to changes in the environment and readiness for considerable changes in strategic vectors. It is based on a continuous analysis of external factors, trends, and consumer needs. A tourism company that chooses this strategy actively experiments with innovative ideas, products, and markets, discovering new opportunities and responding quickly to challenges. A key element of this strategy is flexibility and the ability to quickly resolve and respond to problems.

Typically, tourism businesses strive for stability and safe development, trying to minimise risks through conservative planning and forecasting. However, in modern hyper-dynamic environment, especially with increased environmental, economic, and legal challenges, such approaches may not be sufficiently effective. The proposed strategies represent a more expressive form of flexibility: a static adaptive strategy provides a quick response to current challenges without radical changes in the strategic course, while a dynamic adaptive strategy opens the way for substantial changes in strategic vectors and rapid adaptation to new market conditions and opportunities, which allows for a more effective response to the complexities of a hyper-dynamic environment. Considering the two given variables (in this case, strategies), one need to determine the optimum one. The BOCR method was applied, which, through 4 environmental, economic, and legal criteria, will make this task possible (Fig. 2).

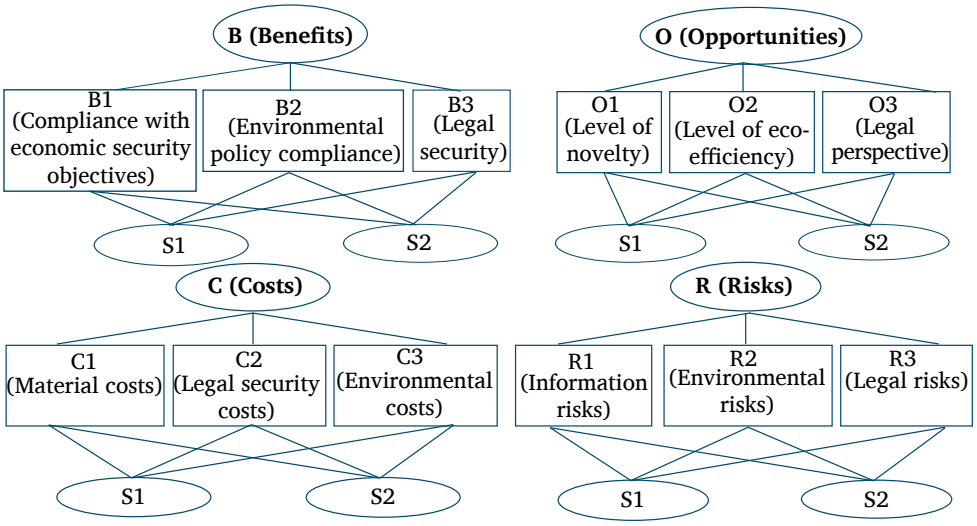


Figure 2. Model of criteria for comparison using the BOCR method
Source: created by the authors of this study

According to the BOCR method, the B criterion includes three main aspects: compliance with economic security goals, compliance with environmental policy, and legal security. These criteria are aimed at determining the potential of the strategy to achieve economic goals while following the environmental standards and requirements that are key to the sustainable development of the tourism industry. In addition, ensuring that all transactions follow the legal norms is fundamental to maintaining legality and strengthening the legal security of the enterprise, which affects its reputation and customer confidence. The O criterion assesses the potential of the strategy to bring innovative solutions or products that may differ from traditional approaches and offer new opportunities for security development and customer engagement. Therewith, the C criterion covers the direct costs of implementing the strategy, including the costs of resources, technology, infrastructure, etc. Notably, the R criterion implies potential legal challenges, such as non-compliance with the law, lawsuits, fines, and other legal threats to the company's operations.

Thus, as with the strategies, all the criteria were determined based on the personal experience of the authors of this study and expert opinion. Next, a direct and clear modelling objective was formed, and the advantages of which strategy were determined according to each BOCR criterion. Therefore, the comparison was made according to the following equality:

$$\frac{p*(p-1)}{2}, \quad (1)$$

where p is the number of cases at the same level (in this case, according to each of the BOCR criteria); 2 is the number of variables, namely strategies (S1, S2). The comparison results are presented in Table 1.

Table 1. Comparison results by three indicators for each of the BOCR criteria

B	O
$\begin{pmatrix} 1 & 1/6 & 1/5 \\ 6 & 1 & 2 \\ 5 & 1/2 & 1 \end{pmatrix}$	$\begin{pmatrix} 1 & 2 & 1/7 \\ 1/2 & 1 & 1/8 \\ 7 & 8 & 1 \end{pmatrix}$
C	**R**
$\begin{pmatrix} 1 & 1/3 & 2 \\ 3 & 1 & 3 \\ 1/2 & 1/3 & 1 \end{pmatrix}$	$\begin{pmatrix} 1 & 2 & 1/8 \\ 1/2 & 1 & 1/7 \\ 8 & 7 & 1 \end{pmatrix}$

Source: created by the authors of this study

Next, in equation (1), it is necessary to introduce the variable n, which implies the number of criteria, i.e., it is necessary to compare two strategies for each of the BOCRs (B1–B3; O1–O3; C1–C3; R1–R3). As a result, the following inequality was obtained:

$$n* \frac{p*(p-1)}{2}, \quad (2)$$

where n is the number of criteria that necessitated the comparison of three pairs of objects. Next, the results of the comparison of the adaptive strategy of the tourism enterprise proposed by the experts in relation to all 12 BOCR criteria (three for each, according to figure 2) were formed (Table 2).

Table 2. Results of comparing adaptive strategies of functioning of a tourism enterprise in relation to all BOCR criteria

B1	B2
$\begin{pmatrix} 1 & 1/2 \\ 2 & 1 \end{pmatrix}$	$\begin{pmatrix} 1 & 1/8 \\ 8 & 1 \end{pmatrix}$
B3	
$\begin{pmatrix} 1 & 1/5 \\ 5 & 1 \end{pmatrix}$	
O1	**O2**
$\begin{pmatrix} 1 & 1/7 \\ 7 & 1 \end{pmatrix}$	$\begin{pmatrix} 1 & 1/5 \\ 5 & 1 \end{pmatrix}$
O3	
$\begin{pmatrix} 1 & 1/8 \\ 8 & 1 \end{pmatrix}$	
C1	**C2**
$\begin{pmatrix} 1 & 2 \\ 1/2 & 1 \end{pmatrix}$	$\begin{pmatrix} 1 & 4 \\ 1/4 & 1 \end{pmatrix}$
C3	
$\begin{pmatrix} 1 & 3 \\ 1/3 & 1 \end{pmatrix}$	
R1	**R2**
$\begin{pmatrix} 1 & 1/4 \\ 4 & 1 \end{pmatrix}$	$\begin{pmatrix} 1 & 1/6 \\ 6 & 1 \end{pmatrix}$
R3	
$\begin{pmatrix} 1 & 1/9 \\ 9 & 1 \end{pmatrix}$	

Source: created by the authors of this study

The final stage is to establish the weight of the proposed strategies through utility. For this, the following calculations need to be performed:

$$U=\sum_{i=1}^{n} wi * uij, \quad (3)$$

where *w* is the relative importance of the criterion; *uij* is the geometric mean of the elements of each row. To perform these calculations, it is necessary to determine the value of *w*, i.e., the priority, and u, the relative weight of alternative strategies. While the latter can be obtained from the fractional values in Tables 2 and 3, *w* needs to be discussed in greater detail. To calculate the priority, the following equality (4) should be fulfilled:

$$wi=\frac{\sqrt[m]{ai1*ai2*.....aim}}{\sum_{i=1}^{m}\sqrt[m]{ai1*ai2*.....aim}}, \quad (4)$$

where *aim* is precisely the element *i* of row *j* of the column of the matrices presented in Tables 2 and 3. Thus, omitting the intermediate volumetric calculations, the solution to problem (4) can be presented in the form of Table 3.

Table 3. Calculation of the priority vector for each of the BOCR criteria

B	O
$\begin{pmatrix} 0.05 \\ 0.65 \\ 0.3 \end{pmatrix}$	$\begin{pmatrix} 0.15 \\ 0.05 \\ 0.8 \end{pmatrix}$
C	**R**
$\begin{pmatrix} 0.3 \\ 0.6 \\ 0.1 \end{pmatrix}$	$\begin{pmatrix} 0.14 \\ 0.1 \\ 0.75 \end{pmatrix}$

Source: created by the authors of this study

The next step is to calculate the utility and optimality for each of the proposed adaptive strategies. The result is presented in Table 4. Therefore, a dynamic adaptive strategy for the functioning of tourism enterprises in Ukraine will be the most optimal. BOCR is a framework that considers the main aspects of strategic management and planning. Thus, in a hyper-dynamic environment, where changes occur quickly and unexpectedly, a flexible strategy allows an enterprise to be more adaptive and respond quickly to changes in market conditions, technological and economic trends. It is a dynamic adaptive strategy that allows an enterprise to respond more quickly to new opportunities, thereby providing an advantage over competitors who may be less flexible in their actions.

Table 4. The weight of the proposed adaptive strategies for the functioning of a tourism enterprise

U	Weight according to BOCR			
	B	O	C	R
U1	0.2	0.1	0.3	0.1
U2	0.8	0.9	0.7	0.9

Source: created by the authors of this study

The key to a dynamic adaptive strategy is the optimisation of service delivery processes, which is an essential element of a successful tourism enterprise. This should include improving service technology, enhancing service quality, reducing customer waiting times, and ensuring customer satisfaction at every stage of the journey or holiday. Notably, project management should be implemented through a dynamic adaptive approach. Effective project management is key to the successful implementation of initiatives and achievement of goals. Project management enables businesses to effectively plan, execute, and monitor various initiatives and projects aimed at improving operations and developing their business:

Environmental aspects include sustainable development, minimising environmental impact, and developing ecotourism. Integration of sustainable development principles into all aspects of the business, including the use of eco-friendly materials, waste reduction, energy saving, and the use of alternative energy sources. Minimisation of the impact on nature means developing routes and programmes that reduce the impact of tourism activities on natural resources and ecosystems. Ecotourism development should consider the development and promotion of ecotourism products that support nature conservation and engage local communities in tourism.

The economic aspects of an adaptive strategy include diversification of services, digital transformation, and pricing flexibility. These aspects include the introduction of new services that can attract different target groups and markets, especially in an uncertain environment, the use of digital technologies to improve customer experience, optimise management and marketing processes, and adapt pricing strategies to changes in the economic environment, using dynamic pricing and personalised offers.

Legal aspects include compliance with international and local legal standards. Continuous monitoring and adaptation to changes in legislation relating to the tourism industry, specifically in the areas of environmental protection, labour relations, and consumer protection. Changes in legislation, especially in the context of globalisation, require careful monitoring and rapid adaptation to new requirements. This includes environmental regulations that define environmental safety standards, consumer protection regulations that affect customer relations, and labour law regulations that govern relations with employees. Failure to follow these regulations may result in substantial financial penalties, legal claims, or loss of reputation, which will adversely affect the stability and development of the company. Therefore, to ensure legal security, tourism enterprises should develop an internal control and audit system that will allow them to promptly identify risks of non-compliance with the law and take measures to eliminate them. Special attention should be paid to the Law of Ukraine No. 2469-VIII "On National Security of Ukraine" (2018), which regulates the issue of organic production, which is vital for tourism enterprises offering food and goods of organic origin.

In this context, it is important to follow the Law of Ukraine No. 324/95-BP "On Tourism" (1995), which defines the legal, economic, and social framework for tourism activities and establishes norms aimed at developing and supporting the tourism industry in the country. Failure to follow these laws could result in considerable legal consequences, including financial penalties and lawsuits, which could adversely affect the business. For instance, Article 33 of the Law of Ukraine No. 324/95-VR "On Tourism" (1995) mandates that a tourism entity that has violated the legislation in the field of tourism activities in the provision of a tourism service that caused damage shall be obliged to compensate the tourist for the damage in full, unless the contract or law prescribes compensation in a smaller or larger amount. But alongside this, Article 12 should also be considered, which indicates the measures that the state can take to support the tourism industry, including financing, tax incentives, and infrastructure development. Knowing and using these provisions can help tourism businesses plan their activities and use the opportunities offered by the state. Following these articles and exercise of constant monitoring of their changes is critical to prevent legal risks and ensure the sustainable development of the enterprise in the tourism sector.

Therewith, the adaptive strategy will consider the European vector of Ukraine's development, the implementation of which is mandated by the Resolution No. 1106 "On the Implementation of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part" (2017). According to this document, the state should take measures to develop a general strategy for the development of the tourism business, with a special focus on the development of rural green tourism and agro-recreational areas, as well as the development of other resort areas by 2026. The need to consider these obligations in current legislation prompted the drafting of new tourism legislation. As a result of the objective necessity dictated by the stagnation of the Law of Ukraine No. 324/95-VR "On Tourism" (1995), its inconsistency with environmental and legal realities, the European integration course and trends in the tourism business, Ukrainian legislators created the Draft Law of Ukraine No. 4162 "On Amendments to the Law of Ukraine "On Tourism" and Some Other Legislative Acts on the Basic Principles of Tourism Development" (2020). Thus, Article 26 of the Draft Law states that tourism enterprises must ensure that they minimise or eliminate harmful impacts on the environment and socio-cultural environment and compensate for the damage caused to them.

However, this document does not define such actions, which creates room for different interpretations, and, as noted by O. Hafurova and S. Holub (2022), this draft does not provide ways to follow such principles. The situation could be improved by the creation of relevant targeted programmes that would set clear criteria for improving environmental safety. The current Tourism and Resort Development

Strategies for the Period up to 2026 (2017) mandates state monitoring of the environmental state and natural therapeutic and recreational resources, as well as physical factors at resorts, tourist areas, and places of recreation. This means that businesses need to consider the environmental risks posed by their activities and carefully monitor their compliance with environmental legislation. In this regard, further legislative work could be aimed at ensuring the implementation of such documents as the Chengdu Declaration on 'Tourism and the Sustainable Development Goals' (2017).

Procuring the necessary licences and certificates that may be required for new activities or products, especially those related to ecotourism and sustainable development, is also a necessary component of the proposed adaptation strategy. For example, in the field of ecotourism, where the emphasis is on the sustainable use of natural resources and biodiversity conservation, licensing is a guarantee that the company's activities follow all environmental standards and regulations. Certification, for its part, helps to confirm the quality of services and products, providing businesses with a competitive advantage and opening access to new markets. Certified products and services inspire more trust among consumers and partners, which contributes to business growth and geographical expansion.

Legal protection of intellectual property in the tourism industry plays a key role in ensuring a competitive advantage. Protecting innovative ideas and products through patents, copyright, and trademarks allows tourism businesses to ensure that their innovations are properly protected. Copyright and trademark registration plays a vital role in protecting unique tourism products, such as special tours or promotional materials. The active use of intellectual property tools not only protects innovation but also stimulates additional investment in research and development. For instance, a properly executed copyright for unique itineraries and a patent for innovative travel organisation methods can not only provide protection against copying, but also become a source of passive income through licensing. This protection is crucial in cases where other companies try to use other people's innovations without permission, ensuring that original ideas stay profitable for their creators.

Thus, the modelling reveals a comprehensive methodological approach to choosing the best strategy for the functioning of tourism enterprises, considering environmental, economic, and legal challenges, in the context of the hyper-dynamic environment in which Ukraine is located as a result of martial law. This approach correlates with recent research in the field of tourism and security development. For a better understanding, the findings of this study must be compared with analogous results. For example, S. Candia *et al.* (2020) focused on the integration of the capacity methodology into strategic tourism plans. While this reflects the environmental component, the approach proposed in the present study further extends the analysis by adding both economic and legal factors. F. Fafurida *et al.* (2022) demonstrated the significance of public participation, i.e., considering socio-legal challenges specifically. To some extent, this complements the findings, showing that domestic resources and public participation are critical for tourism development, especially in developing regions. S. Kryshtanovych *et al.* (2020) has a comparable optics, wherein the attitude of the enterprise's personnel to management decisions is investigated as a factor. However, the lack of consideration of the dynamism of the external environment and environmental and economic challenges is also notable. N. Rushchyshyn *et al.* (2021) considered the regulatory and legal aspects of the financial security of the state, which complements the above analysis of legal challenges affecting tourism enterprises during martial law. Overall, the proposed methodological approach to analysing the strategies of tourism enterprises is distinguished by the use of dynamic adaptation to respond to rapid changes, considering the environmental, economic, and legal challenges. This helps not only to respond to current challenges but also to actively use opportunities for the safe development of domestic and international tourism. Therewith, it is worth supporting the conclusions of O. Hafurova and S. Holub (2022), who noted that Ukraine does not have an effective legal mechanism for compliance with international standards in the field of tourism and the Draft Law of Ukraine No. 4162 "On Amendments to the Law of Ukraine "On Tourism" and Some Other Legislative Acts on the Basic Principles of Tourism Development" (2020) does not fully meet European requirements.

S. Schuhbauer and A. Hausmann (2022) and O. Chernegha *et al.* (2022) investigated the role of information and communication technologies in cultural institutions in rural areas, emphasising a resource-theoretical approach based on interviews. While their research focuses on the introduction and use of information and communication technologies (ICT) to improve visitor experience and operational efficiency, the present study extended this to a broader strategic level, highlighting the need for a dynamic adaptive strategy in the tourism sector. In doing so, the approach presented in this study emphasised the integration of ICT as part of a broader strategic framework that addresses not only technological adaptation but also environmental, economic, and legal issues, demonstrating a holistic response to the hyper-dynamic pressures faced by modern tourism businesses. Compared to the study by O. Vovchak *et al.* (2022), which modelled the impact of the COVID-19 pandemic on the financial and economic activities of tourism enterprises, the present study additionally examined the adaptive capabilities of these enterprises. The researchers describe the immediate financial strategies being implemented to mitigate the effects of the pandemic. However, the researchers considered the long-term strategic adjustments needed to thrive in an uncertain environment. By examining both the BOCR framework (benefits, costs, opportunities, and risks) and the concrete context of martial law in Ukraine, the findings of the present study suggest that strategic flexibility, especially in developing domestic tourism and expanding international cooperation, is crucial.

Conclusions

The present study developed a methodical approach to evaluating variants for a strategic approach to the functioning of tourism enterprises in the context of hyper-dynamism. The focus was on environmental, economic, and legal aspects. Therefore, according to the BOCR modelling methodology, each criterion included an environmental, economic, and legal factor, respectively. It was proved that due to the increasing dynamism of the external environment, only an adaptive strategy can ensure the effective functioning of a tourism enterprise. As a result, it was found that the dynamic form of adaptive strategy is the best in the context of the current functioning of tourism enterprises. The modelling

provided the necessary information basis for strategic planning in the system of ensuring the ecological, economic, and legal security of a tourism enterprise in the context of a hyper-dynamic environment.

The proposed methodological approach to evaluating strategies has practical application for the management of tourism enterprises and other stakeholders in the tourism industry. The proposed strategy, focused on dynamic adaptability and intensification of domestic tourism with the simultaneous expansion of international cooperation, is aimed at counteracting external challenges and changes, specifically in the context of increased hyper-dynamism and instability. This approach helps to strengthen the legal framework for protecting the interests of tourism companies, optimise their compliance with legal requirements and, as a result, improve the overall legal security in the sector. The legal aspect of the study focused on the study and adaptation to the legal requirements that affect the activities of tourism enterprises in changing environmental conditions. In case of tourism enterprises, it is particularly important to understand and implement legal regulations relating to consumer protection, service safety, labour regulation, and environmental protection.

However, the present study had its limitations, since the environmental and economic aspect of the issue is extremely broad and involves many more features than were covered in the study, which should be considered in future research. Therewith, only two strategies were proposed for comparison, which resulted in a narrow range of variables. Future research in this area should focus on the tactical level of functioning of enterprises within the framework of an adaptive strategy.

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Conflict of interest

The authors of this study declare no conflict of interest.

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Анотація. Вибір оптимальної стратегії функціонування туристичного підприємства є вагомим фактором, який впливає на його безпеку та розвиток. Такого роду вибір залежить від значної кількості змінних, в тому числі й від еколого-економічних й правових викликів, які посилюються внаслідок гіпердинамічності зовнішнього середовища. Метою статті є розроблення методичного підходу до оцінювання стратегій функціонування туристичного підприємства. Ключовими методами дослідження стали метод експертного аналізу, завдяки якому було встановлено значення впливу тих чи інших викликів, метод BOCR який становив основу для моделювання. В ході дослідження створено модель оцінювання запропонованих двох варіантів стратегії функціонування туристичного підприємства за чотирма критеріями BOCR: позитивні наслідки, витрати, можливості та ризики еколого-економічного та правового характеру. Таким чином вдалось створити базис для побудови інформаційної основи щодо розроблення й впровадження оптимальної стратегії, яка задовільнить усі еколого-економічні та правові потреби сучасного туристичного. З'ясовано, що воєнний стан в Україні зумовлює посилення динамічності зовнішнього середовища при якому адаптивний підхід дозволяє безпечно функціонувати таким відкритим соціально-економічним системам як сучасні туристичні підприємства. В ході дослідження було виокремлено, що найбільш оптимальною стратегію станом на 2024 рік для туристичних підприємств є динамічна адаптивна, яка передбачає активні дії та направлення власних ресурсів на розвиток внутрішнього туризму із розширенням міжнародної корпоративної співпраці та партнерства. Охарактеризовано як запропонована стратегія функціонування впливає на забезпечення правової безпеки туристичних підприємств. Практична цінність й значущість отриманих результатів полягає в тому, що запропонований методичний підхід до оцінювання стратегій функціонування туристичного підприємства може бути використаний суб'єктами як економічної, так й правової безпеки, до яких належать керівництво самих підприємств та особи, які приймають управлінські рішення в галузі забезпечення їх безпеки

Ключові слова: вибір стратегії; динамічність зовнішнього середовища; еколого-економічні аспекти; воєнний стан; проєктний менеджмент; правова безпека

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Counteracting legal and economic risks of enterprises under martial law

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Abstract. The hyper-dynamic environment in 2024 has already brought considerable changes to the activities of modern enterprises, creating a series of new risks of both legal and economic nature, which increases the relevance of choosing the form of response to them. The purpose of this study was to analyse possible ways of improving the technology of counteracting the factors that facilitate the formation of a crisis situation at an enterprise in the system of managerial decision-making. The research methodology involved the use of formal legal analysis of legislation and the expert method to identify external and internal economic and legal factors, as well as methods of system analysis and hierarchy analysis. As a result, the most significant negative economic and legal factors were identified. A matrix grid between these factors, both internal and external, was presented. The main result of the study is a model that presents a technology for counteracting negative factors that can lead to crisis situations at a modern enterprise in Ukraine. Among these factors, a special place is occupied by those caused by the specific features of the current regulatory framework for the activities of enterprises under martial law, which is based on the Resolution of the Cabinet of Ministers

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of Ukraine No. 303-2022-p of 2022 and the Law of Ukraine No. 2136-IX "On the Organisation of Labour Relations under Martial Law". As a result, the proposed technology lays the information foundation for making effective management decisions by key security actors in a modern enterprise. The practical value of this study lies in the possibility of using the proposed approach in the activities of Ukrainian enterprises to meet the information needs of security actors

Keywords: legal factors; economic factors; counteraction technology; matrix grid; modelling

Introduction

Since the beginning of the hybrid aggression in 2014, the Ukrainian economy has been facing severe challenges, including rising inflation, weakness of the national currency against foreign currencies, falling purchasing power of citizens, and increased out-migration of workers caused by the full-scale invasion of the Russian Federation (RF) in 2022 and other factors, creating a very unstable environment for Ukrainian businesses. Therefore, any business faces a variety of risks and threats that can lead to a crisis in a certain way. Therewith, a modern enterprise operates in a certain environment, which is divided into internal and external. These two areas, albeit different, can both adversely affect a company's operations. It is important to assess the economic and legal factors of the external and internal environment that directly affect the emergence of crisis situations. Notably, the chosen research topic is vital in the context of wartime in Ukraine, due to the critical need for effective decision-making systems. Such a system would help prevent and mitigate crises exacerbated by economic and legal factors. In active hostilities, rapid and often unpredictable changes in the economic and legal environment can lead to increased vulnerability. These changes may include economic sanctions, disruption of trade routes, legal uncertainties in international law, and crisis management challenges. In this context, understanding how technology can be used to counteract negative influences becomes crucial.

The interaction between economic and legal factors and their impact on crisis situations in enterprise decision-making systems is a complex area that crosses various fields of business and socio-economic research (Balas *et al.*, 2019; Hrybinenko *et al.*, 2020). Modern scientific and practical literature contains many studies on the topic of security development and crisis management. Thus, F.A.F. Alazzam *et al.* (2024) investigate a methodological approach to choosing a business management strategy against the background of changes in commercial activities. Their research highlights the significance of strategic adaptation in response to economic change, providing a relevant framework for understanding how businesses can manoeuvre through crises by adjusting their strategic approaches. M.I. Zveryakov and L.L. Zherdetska (2019) discussed the specific links between the currency collapse and the inflationary crisis in Ukraine, highlighting how macroeconomic factors directly affect the stability of enterprises. Their findings highlight the critical role of national economic policy in shaping the operating environment for business. M. Dubyna *et al.* (2023) analysed how digitalisation helps to ensure the financial and economic security of trade enterprises in the face of external shocks. Their research is key to understanding how digital tools can serve as buffers against the destabilising effects of economic and legal unpredictability. M.A.M. Bani-Meqdad *et al.* (2024) delve into the current challenges of intellectual property protection in the cyber environment, emphasising the significance of legal frameworks in ensuring sustainable development. This study is directly related to understanding how legal adjustments can protect businesses from cybereconomic threats.

One of the founders of the school of security studies, V.I. Franchuk *et al.* (2020) emphasised the significance of forecasting the resilience of enterprises in the context of economic security management. Their research provides methodologies for predicting the long-term viability of enterprises, which is important for preventing and managing crisis situations. M.F. Kryshtanovych *et al.* (2024) investigate the development of new information systems using artificial intelligence to improve decision-making in business. Their research provides insights into how technological advances can be used to improve governance strategies amidst economic and legal challenges. A.M. Shtangret *et al.* (2019a) focused on the necessary information systems to manage the economic security of high-tech enterprises. Their research emphasises the significance of robust information systems in navigating and mitigating the impact of economic and legal factors on business operations. M.I. Kopytko *et al.* (2023a) discussed the development of marketing strategies that meet the goals of sustainable development. This study is important because it links market-oriented strategies to the long-term sustainability of enterprises in uncertain economic times.

To summarise, it was noted that the most noticeable gaps in the literature today are as follows: many studies focus on the general principles of crisis management and economic security, but often ignore the specifics of different industries or regions; despite the existence of studies that consider individual economic and legal factors, there is often a lack of comprehensive data on the interaction between these factors; insufficient attention to the role of mathematical modelling in solving scientific and practical problems. This necessitates the analysis of ways to improve the technology of counteracting the factors that lead to crisis situations at the enterprise in the system of managerial decision-making, which is the purpose of this study.

Materials and methods

The main purpose of using the expert method was to identify the key economic and legal factors that make crisis situations in the activities of modern enterprises possible. After an analysis, which included reviewing the studies of national and foreign researchers in the field of crisis management and interviewing 45 expert economists and lawyers in the field of crisis management, the key factors were identified. Reporting on research involving human subjects, it should be noted that the study was conducted according to the following standards: the American Sociological Association Code of Ethics (1997), The International Code of Marketing, Social and Opinion Research, and Data Analysis ICC/ESOMAR (2016), and the European Commission's Guidelines on Ethics and Data Protection (2021). All participants were fully informed that anonymity was guaranteed, why the study was being conducted, how their data would be used, and whether there were any associated risks. The survey

was conducted exclusively online due to the introduction of martial law. Therewith, a question-and-answer form was presented. The ethics of sociological research was observed. Using the Delphi method, the experts' responses were collected and analysed to identify consensus and differences in their assessments and opinions. In case of significant discrepancies in the answers, additional rounds of surveys were conducted, where experts could review their answers, having read the average scores of other participants, and make the necessary corrections or additional explanations. The result of this process was a report that highlighted the key economic and legal factors that can trigger crisis situations, identified through the competent judgement of experts, providing an in-depth and multifaceted analysis of this complex topic. This report reflects not only a diversity of views, but also a consensus among experts, which is crucial in the complex and multifaceted issues that are crisis management. Thus, the Delphi method proved to be an effective tool for identifying and analysing the key factors. The purpose of systemic analysis was to understand the complex interrelationships between the various components of a company's decision-making system, especially under the influence of the identified crisis factors. The hierarchy analysis method involved breaking down a problem into a hierarchy of easier-to-understand subtasks, each of which could be analysed independently. The factors identified by the expert method were arranged in a multi-level hierarchical structure. Pairwise comparisons were made to evaluate economic and legal factors against each other according to certain criteria, such as severity of impact and controllability.

In the study of the legal aspect of the problem, the following regulations of Ukraine were examined: Law of Ukraine No. 2435-IX (1999); Law of Ukraine No. 389-VIII (2015); Resolution of the Cabinet of Ministers of Ukraine No. 303 (2022); Law of Ukraine "On the Organisation of Labour Relations under Martial Law" (2022). The study also considered the Tax Code of Ukraine (2010), Labour Code of Ukraine (1996), and the Commercial Code of Ukraine (2003). The following international regulations were considered: IAS 1 – Presentation of Financial Statements (2007); IFRS 1 – First-time Adoption of International Financial Reporting Standards (2009). Thus, the study employed formal legal analysis and analysed the sources that, as of 2024, directly affect the activities of enterprises in Ukraine.

Results

The martial law, together with the ongoing hostilities, has seriously affected the operational capabilities and economic stability of businesses across the country. The imposition of martial law was accompanied by a series of strict regulations, including movement restrictions, curfews, and special administrative rules, which directly interfered with the normal operations of businesses. Therewith, the Law of Ukraine "On the Organisation of Labour Relations Under Martial Law" (2024) changed the standard operating framework for enterprises regarding labour relations. This includes the possibility for employers to increase the maximum working week to 60 hours, depending on the needs of the enterprise, especially those engaged in defence or critical infrastructure. The introduction of martial law has led to adaptations in the regulatory environment for businesses, affecting how they can operate during this period. This includes suspending certain business operations or adjusting their operational scope, especially in relation to interaction with territories subject to active hostilities or other military activities. Notably, according to the Resolution of the Cabinet of Ministers of Ukraine No. 303 (2022), all planned and unplanned actions of state supervision (control) and state market control are suspended during the period of martial law. However, an exception is made for unscheduled state supervision (control) measures aimed at preventing unjustified price increases for socially important goods.

From a legal standpoint, the activities of Ukrainian enterprises today are highly dependent on changes in legislation. The main legislative act regulating business activities in Ukraine is the Commercial Code of Ukraine (2003). The Code defines the legal framework for entrepreneurship, the rights and obligations of business entities, and regulatory measures to ensure fair competition and consumer protection. Labour law in Ukraine is primarily governed by the Labour Code of Ukraine (1996), which sets out comprehensive guidelines for labour relations. This code ensures that both employees and employers adhere to standards that promote fair labour practices and protect workers' rights. Financial accounting and reporting in Ukraine are regulated by a series of laws and standards aimed at ensuring transparency and reliability of financial statements. The Law of Ukraine No. 2435-IX "On Accounting and Financial Reporting" (1999) requires companies to keep proper accounting records and prepare financial statements following national and international accounting standards. Ukrainian companies must follow the International Financial Reporting Standards as adopted in the country. For instance, this refers specifically to the IFRS 1: First-time Adoption of International Financial Reporting Standards, (2009). This Standard establishes procedures for an entity's first financial statements prepared following the International Financial Reporting Standards (IFRS). IAS 1: Presentation of Financial Statements (2007), which governs the general requirements for financial statements, including their structure, minimum content requirements, and key concepts such as going concern, accrual basis of accounting, and current/long-time distinction. It details how to transition from former generally accepted accounting principles (GAAP) to IFRS, including how to recognise, measure, present, and disclose assets, liabilities, and equity. Businesses in Ukraine face potential tax risks due to frequent changes in tax legislation and the complexity of tax regulations. Since the start of the full-scale invasion, for instance, a simplified taxation system has been introduced to support small and medium-sized businesses, including reduced VAT and single tax rates for certain categories of entrepreneurs. The income tax for companies producing military products was also temporarily abolished. To mobilise resources, the government introduced additional military levies to finance the country's defence needs. The risks themselves may include discrepancies in tax reporting, underpayment of taxes, and increased attention to tax audits and fines. Businesses should keep abreast of changes in legislation and implement robust tax planning and compliance strategies to minimise these risks (Tax Code of Ukraine, 2010).

The introduction of martial law in Ukraine has led to considerable innovations in the legal system aimed at ensuring national security and optimising governance in the face of new challenges (Law of Ukraine No. 2136-IX, 2022). The key changes included restrictions on certain civil rights and freedoms, such as the right to private property and

movement, as well as the introduction of information censorship and increased control over communications. The imposition of martial law gave the government the authority to nationalise certain enterprises critical to the country's defence and security and to simplify procedures in making important administrative decisions. The introduction of martial law in Ukraine has indeed led to marked changes in the legal system aimed at ensuring national security and optimising governance in emergency situations. The main provisions governing these innovations are mandated in the Law of Ukraine "On the Legal Regime of Martial Law" (2015), which has undergone significant changes since the outbreak of full-scale war. Therewith, the introduction of martial law allows the government and military authorities to carry out certain actions and make decisions in a simplified manner. Specifically, Item 2 of Article 8 prescribes the possibility of introducing special regimes for the management and operation of enterprises, institutions, and organisations, which may include simplification of administrative decision-making procedures to respond to threats promptly. Such regimes include the possibility of establishing simplified procedures for administrative decisions, which allows enterprises to respond more quickly to defence and military needs. Under special management regimes, the government is entitled to centrally allocate material and financial resources that are critical during wartime. This also includes the possibility of temporary seizure of privately owned property for military purposes, subject to proper compensation. The law stipulates that such actions are taken exclusively under martial law and are aimed at ensuring maximum efficiency and effectiveness in a rapidly changing environment.

Furthermore, the physical destruction of infrastructure and the unpredictable security situation have led to the closure or severe restrictions on the operations of many businesses. Most businesses faced crisis situations, with the manufacturing, retail, and service sectors having a particularly difficult time. The unpredictable and volatile environment has made it difficult for businesses to plan for the future, secure supplies, or even maintain a stable workforce. Economic uncertainty has been exacerbated by significant population movements, both internal and refugee, which have depleted the consumer base and the available labour market for many businesses (Fig. 1).

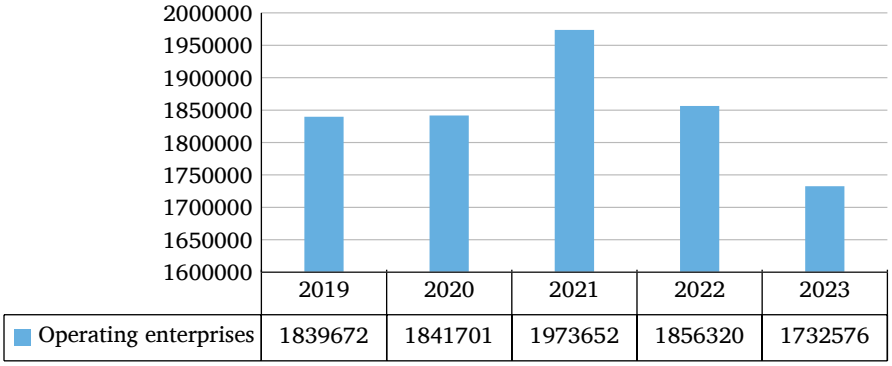

Figure 1. Dynamics of changes in the number of operating enterprises in Ukraine for 2019-2023, units
Source: calculated according to data from the State Statistics Service of Ukraine (2023)

As a result of the expert analysis, the study identified the most significant internal economic and legal factors that have led to the emergence of crisis situations at a modern enterprise. They will be further referred to as M = {M1,M2,M3,M4,M5,M6,M7}:

- M1. Lack of effective internal labour regulations. Establishes rules for employee behaviour in the workplace and defines liability for violations. Such rules help manage the risks associated with inappropriate behaviour or actions of employees that may threaten security.
- M2. Low innovation activity. Innovation is the key to competitiveness. Lack of innovation can lead to the "obsolescence" of products and services, reduced efficiency of operations and loss of market positions.
- M3. The presence of constant internal conflicts between management and managers, and between staff. Conflicts within, especially between distinct levels of management, can seriously undermine morale, productivity, and efficiency, which can lead to crisis situations.
- M4. Outdated form of risk management. The modern business environment requires flexible and secure approaches to risk management. Obsolete methods may fail to identify or mitigate ever-changing risks.
- M5. Ineffective meeting the information needs of key economic security actors and the crisis management system. Information is a key resource in a modern enterprise. Ineffective satisfaction of information needs can lead to incorrect management decisions in crisis management, as management and managers base their decisions on inaccurate, outdated, or incomplete information.
- M6. Reduced human resources potential. A decrease in the qualifications, motivation, or number of employees can lead to lower productivity, poorer quality of products or services, and a loss of competitiveness.
- M7. Problems with privacy and data protection policies. Defines how the company collects, uses and protects personal and commercial data. This is vital to ensure the protection of information and may include policies on cybersecurity and physical protection of data.

Using an analogous survey method, the study identified the most significant external economic and legal factors that can lead to crisis situations at a modern enterprise and denoted their totality as N = {N1,N2,N3,N4,N5,N6,N7}:

- N1. Mass migration abroad as a result of martial law. Martial law has led to mass migration, which could lead to a shortage of skilled labour. This makes it difficult to recruit

employees and maintain prominent levels of productivity. According to the United Nations (United Nations High Commissioner for Refugees, 2024), over 8 million Ukrainians have been forced to leave the country, seeking safe haven in Europe and other countries. This has created a serious shortage of skilled labour in various sectors of the Ukrainian economy, including the IT sector, construction, healthcare, and education.

- N2. International norms and standards. If a company operates in the international market, it must follow international norms and standards, including business rules, export controls, anti-corruption measures, and corporate governance standards.
- N3. Legislation on cybersecurity. Regulates the protection of information systems and databases from unauthorised access, attacks, and leaks. This includes requirements for data protection, cryptographic protection, and rules for handling cybersecurity incidents. One of the most significant examples of the impact of cybersecurity legislation on a modern enterprise is the situation with the implementation of the European Union's General Data Protection Regulation (GDPR). One concrete example of the impact of GDPR on a modern enterprise can be observed in the case of British Airways. In 2018, the company was the victim of a major cyber-attack where attackers gained access to the personal data of approximately 500,000 customers, including credit cards, addresses, and other personal information. This happened due to vulnerabilities in their security system. As a result, in 2020, the UK's Information Commissioner's Office (ICO) fined British Airways GBP 20 million for failing to follow the GDPR regulations on customer data protection. The European Union's General Data Protection Regulation (GDPR) has not been ratified in Ukraine as such, as it is directly applicable only in the European Union. However, Ukraine has taken steps to harmonise its legislation with the GDPR within the framework of its commitments to the EU and international partners
- N4. High interest rates. The rising cost of lending is negatively contributing to the lack of access to finance for businesses, especially small and medium-sized businesses.
- N5. Full-scale invasion of Russia. The war waged against Ukraine has resulted in the destruction of infrastructure, loss of markets, supply chain disruptions, and general uncertainty. All this has sharply increased business risks and forced companies to cease operations.
- N6. Rising inflation. High inflation can reduce purchasing power and increase costs for businesses as the costs of raw materials, energy, and other resources rise. In Ukraine, high inflation has become a significant external economic factor that contributes to the emergence of crisis situations for modern enterprises. For instance, in 2022, Ukraine faced an inflation rate of 26.6%, which is substantially higher than in 2021, which was 9.4%. This sharp rise in inflation has led to a considerable increase in the costs of raw materials, energy, and other resources that are critical to businesses. According to the National Bank of Ukraine, the cost of raw materials increased by an average of 30%, while energy costs jumped by more than 50% over the same period. As a result, businesses have faced higher operating costs and decreased profitability, which has created difficult economic conditions and increased the risk of crises (State Statistics Service of Ukraine, 2023).
- N7. Increased competition in the market. Increased competition can lead to lower prices and margins, requiring businesses to be more innovative, efficient, and customer-focused to stay competitive. Even in times of war, there may be an increase in market competition, often driven by internal migration. War causes considerable population movements within the country, as people leave dangerous regions and move to safer areas with relatively stable business conditions. This leads to a concentration of entrepreneurs, specialists, and labour force in less affected regions, which leads to an increase in the number of new businesses and, consequently, increased competition.

A dependency matrix was used to show the interdependencies between different elements of a system. Each element of the system is displayed as a row and a column in the matrix, and their relationships are marked in the corresponding cells of the matrix. This way, it is easy to identify how changes in one element can affect the others. The matrix grid of dependence between the identified economic and legal factors that may cause crisis situations at a modern enterprise is presented in figure 2.

N7	0	0	0	0	0	0	0
N6	0	0	0	0	0	0	0
N5	1	1	0	1	0	0	0
N4	0	0	0	0	0	0	0
N3	0	1	0	0	0	1	1
N2	0	0	0	0	0	1	0
N1	0	1	0	0	0	1	0
	N1	N2	N3	N4	N5	N6	N7
M7	0	1	0	0	0	1	0
M6	0	0	0	0	0	0	0
M5	1	1	0	0	0	1	0
M4	0	1	0	0	0	0	0
M3	0	1	0	0	0	0	0
M2	0	0	0	0	0	0	0
M1	0	1	1	0	0	1	1
	M1	M2	M3	M4	M5	M6	M7

Figure 2. A matrix grid of dependence between certain economic and legal factors that can cause crisis situations at a modern enterprise
Source: created by the authors of this study

The reason for the 0 or 1 in the dependency and reach matrices is to identify and illustrate the relationships and influences between the elements or factors being analysed. Specifically, a "1" is indicated in a cell of these matrices to denote a direct influence or relationship between a row element (factor) and a column element (factor) based on a pairwise comparison. This means that the row factor has some kind of influence or advantage over the column factor. Conversely, a "0" is indicated when no direct effect or relationship is observed in a pairwise comparison. Such matrices thus provide a structured way of visualising and analysing the dynamics in a system or hierarchy, allowing dependencies to be identified and hierarchies to be established among elements. The "1" on the diagonal is fundamental. This designation indicates that each element or factor reaches itself by default. In essence, the principle of reflexivity is applied here, which means that each factor has a direct

impact or connection with itself. Next, the achievability matrix shows which elements of the system can be achieved from each element through a series of intermediate steps. This helps to determine how certain factors can spread through the system, identifying potential pathways for the spread of crises or important changes (Fig. 3).

N7	0	0	0	0	0	0	1
N6	0	0	0	0	0	1	0
N5	1	1	0	1	1	0	0
N4	0	0	0	1	0	0	0
N3	0	1	1	0	0	1	1
N2	0	1	0	0	0	1	0
N1	1	1	0	0	0	1	0
	N1	N2	N3	N4	N5	N6	N7
M7	0	1	0	0	0	1	1
M6	0	0	0	0	0	1	0
M5	1	1	0	0	1	1	0
M4	0	1	0	1	0	0	0
M3	0	1	1	0	0	0	0
M2	0	1	0	0	0	0	0
M1	1	1	1	0	0	1	1
	M1	M2	M3	M4	M5	M6	M7

Figure 3. Matrix grid of achievability between certain economic and legal factors that can cause crisis situations at a modern enterprise
Source: created by the authors of this study

Let the set of available factors that are connected to each other according to the matrix grid be denoted as S. When the notation is 1, it indicates the influence of the defined factor represented by this vertex on the factor. Accordingly, the set of all antecedents in a graph forms a subset P. Therewith, to form one of the hierarchy levels for both external and internal economic and legal factors identified here, which may cause crisis situations at a modern enterprise, the following equality (1) must be fulfilled:

$$R = S \cap P, \quad (1)$$

is the level of the hierarchy if P = R. The implementation of the specified set of measures (1) creates the initial (and the least significant in terms of impact on the analysed process) level of the hierarchical structure of the factors identified by experts according to the Delphi method that can cause crisis situations at a modern enterprise. The calculated matrix grid for determining the hierarchy of economic and legal factors that may cause crisis situations at a modern enterprise is presented in figure 4. Each level of the hierarchy is evaluated using pairwise comparisons, where elements are compared in terms of their significance or superiority to one another. These comparisons are usually quantified using a scale. Thus, for internal factors, equality is initially fulfilled for M2 and M6, which will be the lowest level in the hierarchy. Then those factors are removed from the grid, and this continues until the highest level is formed for both M and N factors. By skipping intermediate calculations, it is possible to form a holistic hierarchy in the context of presenting the technology to counter them (Fig. 5).

M	S	P	R	N	S	P	R
1	1;5	1;2;3; 6;7	1	1	1;5	1;2;6	1
2	1;2;3;4; 5;7	2	2	2	1;2;3;4;5	2;6	2
3	1;3	2;3	3	3	3	2;3;6;7	3
4	4	2;4	4	4	4;5	4	4
5	5	1;2;5;6	5	5	5	1;2;4;5	5
6	1;5;6;7	6	6	6	1;2;3;6	6	6
7	1;7	2;6;7	7	7	3;7	7	7

Figure 4. A matrix grid for determining the hierarchy of economic and legal factors that can lead to crisis situations at a modern enterprise
Source: created by the authors of this study

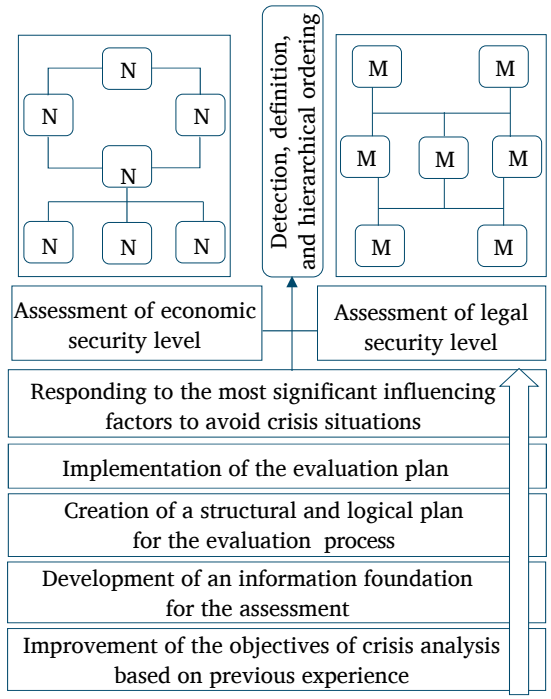

Figure 5. Technology for counteracting negative economic and legal factors that can lead to crisis situations at a modern enterprise
Source: created by the authors of this study

To improve the internal and external response to crisis situations at an enterprise, it is first necessary to focus on more effectively meeting the information needs of key economic security stakeholders. In the context of external threats, such as a full-scale invasion by the Russian Federation, the company should develop a strategy for geographical dispersion of assets and diversification of supply chains, which will reduce vulnerability to external shocks and ensure greater resilience.

Therewith, internal and external legal factors play a critical role in ensuring the legal security of an enterprise. Internal factors, such as corporate security, privacy policies, and work rules, provide the basis for internal governance and control, ensuring that all actions are within legal and policy frameworks. On the other hand, external legal factors, such as national health and safety legislation, cybersecurity, and

international regulations, impose obligations to follow security, cybersecurity, and external relations standards, which helps businesses identify and manage external risks while complying with the requirements of legislation and international agreements. To ensure the legal security of a business during the war in Ukraine, it is critical to keep up-to-date with rapidly changing national and international regulations and compliance requirements. Businesses should create a crisis management department that includes legal experts who can continuously assess risks and adapt strategies accordingly. This department should focus on asset protection, data security, and business continuity in the face of extraordinary regulations. It is also important to maintain strong communication with regulators and obtain legal advice on new legislation and government directives.

The final stage is a discussion of the results. Specifically, they should be compared with analogous ones in this area. For instance, B.M.A.R. Tubishat *et al.* (2024) focus on improving the efficiency of commercial relations to support sustainable development through regional legal frameworks. The present study expands on this by systematically analysing both internal and external economic and legal factors affecting enterprises, analogous to the use of a matrix grid to assess the interaction of factors suggested above. The methodological approach developed by V. Panchenko *et al.* (2022) for managing innovation activities is consistent with the emphasis placed on systematic analysis combined with expert methods. The present study contributes to this aspect by proposing a technology for counteracting the economic and legal factors that facilitate a crisis situation at an enterprise in the system of managerial decision-making to ensure its security development, improving the methodological tools available for managing enterprises during economic shocks.

O. Vovchak *et al.* (2021) and L. Dokiienko (2021) provided a framework for diagnosing financial crises and assessing financial security, respectively. The present study complements these paths by proposing a holistic technology that not only detects but also actively counteracts the negative influences that lead to crises, thereby providing a proactive tool in crisis management. I. Isaienko (2020) discussed the crisis in public administration, which resonates with the findings on the need for strong decision-making systems. The proposed model potentially serves as a bridge to apply these approaches to the private sector. The spatial challenges assessed by O. Zybareva *et al.* (2022) reflect the complexity of economic security management at the industrial level. The technology covered above uses analogous concepts, but refines the application specifically to address crisis situations, thereby increasing the security potential of the enterprise. M. Kopytko *et al.* (2023b) and O. Sylkin *et al.* (2019) explored creative responses to pandemic crises and crisis management modelling, respectively. The technology developed in the present study aligns with these approaches by providing a structured method for anticipating and mitigating crises by integrating creative problem solving into the decision-making process. A. Shtangret *et al.* (2019b) focused on the development and functioning of the organisational and economic mechanism for ensuring the economic security of the enterprise. This research is important for the present study because it provides a basic context for understanding the structural aspects of economic security. Thus, the proposed technology extends this approach.

Conclusions

In conclusion, the study made a significant contribution to the development of methods of counteracting crisis situations at enterprises through the analysis of economic and legal factors. The innovation lies in the creation of a matrix grid that systemises the links between internal and external factors that affect the stability of the enterprise. Therewith, an approach to their assessment and ordering was proposed. In total, the study identified 14 crucial economic and legal factors of the external and internal environment that influence the process of crisis formation at an enterprise through the involvement of experts. As a result of establishing the interrelationships between them and their hierarchical ordering, the study proposed a technology for counteracting negative economic and legal factors that may lead to crisis situations at a modern enterprise. The developed model of counteraction technology has significant practical value, as it provides enterprises with a tool for early response to crisis threats. Using this model, decision makers can set up their security strategies with minimal losses and optimise strategic planning processes. The technology also helps to improve the financial stability of the enterprise and strengthen its socio-economic security. Despite its considerable advantages, the model has certain limitations.

The analysis of economic and legal factors in the formation of crisis situations in enterprises highlighted the complex intertwining of legislation and corporate decision-making. Legal frameworks define the operational boundaries within which businesses operate and respond to crises. The study highlighted significant legal vulnerabilities that could cause or exacerbate crises. These vulnerabilities often arise from gaps in knowledge of the law, misinterpretation of new regulations, or non-compliance with existing laws. The rapid evolution of legal standards, especially in dynamic economies, can render existing compliance strategies obsolete, thereby exposing businesses to legal risks. The main limitation is its dependence on accurate and up-to-date input data, which can be difficult to collect in the ever-changing legal environment of Ukraine. It is also worth considering the need to constantly update the methodological framework and adapt to new economic realities, which may require additional resources and efforts on the part of the enterprise to fully implement the technology.

Prospects for further research in this context from the legal standpoint may focus on the analysis of new legislative initiatives and their impact on the economic stability of enterprises. Particular attention should be paid to the investigation of the adaptation of enterprises to the changes brought about by martial law in the country. It is also crucial to interact with state security structures to ensure coordination of efforts to counter military threats and minimise their impact on the economic security of enterprises.

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Conflict of interest

The authors of this study declare no conflict of interest.

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Протидія організаційно-правовим та економічним ризикам роботи підприємств в умовах воєнного стану

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Анотація. Гіпердинамічність зовнішнього середовища в межах вже 2024 року привнесла значні зміни в діяльність сучасних підприємств, утворивши ряд нових ризиків як правового так й економічного характерів й, що підвищує актуальність вибору форми реагування на них. Метою статті є аналіз можливих шляхів удосконалення технології протидії чинникам, що уможливлюють утворення кризової ситуації на підприємстві в системі прийняття управлінських рішень. Методологія дослідження передбачала застосування формально-юридичного аналізу законодавства та експертного методу для виокремлення зовнішніх й внутрішніх економіко-правових чинників, методів системного аналізу й аналізу ієрархії. В результаті було виокремлено найбільш вагомі негативні чинники економічного й правового характеру. Представлено матричну сітку між цими факторами як внутрішніми, так й зовнішніми. Основним результатом статті стала модель, яка представляє технологію протидії негативним чинникам, що можуть спричинити утворення кризових ситуацій на сучасному підприємстві в Україні. Особливе місце серед цих чинників займають ті, що викликані особливостями сучасної нормативної регламентації діяльності підприємств в умовах воєнного стану, основу якої складає Постанова Кабінету міністрів України № 303-2022-п 2022 року та Закону України № 2136-IX «Про організацію трудових відносин в умовах воєнного стану». Як результат, запропонована технологія закладає інформаційне підґрунтя для прийняття ефективних управлінських рішень ключовими суб'єктами безпеки на сучасному підприємстві. Практична цінність роботи полягає в можливості використання запропонованого підходу в діяльності підприємств України з метою задоволення інформаційних потреба суб'єктів безпеки

Ключові слова: правові чинники; економічні чинники; технологія протидії; матрична сітка; моделювання

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Legal regulation of surrogacy: International experience, status and prospects for development in Ukraine

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Abstract. The use of assisted reproductive technologies in Ukraine is insufficiently regulated at the legislative level, which necessitates a study of one of the types of assisted reproductive technologies – surrogacy – and the legal basis for the use of this phenomenon in Ukraine. The purpose of this study was to clarify the status and identify the shortcomings of legal regulation of surrogacy under the national legislation of Ukraine, and to investigate the world practices of its development. To fulfil the stated purpose, the study employed general scientific and special methods of scientific cognition, specifically, the formal legal method, the comparative legal method, and the method of functional forecasting. The study focused on the specific features of consolidating the institution of surrogacy in European legislation. The study found no unified international regulation of surrogacy relations, which leads to the existence of different approaches to their regulation in legislation. The study analysed the current state of national legislation on the use of assisted reproductive technologies through surrogacy and highlighted the existing gaps and shortcomings that need to be addressed. It was found that Ukraine lacks comprehensive legal regulation of surrogacy relations, which leads to contradictory opinions on the problem of using this type of assisted reproductive technologies. Based on the study conducted, conclusions were drawn on the need to amend the legislation of Ukraine regarding the use of surrogacy as a type of assisted reproductive technology. An analysis of the regulations of Ukraine suggests the need for a unified legal regulation of the surrogacy process. This analysis of the regulatory framework is of practical significance for further legislative regulation of legal relations in surrogacy matters

Keywords: legal framework for surrogacy; assisted technologies; Ukrainian and international legislation; fourth generation of human rights; human rights protection

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Introduction

Technologies that are being introduced in various areas of human activity, including medicine, law, and other related fields, are prompting a rethinking of the understanding of the human right to reproduction. This right is a part of the fourth generation of human rights and is an element of a set of opportunities for a person to exercise their personal and conscientious choice to reproduce and to exercise this right. To enjoy one of the natural human rights – the right to one's physical condition, body, and health (Convention for the Protection of Human Rights and Dignity..., 1997) – any person can make an informed independent decision regarding their health, including reproductive health, and decide on childbearing, including the use of assisted reproductive technologies.

Issues related to the legal nature, system, and content of reproductive human rights, as well as the specific features of their implementation through the lens of surrogacy programmes as a type of assisted reproductive technology, are becoming the subject of special attention of researchers in the fields of law, medicine, psychology, and ethics. Thus, Yu. Turyansky (2020) examined surrogacy as a somatic right of an individual to use and dispose of their body at their discretion. Therefore, surrogacy is considered as a specific activity carried out by a "gestational" courier. According to the researcher, altruistic and commercial types of surrogacy procedures provide an underestimated opportunity to become parents thanks to modern reproductive technologies, which requires a clear regulation of the legal relations by the state.

B. Ostrovska (2022) investigated the commercial surrogacy as an element or part of ART (assisted reproductive technologies) services in Ukraine. The researcher focused on the significance of the problem of protection and restoration of human and reproductive health, specifically on the protection of the rights and interests of children born under the surrogacy programme, as well as Ukrainian surrogate mothers, which is of particular importance in the context of martial law, and therefore necessitates a review of approaches to solving the problematic issues that exist in the issue of surrogacy at the state level.

O.M. Ponomarenko *et al.* (2020) and E.R. Kostyk (2023) addressed the problems of legal regulation of the institution of surrogacy in private international law. The latter researcher, based on the study of legislative and doctrinal sources, Ukrainian and international judicial practice, including the ECHR judgements, investigated the genesis of legal regulation of the institution of surrogacy in international private law, the specific features of the subjective composition of the institution of surrogacy, and the forms of implementation of reproductive rights in the field of surrogacy in international private law.

R. Maidanik (2020) provided a general description of the phenomenon from the perspective of a foreigner. The researcher analysed the features of substantive and conflict-of-laws regulation of surrogacy relations and considered conflicts in establishing and challenging paternity of a child born through the studied type of ART. The researcher suggests implementing positive foreign practices in the field of surrogacy into Ukrainian legislation.

N. Patel *et al.* (2018) performed a comprehensive analysis of surrogacy in terms of medical, legal, and social aspects. The researchers delved into topics such as medical advances, legal regulation, psychological impact on surrogates and intended parents, public perception and cultural impact, providing a holistic view of surrogacy. By providing a nuanced understanding of this complex reproductive phenomenon and its implications for the various stakeholders involved, the study added valuable insights to the existing discourse through the Indian experience.

R. Deonandan (2020) studied the ethical aspects of gestational surrogacy from different perspectives through the lens of classical ethics of religion, adoption standard, and Western liberalism with an emphasis on understanding heredity. V. Piersanti *et al.* (2021) analysed the ethical and legal complications associated with surrogacy and "procreative tourism", the problems of commercialisation of reproductive services, exploitation of surrogates, respect for the rights and welfare of the child, and the complexities of cross-border reproductive care, including the potential for exploitation or legal uncertainty in surrogacy arrangements. P. Brandão & N. Garrido (2022) and N. Hodson *et al.* (2019) analysed the risks of international commercial surrogacy arrangements, especially in the context of the debate around organ sales and the possible harm to potential surrogates, both individually and collectively, specifically considering the gendered nature of such arrangements.

Despite the substantial developments in the field, the lack of proper legal regulation of the relations arising from the use of surrogacy as a separate type of ART calls for further scientific investigation. Such studies will help to identify the main problematic aspects in the surrogacy process and seek to eliminate them at the legislative level, i.e., improve modern Ukrainian legislation, considering foreign practices in surrogacy.

The purpose of this study was to identify certain shortcomings and specific features of legal regulation of surrogacy in Ukrainian legislation, and to outline the prospects for its development, considering positive international practices.

Materials and methods

The study employed general scientific and special methods of scientific cognition in their combination. Using the method of formal legal analysis, the study examined the regulations of Ukraine aimed at governing relations in the field of surrogacy as a type of ART and studied the doctrinal sources in this area. The comparative legal method helped to make a comparative characterisation of Ukrainian legislation and the legislation of European countries (which allow or prohibit surrogacy) regarding the regulation of the institution of surrogacy. This study applied the method of problem analysis, specifically, in the part which identified the problematic aspects caused by the use of ART, as well as the method of alternatives, which revealed distinct positions of different researchers, and offered original recommendations and classifications, namely, the groups of states formed by the method of statutory regulation of surrogacy, as well as surrogacy in Ukraine. The method of synthesis and systematisation was used to formulate the conclusions and generalisations.

The regulatory framework of the study included international documents, as well as individual laws and regulations of Ukraine and the European Union. The Law of Belgium "On Medical Assisted Reproduction and the Assignment of Surplus Embryos and Gametes" (2007) regulates the use of medical reproductive technologies in Belgium, which is the basis for considering the legal aspects of surrogacy. It

served as a comparative basis for analysing Ukrainian legislation and helped to assess legal norms in other countries. Council of Europe reports have become a valuable source for investigating international trends in reproductive rights, including surrogacy. They helped to study the positions of different states on the rights of surrogate mothers and biological parents, which is essential for generalising international practices and prospects for the development of this institution in Ukraine (Resolution of the European..., 2015; De Sutter, 2016; Council of Europe Portal..., 2024). The analysis of the draft laws played a significant role in the study. This played an important role in the investigation of the legal regulation of surrogacy in Ukraine and helped to demonstrate the development of legislative initiatives aimed at streamlining the use of assisted reproductive technologies and regulating surrogacy. The analysis of the Draft Law of Ukraine No. 6475 "On Assisted Reproductive Technologies" (2021) helped to investigate the initial proposals of the legislators, which concerned not only surrogacy, but also the broader issue of the use of assisted reproductive technologies, including the regulation of the rights and obligations of biological parents and medical institutions. The study of subsequent draft laws, including Draft Law of Ukraine No. 6475-d "On the Use of Assisted Reproductive Technologies and Substitute Motherhood" (2023), helped to reflect the current changes and proposals for the regulation of ART and surrogacy. These documents became essential for determining the prospects for the development of the institution in the future.

The international documents and national laws used in this study are to some extent the primary information on the use of ART, including the use of surrogacy. Based on international regulations, it is possible to overcome the gaps in Ukrainian legislation, which will allow the latter's adaptation to the needs of modern society and, specifically, families wishing to become full-fledged parents.

Results and discussion

International practices in regulating surrogacy. The issue of legal regulation of surrogacy by sources of international law is extremely controversial and problematic. As of 2024, there is no unified international regulation of surrogacy. Most countries in the world are trying to regulate the process of ensuring the right to maternity/paternity for married couples within their national legal acts. Therewith, a series of countries deny the possibility of surrogacy in general. Specifically, surrogacy is not recognised in Pakistan, while in the United Arab Emirates (UAE), France, Austria, Norway, Italy, Germany, and Switzerland it is prohibited and considered illegal, and in Sweden the ban is formalised legislatively (Swedish Parenting Code, 1949). Another group of countries (Belgium, the Netherlands, the United Kingdom, the Czech Republic, and Greece) allow altruistic surrogacy, while imposing certain legal restrictions. In Belgium, surrogacy is governed by special legislation, which is primarily regulated by the current Civil Code of Belgium (2019) and various regulations on reproductive technologies, such as the Law of Belgium "On Medical Assisted Reproduction and the Assignment of Surplus Embryos and Gametes" (2007). In the UK, the Surrogacy Arrangements Act (1985), as amended, and case law are in force. This law is part of a broader legal framework governing surrogacy in the United Kingdom, which includes provisions from other laws, including the Human Fertilisation and Embryology Act (2008), which contains more detailed rules on surrogacy, including parental orders to establish legal paternity. The principal law governing non-commercial surrogacy in the Netherlands is the Netherlands Embryos Act (2002) and related regulations. And only a small number of countries, including Ukraine, Georgia, and some US states, manage to balance the provision and receipt of surrogacy services (both altruistic and commercial) using their legislative acts. That is why this latter group of states is extremely attractive to couples who are unsuccessfully trying to become parents, giving rise to the concept of cross-border surrogacy.

As there are differences in national regulations governing surrogacy, there is a need for international cooperation and harmonisation of laws relating to assisted reproductive technologies. A common international convention or a legally binding agreement between different countries on the recognition of a child's legal paternity and granting them citizenship would ensure that the rights of the child, the rights of their biological parents and the surrogate mother are respected and reduce the risks of abuse in this area. There is a positive practice of a series of declarations and memoranda, which, while not being legally binding treaties, influence the conclusion of international agreements. Specifically, the Universal Declaration of Human Rights (1948), adopted by the United Nations General Assembly, is considered a fundamental document in the field of human rights protection and has influenced subsequent international treaties and conventions on human rights protection.

Notably, the issue of surrogacy is often addressed in the reports of the Council of Europe (Resolution of the European Parliament..., 2015; De Sutter, 2016; Parliamentary discussion on Reproductive Health Rights. 2024). However, according to E.R. Kostyk (2023), the problematic aspects of this phenomenon are local in nature and do not have a single, unified vision. Thus, the situation with the legal regulation of surrogacy relations in Europe is an example of regulatory diversity between relatively close states, despite some attempts to resolve these issues.

Differences in the regulation of law and order in different countries have led to the emergence of such a phenomenon as "reproductive tourism". These are citizens who, not having the jurisdictional capacity to exercise their right to reproduction in their country, travel to other countries where surrogacy is permitted to exercise their right to use assisted reproductive technologies. According to E.R. Kostyk (2023), this will lead to problems with the agreement between the future parents and the surrogate mother, as well as with the child born as a result of the exercise of such a right to reproduction under contractual relations.

In modern world, there is no generally accepted legal framework that would regulate this practice at the global level, leaving this area largely unregulated. The absence of legislative regulation of surrogacy in many countries raises many problematic issues. G. Torres *et al.* (2019), identifying the challenges faced by surrogacy in South America, focus on the different approaches to regulating surrogacy in the region and highlight the difficulties arising from the lack of standardised guidelines. The researchers identify three groups of countries in the region: one uses guidelines on the substantiation and legality of commercial surrogacy

(Brazil, Uruguay), the second has special legislation in this area (Argentina, Colombia), and the third has no special legal mechanisms and regulations (Chile, Ecuador, Paraguay). By examining policies and practices in different South American countries, identifying inconsistencies and gaps in the regulation of surrogacy, these researchers emphasise that legal uncertainty leads to ethical dilemmas and potential exploitation of surrogate mothers and intended parents. The researchers' call for an international legal framework reflects their recognition of the interconnectedness of surrogacy in different countries. Such a framework, according to G. Torres *et al.* (2019), could establish uniform standards, promote ethical practice, and protect the rights and welfare of all parties involved in surrogacy.

Another issue is access to and equality in surrogacy for LGBT (lesbian, gay, bisexual, transgender) individuals and couples, who often face major difficulties in accessing surrogacy services compared to heterosexual couples. These challenges include legal barriers, social stigma, and financial inequality, which can hinder their ability to use surrogacy as a means of starting a family. The problem covers issues related to legal recognition, discrimination, and equal access to surrogacy resources. Having analysed various social, legal, and cultural changes in recent decades, it can be argued that the modern world is becoming increasingly tolerant of same-sex couples. This manifests itself in various areas of human life. There has been legal progress, changes in public attitudes, educational initiatives, corporate, and institutional support. Surrogacy as a separate type of ART is no exception. However, even though in many countries where surrogacy is permitted and practised (Ukraine, Georgia, Thailand, India), same-sex couples are prohibited from using surrogacy services. This problem stays a hot topic for public debate and academic discussion.

The Georgian surrogacy legislation is mainly based on the Civil Code of Georgia (1997), which mandates restrictions for same-sex couples, especially those who are not Georgian citizens. They face legal restrictions and are effectively excluded from surrogacy services because of these restrictions. Thai surrogacy legislation is governed by the Law of Thailand "On the Protection of Children Born through Assisted Reproductive Technologies" (2015). According to this law, surrogacy is available only to heterosexual couples. The law explicitly prohibits surrogacy for same-sex couples and single individuals. The law requires that surrogacy agreements be concluded through licensed clinics and meet concrete regulatory requirements. The main piece of legislation governing surrogacy in India is the Surrogacy (Regulation) Act (2021), which stipulates that surrogacy services are available only to heterosexual married couples. The law does not allow same-sex couples, single persons, and unmarried couples to use surrogacy services.

P. Pérez Navarro (2020), analysing the personal experience of gay parents in Spain, argued that state regulation of reproductive practices, especially in the context of gestational surrogacy, is not neutral, but rather serves to maintain and protect the existing infrastructure of heterosexual kinship through various mechanisms, including elitism, institutional hostility, and outright criminalisation. The researcher concluded that such regulation can "cement" social norms that favour heterosexual families.

R. Henrion (2014) analysed the arguments for extending or lifting the ban on surrogacy for same-sex couples. The reasons given for this include the desire of same-sex couples to build a family from their gene pool; existing barriers to adoption; the desire for equality between heterosexual and same-gender couples; problems associated with cross-border surrogacy; and limited access to therapeutic alternatives. At the same time, the facts supporting the ban include medical and ethical arguments, such as physical and psychological risks for the surrogate mother, complex aspects of the exchange between mother and foetus during pregnancy and potential risks for the child, commercialisation, creation of a favourable environment for abuse, etc.

The use of surrogacy services by same-sex couples raises issues that go outside the scope of purely medical aspects and constitute a social problem, as evidenced by a series of scientific papers. For example, O. Carone *et al.* (2018) investigated surrogacy involving same-sex couples in Italy, considering their relationships with surrogates and biomaterial donors, parents' decisions to keep/not keep the birth of their children in secrecy, and the latter's opinions on their origins. The emotional, psychological, and relationship aspects of surrogacy were highlighted, potentially affecting the legal, ethical, and social aspects of assisted reproductive technologies involving homosexual parents.

G. Sydsjö *et al.* (2019) studied the experiences of heterosexual parents and same-sex couples in Sweden who used cross-border surrogacy services to have a child. Parents, regardless of their sexual orientation, reported minimal parenting stress and generally expressed positive or neutral feelings about their parenting experience during interactions with healthcare professionals, in preschools, and during their child's leisure time.

Legal regulation of surrogacy in Ukrainian legislation. Ukraine is one of the countries where the law mandates the possibility of using surrogacy services. Therewith, the current use of this type of ART in the medical field is ahead of the formation of a regulatory framework in this area, and therefore surrogacy is one of the most complex institutions bordering on family and civil law and requires additional legislative regulation. Otherwise, the use of the type of ART under study will pose a threat to the rights of the child born through the surrogacy programme and the surrogate mother.

The contradiction of opinions on the issue of surrogacy is primarily conditioned by the lack of proper comprehensive legislative regulation of relations arising from the use of the type of ART under study. Thus, only a few provisions aimed at regulating this legal phenomenon are contained in the Civil Code of Ukraine (2003) ("the CC of Ukraine"), Family Code of Ukraine (2002), Law of Ukraine "Fundamentals of the Legislation of Ukraine on Healthcare" (1992), Order of the Ministry of Justice of Ukraine No. 52/5 "On Approval of the Rules for State Registration of Civil Status Acts in Ukraine" (2000), Order of the Ministry of Health of Ukraine No. 787 "On Approval of the Procedure for the Use of Assisted Reproductive Technologies" (2013).

The Constitution of Ukraine (1996), covering the conceptual norms that serve as the basis for building relationships in all spheres of society without exception, states in Article 51 that the family, childhood, maternity, and paternity are protected by the state. This provision unequivocally prescribes the right of every individual to have a child both naturally and reproductively, which has become possible in the current conditions of medical technology development.

The current CC of Ukraine (2002) gives an opportunity for an adult woman or man to use medical services involving assisted reproductive technologies pursuant to the procedure and on the legislatively conditions established (Article 281, Part 7). The provisions of the family legislation of Ukraine are limited to indicating the origin of a child born under a surrogacy programme. Thus, in case of transfer of a human embryo conceived by a married couple (a woman and a man) using assisted reproductive technologies into the body of another woman, the spouses will be considered the child's parents – Article 123, Part 2 of the Family Code of Ukraine (2002).

At the request of the spouses, the state registration of the child's birth is performed. In this case, along with a document certifying the fact that the child was born to the woman into whose body the embryo was transferred, a certificate of genetic relationship between the parents (mother or father) and the foetus, as well as a statement of the woman's consent to the registration of the child as the spouses' child, must be submitted. The authenticity of the signature on such an application must be notarised (Item 11, Chapter 1, Section III of the Rules for State Registration of Civil Status Acts in Ukraine (Order of the Ministry of Justice of Ukraine No. 52/5, 2000). Notably, children born in Ukraine and, accordingly, their registration is not separately distinguished by state authorities into those born in the usual way and those born using ART.

By its nature, the only document dedicated to the regulation of relations in the field of ART, including the use of surrogacy programmes, is the Order of the Ministry of Health of Ukraine No. 787 (2013). Section 6 of the document, which is devoted to surrogacy, covers the processes and necessary conditions for the use of the type of ART under study. This refers to the liberal approach of the Ukrainian legislator and the sub-legislative level of legal regulation of assisted reproductive technologies (Pokalchuk, 2020), which leads to gaps in the regulation of the relations under study.

As of 2024, the contractual principles set out in the Civil Code of Ukraine will be used to regulate the surrogacy programme. The contractual framework for regulating surrogacy relations, despite the existence of model applications and agreements approved by the relevant regulations of the relevant ministry, requires substantial revision. According to W.K.A.S. Atia (2020), this is not surprising considering the multi-subjective nature of the surrogacy services relationship, its duration, the significance of the object of the relationship – the surrogate mother's health and the child's life, ensuring the surrogate mother's due actions, the need to properly regulate the professional liability of the medical institution and its staff, etc.

In Ukraine, there is no special law that would define the essential terms of the agreement between the surrogate mother and the child's parents, regulate in detail the rights and obligations of the parties to the surrogacy relationship, their liability for violations of the law in the field of surrogacy services, etc. Particular attention should be paid to the protection of the rights of a child born as a result of the use of the type of ART under study.

A series of draft laws have been prepared to define the legal framework for the use of assisted reproductive technologies and surrogacy. Thus, in 2021-2024, the Committee on National Health, Medical Care and Health Insurance considered three draft laws, namely: "On Assisted Reproductive Technologies" (Draft Law of Ukraine No. 6475, 2021), "On the Application of Assisted Reproductive Technologies" (Draft Law of Ukraine No. 6475-1, 2022), "On the Use of Assisted Reproductive Technologies and Substitute Motherhood" (Draft Law of Ukraine No. 6475-2, 2022), which became the basis for the development of a joint document – Draft Law of Ukraine No. 6475-d "On the Use of Assisted Reproductive Technologies and Substitute Motherhood" (2023). None of these draft laws has been adopted.

The main provisions of these draft laws were aimed at improving the terminology in the field of assisted reproductive technologies, including relations in the use of surrogacy programmes, both by improving the existing terms (assisted reproductive technologies, embryo reduction, *in vitro* fertilisation) and by interpreting new terminology (infertility, surrogacy, genetic parents, embryo, cryopreservation of reproductive cells, etc.). It was equally important to define the key principles of the use of assisted reproductive technologies, including surrogacy, and the conditions and procedure for the use of the type of ART under study. Particular attention is paid to the protection of the rights and legitimate interests of both Ukrainian citizens and foreigners involved in surrogacy relationships, etc.

The problem of surrogacy, like any morally controversial issue, has supporters and opponents. Some researchers consider commercial surrogacy as a way to satisfy the interests of the client by purchasing an expensive product – a child. Others fairly deny the widespread public position that equates surrogacy with human trafficking and believe that it is a service provision, not a contract of sale, as from the moment of conception until birth, the child stays the child of their genetic parents (Markovych & Krikalo, 2020).

This gives grounds for a clear distinction between the terms "surrogacy services" and "human trafficking". The latter would occur in the complete absence of genetic relationship between the child and the parents, and in the case of payment for the transfer of the child to the customers. In the case of commercial surrogacy, financial compensation for the services rendered is provided, as well as coverage of the surrogate mother's expenses stipulated in the contract (Kostyk, 2022). Clearly, these postulates served as the basis for the authors of draft laws No. 6475-2 (2022) and No. 6475-d (2023) when defining the term "substitute motherhood" through "services involving the use of assisted reproductive technologies, as a result of which an embryo obtained in the laboratory, which has a genetic link with both or one of the genetic parents, is transferred to the body of a substitute mother for further gestation and birth of a child". Considering the above, it was found that surrogate (substitute) motherhood services are characterised by a contractual civil law nature and are, in essence, a separate type of assisted reproductive technologies.

N.M. Kvit (2016) is correct in stating that most European laws aimed at regulating the surrogacy institution are mostly characterised by common features, such as the establishment of age limits for both the clients and the surrogate mother; limiting the circle of persons who can use surrogacy services to their citizens or persons permanently residing or staying in these countries. In the context of the latter of these features, Ukraine is one of the few countries that provides an opportunity to have a child using assisted reproductive technology programmes with the participation of foreign couples but does not regulate all aspects of them in detail. As a

result, it is not uncommon for children born to foreigners by a surrogate mother in Ukraine to be unrecognised abroad in countries where the use of relevant reproductive technologies is prohibited by law, and as a result, illegal methods of taking children out of Ukraine are used. One of the most resonant in Ukraine was the criminal scheme of trafficking children born under a surrogacy programme to countries where surrogacy is prohibited, uncovered by law enforcement in 2023 (They traded newborn children..., 2023).

Considering the above, it appears reasonable to propose that the legislation should mandate the possibility of spouses, one or both of whom are foreigners and/or stateless persons, to resort to surrogacy services in Ukraine only if the spouses have a common personal law, and if the spouses do not have a common personal law, the law determining the legal consequences of marriage does not prohibit the use of this type of ART as a method of solving the problem of infertility (Opinion on the Draft Law of Ukraine No. 6475-d, 2023). Failure to follow these requirements would be grounds for denial of the right to use surrogacy services, according to Article 22, Part 2 of the Draft Law of Ukraine No. 6475-d (2023).

Despite the positive trends in the regulation of surrogacy relations, these draft laws require critical reflection and revision, specifically in terms of their compliance with the provisions of Article 14 of the Convention for the Protection of Human Rights and Dignity in the Application of Biology and Medicine (1997). Particular attention should be paid to the principle of ensuring the best interests of a child born under a surrogacy programme. Furthermore, a series of issues require more detailed regulation and clarification. Thus, there is a need to regulate the contractual relationship between a medical institution and a surrogate mother and genetic parents; it is necessary to determine the scope and legal regime of information on the surrogacy procedure, including information on its individual stages, duration, possible risks, and alternative solutions; relations with human embryos require special legal regulation, including the absence of a proper legislative mechanism for controlling the importation into the customs territory of Ukraine or exportation of embryos and reproductive cells.

Considering the different methods used in the field of reproductive technologies, the study focused on one of them, namely surrogacy, which is the newest method that involves an unnatural (artificial) way of fertilisation. To have a genetically related child, a married couple who, for certain physiological and medical reasons, cannot naturally produce offspring, will only be able to exercise their right to procreation as part of the right to life in this way (i.e., using assisted reproductive technologies).

Undoubtedly, surrogacy as a type of assisted reproductive technology has its drawbacks and unregulated aspects. Such unresolved issues include gaps in legislation, as well as the fact that there are countries that allow its use at the legislative level, but there are also a series of countries that categorically prohibit it, while in other countries surrogacy is not mandated by the current legislation, which complicates international uniformity. As for Ukraine, as of 2024, there is no comprehensive legal regulation of surrogacy, and the issue of reproductive rights in general also requires considerable legislative regulation.

Proceeding from the data from the Report of the Public Health Centre of the Ministry of Health of Ukraine (2022), there are nine institutions of the Ministry of Health of Ukraine that provide medical services for ART, as well as 59 outpatient clinics with family planning and reproduction rooms. There are also private healthcare facilities that provide the same surrogacy services – there are 39 of them in Ukraine. According to the report, the provision of services can be distinguished, which are in one way or another related to surrogacy: embryo transfer using *in vitro* fertilisation (IVF) – 189; transfer of cryopreserved embryos – 12,963; embryo reduction – 26.

Therefore, the identification of the main problems, the search for ways to solve them, and the improvement of national legislation in the field of surrogacy, considering the practices of foreign countries, appears to be a major area for the development of legal science. International cooperation and harmonisation of laws on assisted reproductive technologies is essential. The creation of a universal convention or legally binding agreement between countries on the recognition of legal paternity of a child and the granting of citizenship would protect the rights of the child, their biological parents, and the surrogate mother, and reduce potential abuses in this area. Only proper regulation of relations in the field of surrogacy services will ensure that the right to surrogacy is perceived through the lens of ensuring and exercising the rights of the fourth generation.

Conclusions

The study found that Ukraine is one of the countries where the possibility of using the services of a surrogate mother is legalised. It was found that legal regulation of relations in this area is carried out mainly at the level of a sub-legislative regulation with simultaneous application of contractual principles established by the Civil Code of Ukraine, since in the absence of a special law, it is the contract which will be the main source of regulation of these legal relations. At the same time, there is still a need to adopt a legislative act that would outline the rights and obligations of participants in relations arising from the use of the type of ART under study, define the terms of their liability, and protect the rights of a child born under a surrogacy programme.

An attempt to address this issue was made by developing four draft laws on assisted reproductive technologies and surrogacy, none of which were approved. Despite the positive trends in the legal regulation of surrogacy relations within the framework of the studied draft laws, including towards distinguishing surrogacy services from human trafficking, a series of provisions need to be finalised and revised, specifically, considering the requirements of the Convention for the Protection of Human Rights and Dignity of the Human Being regarding the use of biology and medicine.

According to Ukrainian legislation, relations in the field of surrogacy arise only based on a joint agreement between a surrogate mother and a woman (man) or a couple. Therewith, there is no statutory definition of a surrogacy agreement, nor a legislative list of essential terms and procedures for such an agreement.

On the positive side, the principal provisions of the Ukrainian draft laws are aimed at improving the terminology of the studied area of relations, including by interpreting new terms (infertility, genetic parents, embryo, surrogacy, surrogate motherhood, surrogate mother, cryopreservation of reproductive cells, embryos, etc. An urgent issue is the legislative formalisation of the institution of surrogacy (i.e., bridging the gaps in the legal framework of Ukraine) as a separate type of ART and the adoption of a relevant

law that would clearly define the rights and obligations of persons conducting ART programmes, including through surrogacy (substitute) motherhood. Considering this, further research should focus on formulating concrete recommendations for the legislator.

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Conflict of interest

The authors of this study declare no conflict of interest.

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Правове регулювання сурогатного материнства: міжнародній досвід, стан та перспективи розвитку в Україні

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Анотація. Застосування допоміжних репродуктивних технологій в Україні є недостатньо врегульованим на законодавчому рівні, у зв'язку з чим виникає потреба дослідження одного із видів допоміжних репродуктивних технологій – сурогатного материнства, правових підстав використання цього явища в Україні. Метою статті було з'ясування стану та виявлення недоліків правового регулювання сурогатного материнства за національним законодавством України, дослідження світового досвіду його розвитку. Для досягнення поставленої мети було використано загальнонаукові та спеціальні методи наукового пізнання, зокрема, формально-юридичний метод, порівняльно-правовий метод та метод функціонального прогнозування. Акцентовано увагу на особливостях закріплення інституту сурогатного материнства в європейському законодавстві. Констатовано відсутність уніфікованого міжнародного регулювання відносин сурогатного материнства, що зумовлює наявність різних підходів їх регламентації в законодавстві. В межах статті здійснено аналіз сучасного стану національного законодавства з питань застосування допоміжних репродуктивних технологій методом сурогатного материнства, підкреслено наявні прогалини та недоліки, які потребують усунення. Встановлено, що в Україні є відсутнім комплексне правове регулювання відносин сурогатного материнства, що зумовлює наявність контраверсійних поглядів на проблему застосування цього різновиду допоміжних репродуктивних технологій. На основі проведеного дослідження зроблено висновки про необхідність внесення змін до законодавства України в частині застосування саме сурогатного материнства, як одного із виду допоміжних репродуктивних технологій. Аналіз нормативно-правових актів України дав підстави стверджувати про потребу в уніфікованому правовому врегулюванні процесу сурогатного материнства. Даний аналіз нормативно-правової бази має практичне значення для подальшого законодавчого урегулювання правовідносин в питаннях сурогатного материнства

Ключові слова: законодавча база сурогатного материнства; допоміжні технології; українське та міжнародне законодавство; четверте покоління прав людини; захист прав людини

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Legal framework for health policy to reduce the level of substance abuse in the United States

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Abstract. The purpose of this study was to identify and legally assess the key legal instruments and strategies employed in the United States of America to combat substance abuse and their impact on the development of national health policy in this area. The study used quantitative and qualitative methods of analysis, including the processing of statistical data on the financing of addiction prevention and treatment programmes, analysis of federal and regional legislative acts, and comparative analysis of the policies of different states on the regulation of psychoactive substances. The key findings showed a significant evolution of the legal approach to the problem of substance abuse. The study revealed a gradual shift from a purely punitive approach to a balanced strategy that combines elements of prevention, treatment, and harm reduction. Furthermore, the analysis of funding showed a 35% increase in federal support for prevention programmes between 2018 and 2022, which led to improved access to healthcare for drug users and the development of recovery programmes. The results of a comparative analysis of state policies on the regulation of psychoactive substances showed a considerable difference in approaches, specifically regarding the legalisation of marijuana, which creates legal and regulatory challenges due to contradictions between federal and local laws. Specifically, in states where marijuana is legalised for medical or recreational use, the level of trafficking offences has decreased, but questions arise concerning the regulation of cultivation and distribution. It was also found that the introduction of telemedicine has significantly increased the effectiveness of drug treatment in a pandemic, allowing more patients to be reached, but this approach needs further improvement in the field of regulation and control. The findings of the study point to the need for closer integration of prevention, healthcare, and legal measures at all levels of government, unification of legislation on the regulation of psychoactive substances at the federal and state levels, as well as decriminalisation of drugs for personal use, which can reduce the level of criminalisation of society and contribute to a more effective fight against substance abuse

Keywords: drug dependence; harm reduction; decriminalisation; rehabilitation; drug courts; prevention

Suggested Citation

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Introduction

Substance abuse stays one of the most pressing public health issues in the United States (US), with far-reaching consequences for society, the economy, and the country's healthcare system. As of 2024, this problem is becoming particularly urgent due to the increase in opioid overdoses, the spread of new synthetic drugs, and the rise in mental disorders related to substance use. The legal framework for public health policy to reduce substance abuse in the United States is a complex and dynamic aspect of American legal science and healthcare. This area of law sits at the intersection of federal, state, and local laws and regulations, creating a complex legal mosaic that affects the formulation and implementation of healthcare policy. The rising tide of substance abuse in the United States continues to pose major challenges to public health, social welfare, and economic stability. Despite the numerous interventions and policy measures implemented over the years, the persistent nature of this problem highlights the need for a comprehensive reassessment of health policy practices aimed at reducing substance abuse. Recent data from the National Survey on Drug Use and Health revealed alarming trends: an estimated 40.3 million Americans aged 12 and older suffered from a substance use disorder in 2020 (Medication Assisted Treatment…, 2021). These statistics underscore the urgency of developing more effective, evidence-based approaches to combat this widespread problem.

Substance abuse research and policy development are hot topics in the scientific literature. R. Chang *et al.* (2022) made a significant contribution to understanding the neurobiological basis of addiction, expanding the understanding of the mechanisms underlying addictive behaviour. M.T. Davis *et al.* (2017) made progress in the development of new pharmacological interventions aimed at treating addiction. However, as these researchers point out, there is still a critical need to translate scientific discoveries into practical healthcare policy. In the context of the opioid crisis, W. Macias-Konstantopoulos *et al.* (2021) investigated the effectiveness of supervised injection sites as a harm reduction strategy. J.G. Katzman *et al.* (2022) studied the impact of expanded access to naloxone on reducing overdose deaths. M. Cerdá *et al.* (2019) conducted a comprehensive study of the impact of marijuana legalisation on overall substance use patterns, providing important data for policy-making in this area. N.M. Avena *et al.* (2021) addressed the impact of the COVID-19 pandemic on substance abuse, identifying increased risk factors and disrupted access to treatment. G.C. Alexander *et al.* (2020) highlighted the need for adaptive and resilient health systems to address addiction in crisis situations. J.K. Niles *et al.* (2020) explored the relationship between substance abuse and other public health issues, such as mental health and infectious diseases, highlighting the significance of a comprehensive approach to healthcare policy making. A. Stevens *et al.* (2022) performed an in-depth analysis of the legal consequences of drug decriminalisation in Portugal, which was one of the first countries to implement this approach in 2001. The researchers considered how this policy had affected the criminal justice and healthcare systems over two decades. They found that decriminalisation led to a significant reduction in drug-related arrests and increased access to treatment. However, the researchers also noted some legal uncertainties, especially regarding the distinction between personal use and distribution of drugs. This study highlighted the importance of a clear legal definition when implementing innovative approaches to drug policy.

In the context of the new challenges posed by the emergence of new psychoactive substances (NPS) and changes in cannabis regulation, M. Pardal *et al.* (2022) conducted a comparative analysis of the legal frameworks for cannabis regulation in Belgium, the Netherlands, and Spain. The researchers focused on the investigation of so-called "cannabis clubs" – non-profit associations that grow and distribute cannabis to their members. The study revealed significant differences in the legal status and regulation of these clubs in different jurisdictions, leading to legal uncertainty and challenges in law enforcement. M. Pardal *et al.* emphasise the need to harmonise legislation and develop clear legal frameworks to regulate such innovative models of access to cannabis, especially in the context of the growing trend towards liberalisation of cannabis policy in Europe. Another important study was conducted by T. Decorte *et al.* (2017), who examined the legal and practical aspects of implementing a regulated cannabis market. The researchers analysed different models of cannabis legalisation, including commercial and non-commercial approaches, and their potential impact on public health and criminal justice. The study focused on the legal challenges associated with regulating the production, distribution, and use of cannabis, as well as potential conflicts with international drug conventions. T. Decorte *et al.* (2017) emphasise the significance of developing a comprehensive legal framework that considers both the potential risks and possible benefits of a regulated cannabis market. They also emphasise the need for a flexible approach to legislation that allows for adaptation to new scientific evidence and social trends.

The purpose of this study was to comprehensively analyse and evaluate the effectiveness of legal mechanisms in the formation and implementation of US healthcare policy aimed at reducing the level of substance abuse, considering current challenges and trends in this area. To fulfil the purpose of this study, the tasks were set as follows:

1) to consider key US legislation and programmes in the field of substance abuse regulation, their impact on healthcare policy making, and effectiveness in combating abuse;

2) to assess the role of the US judicial system in shaping legal policy on the regulation of psychoactive substances and its impact on resolving legal conflicts between federal and state laws;

3) to identify the key problems and prospects for the development of legal regulation of psychoactive substances in the United States, considering the differences in approaches at the federal and state levels.

Materials and methods

The research methodology was based on a comprehensive approach that included an analysis of regulations, statistics, and scientific publications in the field of substance abuse regulation and healthcare policy in the United States. The study covered the period from 1970 to 2024, which helped to trace the evolution of legislation and policy in this area.

The principal method of the study was comparative legal analysis, which helped to identify the specific features of regulating psychoactive substances at the federal and state levels. For this, key legislative acts were analysed, including the Controlled Substances Act (2022), Comprehensive Drug Abuse Prevention and Control Act (CDAPCA) (1970), Drug Addiction Treatment Act (2000), Mental Health Parity and Addiction Equity Act (MHPAE) (2008), Affordable Care Act (ACA) (2010), Support Act: Highlights of the 2018 Opioid Legislation (2018), H.R.1865 – Further Consolidated Appropriations Act (2020), and H.R.5376 – Inflation Reduction Act (2022). The analysis included a review of the structure of the laws, their main provisions and changes made over time. To evaluate the effectiveness of legislative initiatives, the study used statistics from official sources such as the Centers for Disease Control and Prevention (CDC) (2024), the Drug-Free Communities (DFC) Support Program (2023), and the Substance Abuse and Mental Health Services Administration (SAMHSA) (2024).

The study of the effectiveness of drug courts was based on a comprehensive analysis and synthesis of heterogeneous data from multiple sources. As a result, an original diagram was developed that reflects a generalised picture of the phenomenon under study. This chart visualises key performance indicators such as recidivism rates, treatment costs, and other important parameters, providing a holistic view of the impact of drug courts on the justice and healthcare systems. A comparative table was created to compare US state policies on psychoactive substances, which included information on the status of psychedelics, implementation programmes, and specific features of the approach in different states. This information was obtained from official state legislative documents and reports from relevant government agencies.

To analyse the impact of legalisation of recreational use of marijuana on the healthcare sector, the study examined the laws of individual states, specifically the Colorado Amendment 64 "Use and Regulation of Marijuana" (2012) and the Proposition 64: Adult Use of Marijuana Act – Effect on College Districts (2016), and conducted a comparative analysis of their provisions. The evaluation of the effectiveness of mandatory educational programmes for the prevention of substance abuse in public schools was based on data analysis using descriptive statistics. To investigate the impact of expanding the use of telemedicine for drug treatment, the provisions of the H.R.3875 – Expanded Telehealth Access Act (2023) and the results of relevant studies were analysed. Based on the findings obtained, the study formulated recommendations for improving the legal framework of healthcare policy to more effectively combat substance abuse in the United States. Using a comprehensive approach that combines different analytical methods and data sources, the study provided a comprehensive understanding of the legal framework for healthcare policy to reduce substance abuse in the United States and assessed the effectiveness of various legislative initiatives and programmes.

Results

The Comprehensive Drug Abuse Prevention and Control Act (1970) is the fundamental legislative act governing the circulation of psychoactive substances in the United States. This law establishes a system for classifying psychoactive substances into five categories depending on their medical use and potential for abuse. It establishes a legal framework for regulating the production, distribution, and possession of controlled substances, and establishes penalties for violations of these regulations. The Comprehensive Drug Abuse Prevention and Control Act is a part, defines an overall strategy for combating drug abuse, including prevention, treatment, and rehabilitation measures. The provisions of the U.S. Code (2024), specifically Title 21, detail and expand on the provisions of the above laws by establishing concrete registration, licensing, and reporting procedures, as well as requirements for persons and organisations dealing with controlled substances. Regulations, including the Drug Scheduling (2018) regulations, are aimed at practical implementation of the provisions of the laws, establishing concrete procedures for controlling and monitoring the circulation of psychoactive substances. The HHS and US Social Services guidelines play a vital role in shaping healthcare policy to reduce substance abuse, focusing on prevention, treatment, and rehabilitation.

The US regulatory framework at the federal and state levels in the field of substance abuse and healthcare policy reveals a complex and multi-level system of legal regulation. At the federal level, the Comprehensive Drug Abuse Prevention and Control Act (1970) stays the key piece of legislation, which establishes the basic principles of classification of psychoactive substances and defines the general framework for their regulation. Over the past fifty years, since the adoption of the CSA, there has been a significant evolution in approaches to substance policy in the United States. This evolution is characterised by a gradual shift from a purely punitive approach to a more comprehensive one that includes prevention, treatment, and rehabilitation. Changes in federal policy have been reflected in a series of legislative initiatives and programmes, including the DFC programme.

The DFC programme, created by the Drug-Free Communities Act (1997), was one of the crucial steps in the federal approach to substance abuse. According to this law, the purpose of the programme is to reduce substance abuse among youth and, over time, among adults by addressing factors in the community that increase the risk of substance abuse and promoting factors that minimise the risk of substance abuse. The programme is implemented by providing grants to local coalitions working to prevent drug use among young people. These coalitions bring together representatives of various sectors of the community, including schools, law enforcement, religious organisations, business, media, etc. The effectiveness of the DFC programme is evidenced by its longevity and scale of coverage. According to the DFC Support Program (2023), between 2002 and 2022, over 2000 community coalitions across the country were funded under this programme (Fig. 1).

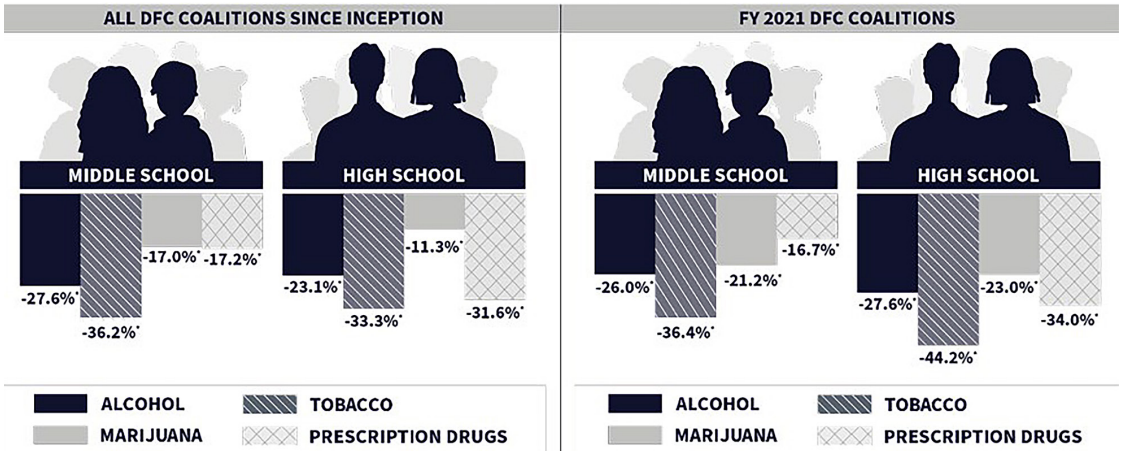

Figure 1. Impact of the DFC programme

Note: significance level $p < 0.05$

Source: Drug-Free Communities (DFC) Support Program (2023)

Figure 1 demonstrates the major impact of the DFC programme on substance use among target populations in the United States. The results in reducing tobacco use are particularly noteworthy, with the most significant decrease in the indicators over the entire period of the programme and in FY 2021. This information is valuable for the study of the legal framework of healthcare policy, as it provides empirical evidence of the effectiveness of legislative initiatives and preventive measures. From a legal standpoint, the presented data confirm the validity of preventive strategies in the field of drug policy and can serve as an argumentative basis for the further development of analogous programmes. The data analysis suggests the need for a differentiated approach to regulating the use of different psychoactive substances, specifically, the need to strengthen measures to reduce the use of marijuana, which has a less pronounced decline compared to alcohol and tobacco. Notably, the effectiveness of the programme in reducing alcohol consumption has been consistently high in both the medium and short term. Furthermore, the findings show the effectiveness of a comprehensive approach to addressing the problem at the community level, which can be extrapolated to the development of future legislative initiatives in the field of healthcare and substance abuse. It is worth noting the positive dynamics of the DFC programme's effectiveness in FY 2021 compared to the cumulative indicators for the entire period of its existence, which is especially noticeable in the reduction of prescription drug use. These data can serve as a compelling argument in favour of extending and expanding such programmes at the legislative level.

The evolution of US substance abuse legislation demonstrates a gradual shift from a purely punitive approach to a more balanced strategy that includes elements of prevention, treatment, and harm reduction. This can be traced back to a series of key legislative acts. For instance, the Comprehensive Drug Abuse Prevention and Control Act (1970) established severe penalties for drug trafficking. Further developments are reflected in the Drug Addiction Treatment Act (2000), which allowed doctors to prescribe certain medications for the treatment of opioid dependence on an outpatient basis. Another major contribution is the Support Act: Highlights of the 2018 Opioid Legislation (2018), which expanded access to treatment by increasing the limits for doctors prescribing opioid dependence treatment. The next significant law was the H.R.1865 – Further Consolidated Appropriations Act (2020), which included provisions for the expansion of telemedicine for drug treatment. Finally, the H.R.5376 – Inflation Reduction Act (2022) provided additional funding to expand access to drug treatment through Medicare and Medicaid.

The key initiative in this area was the Medication-Assisted Treatment (MAT) programme. This programme was introduced by the Mental Health Parity and Addiction Equity Act (2008) and further developed by the Affordable Care Act (2010). These legislative acts obliged insurance companies to cover drug dependence treatment, including MAT, on an equal footing with other medical services. The number of patients receiving MAT has grown from approximately 227,000 in 2011 to more than 1.2 million in 2022 (SAMHSA…, 2024). The Support Act: Highlights of the 2018 Opioid Legislation (2018) further expanded access to MAT by increasing the number of patients that can be treated by a single doctor and allowing more healthcare professionals to prescribe treatment.

In considering the problem of opioid abuse, the complex impact of different strategies and the need for careful consideration of available data were identified. The Prescription drug monitoring programmes (2022) (PDMPs) implemented in the United States have demonstrated effectiveness in controlling the prescription of opioids by doctors. According to the CDC (2024), the implementation of PDMPs correlates with a significant decrease in the number of opioid prescriptions per 100 people: from 81.3 in 2012 to 43.3 in 2022, which corresponds to a 46.7% decrease

(Fig. 2). This reduction is substantial in the context of the fight against opioid abuse, as limiting the availability of prescription opioids potentially reduces the risk of addiction and misuse of these drugs. At the same time, this correlation does not necessarily suggest a causal relationship, and more research is needed to fully understand the effectiveness of PDMPs. A comparison of the effectiveness of different legal instruments in terms of their impact on the situation with substance abuse indicates that comprehensive strategies are preferable. These strategies include not only legal mechanisms but also healthcare and social support measures. Specifically, the introduction of syringe exchange programmes, increased access to naloxone, and the adoption of "good Samaritan" laws show potential to reduce the adverse consequences of opioid abuse. "Good Samaritan" laws provide some immunity from criminal prosecution for people who call for emergency assistance in cases of drug overdose. These laws eliminate the fear of legal repercussions that can prevent people from seeking medical care in critical situations, creating a balance between the need for law enforcement and the priority of saving lives. The integration of PDMPs with other interventions, such as syringe exchange programmes and expanded access to naloxone, creates a synergistic effect in the fight against opioid abuse. PDMPs help to control the legal circulation of opioids, while harm reduction programmes and "good Samaritan" laws minimise the negative consequences for those already suffering from addiction. This multifaceted strategy accommodates both prevention and the need to provide aid to people who have already encountered drug addiction.

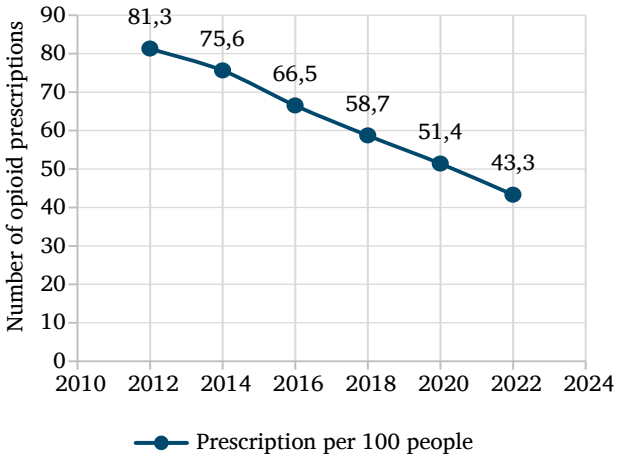

Figure 2. The impact of PDMPs on opioid prescribing
Source: created by the author of this study based on a study by the Centers for Disease Control and Prevention (2024)

Figure 2 shows the substantial impact of the introduction of prescription drug monitoring programmes (PDMPs) on opioid prescribing practices in the US over a ten-year period. The graph shows a steady and consistent downward trend in opioid prescriptions starting in 2012, when PDMPs were implemented in all states, and continuing through 2022. This trend demonstrates the effectiveness of PDMPs as a tool for controlling the prescription of opioid medications and may potentially indicate a reduction in the risks associated with their overuse or abuse. According to the data presented in the graph, the number of opioid prescriptions per 100 people decreased from 81.3 in 2012 to 43.3 in 2022, which corresponds to a decrease of 46.7%.

Notably, the rate of decrease in opioid prescriptions was relatively uniform throughout the observation period, without a particularly sharp decline in the first years after the programmes were implemented. This may suggest that healthcare professionals are gradually adapting to the new requirements and constantly raising awareness of the risks associated with opioid prescribing. PDMPs, as a regulatory measure, have been shown to be effective in reducing the number of opioid prescriptions, which is a crucial step in the fight against the abuse of these drugs. However, it is important to understand that PDMPs are only one element in a broader strategy to combat the opioid crisis. To achieve a comprehensive effect, PDMPs need to be combined with other measures, such as educational programmes for healthcare professionals and patients, the development of alternative treatments for chronic pain, and drug prevention and treatment programmes. Although these supplementary measures are not directly part of PDMPs, they are critical components of the overall strategy to address the opioid crisis and should be considered in the context of evaluating the effectiveness of PDMPs and planning future interventions.

The US judicial system plays a key role in the development of legal policy on the regulation of psychoactive substances, especially considering the precedent-setting nature of its decisions. Judgment of the Supreme Court of the United States in Case No. 03-1454 (2005), which confirmed the constitutional right of the federal government to regulate marijuana throughout the country, regardless of the laws of individual states, was a landmark in this regard. The case was about federal agents confiscating and destroying marijuana that two women from California had grown for personal medical use according to state law. The court ruled that under the US Constitution, the federal government is entitled to regulate interstate commerce, including a ban on the cultivation of marijuana for personal use, even if it is permitted under state law. This decision created a legal conflict between federal law and state laws that have legalised marijuana for medical or recreational use. This situation led to legal uncertainty, as, on the one hand, states continue to legalise marijuana, and on the other hand, the federal government retains the right to prohibit and prosecute its use under federal law. This creates difficulties for businesses involved in the cannabis industry, as well as for consumers, who face the risk of federal prosecution even in states where marijuana is legalised.

The courts recognise the therapeutic value of cannabis and the right of states to regulate it independently, despite the federal ban. Specifically, in the case of Washington v. Barr No. 18-859 (2019), the federal appellate court upheld the right of states to legalise the medical use of marijuana, finding that it does not contradict federal law. This judgement is significant for the regulation of drug trafficking, as it creates a legal basis for a differentiated approach to cannabis as a medicine, separating it from other prohibited psychoactive substances. This approach can increase patient access to medical cannabis in states where it is permitted, which could positively affect the quality of life of people with certain medical conditions. However, the impact of this judgement on the level of substance abuse is still a matter of debate and requires further investigation. On the one hand, the legalisation of medical cannabis could lead to

a reduction in illicit trafficking and associated health risks through controlled production and distribution. On the other hand, there are concerns about the potential increase in the availability of cannabis for non-medical use, which could lead to an increase in abuse (Spytska, 2024).

In United States v. Safehouse, No. 20-1422 (2021), the federal court considered the legality of creating controlled premises for the safe use of drugs. These facilities, also known as "supervised consumption centres" or "safe consumption rooms", are designed to provide medical supervision to people who use drugs to prevent overdoses and improve overall public health. The court ruled that the operation of such facilities does not violate the federal law on controlled substances, as their primary goal is to reduce overdose deaths and promote public health. This judgement reflects a broader trend in US legal science towards decriminalising the possession of lesser amounts of drugs for personal use. As of 2024, there are over 4000 such specialised court programmes in the United States that combine intensive supervision, drug treatment, and social support. Re-arrest rates among graduates of drug court programmes are reduced by an average of 8-14% two years after completion, with the most effective programmes showing a 35-80% reduction in recidivism (Sheeran & Varline, 2024). The study clearly demonstrates the advantages of drug courts over the conventional criminal justice system in terms of key performance indicators (Fig. 3). These data point to the potential of drug courts not only as a means of reducing recidivism, but also as an effective mechanism of comprehensive rehabilitation that can have a significant positive impact on society, contributing to a reduction in drug crime, reducing the burden on the penitentiary system, and improving the social integration of former offenders.

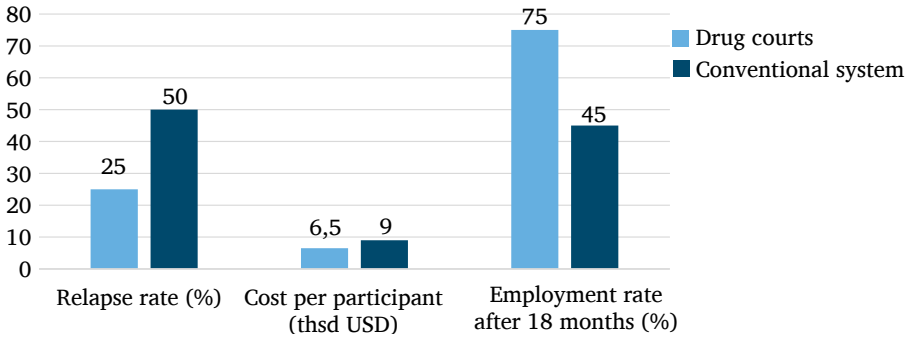

Figure 3. Effectiveness of drug courts compared to the conventional criminal justice system
Source: created by the author of this study based on B. Kearley & D. Gottfredson (2020), J.K. Roman *et al.* (2020), P.J. Joudrey *et al.* (2021)

Recent research on the effectiveness of substance use prevention and harm reduction programmes demonstrates their significant role in combating this problem, which is supported by relevant legislation and increased funding. According to R. Reilly *et al.* (2020), the implementation of the Communities That Care (CTC) programme, which is based on principles analogous to the Strategic Prevention Framework (SPF), led to a considerable reduction in substance use among young people. The implementation of CTC was made possible by the CDAPCA of 1970, which provided the legal framework for the implementation of such programmes at the federal level. Specifically, Title II of this law, known as the CSA, establishes that the unlawful importation, manufacture, distribution, possession, and misuse of controlled substances have a substantial and detrimental effect on the health and general welfare of the American people (21 U.S.C. § 801…, 2024). An analysis of DFC budget data showed a 35% increase in federal funding for prevention and treatment programmes from 2018 to 2022, which in absolute terms represents an increase from USD 17.4 billion to USD 23.5 billion, respectively.

Table 1. Comparative table of US state policies on psychedelics

State	Status of psychedelics	Implementation programmes	Approach features
California	Decriminalised in some cities	Research programmes	Focus on healthcare and decriminalisation
Colorado	Legalised for therapeutic use	Controlled treatment centres are permitted	Progressive approach to legalisation
New York	Research programmes	Study of therapeutic potential	Balance between research and law enforcement
Texas	Limited research use	Limited programmes for veterans	Predominantly research-based approach
Florida	Research proposals	Increasing access to research	Gradual transition to decriminalisation
Oregon	Legalised for therapeutic use, decriminalisation	Wide range of treatment programmes	Radical reform with a focus on healthcare
Massachusetts	Decriminalised in some cities	Advanced research programmes	Science-based approach, public initiatives

Source: created by the author based on Mapping Psychedelic Drug Policy Reform in the United States (2024)

Table 1 demonstrates the general trend towards gradual liberalisation of cannabis (psychedelics) legislation, but with varying degrees of intensity and emphasis. Some states, such as Oregon, have taken a more radical approach with full decriminalisation and a focus on public health, while others, such as Texas, have maintained a more conservative stance with limited research use. Notably, most states are implementing research programmes on the therapeutic potential of cannabis, which suggests a growing scientific interest in this area. At the same time, there is variation in the balance between research initiatives and law enforcement, reflecting the difficulty of formulating a unified national policy on this issue. Overall, the data indicates a gradual shift from a purely prohibitionist approach to a more nuanced one, focused on healthcare and research, although the pace and nature of this change varies substantially from state to state.

The passage of the Support Act: Highlights of the 2018 Opioid Legislation in 2018 marked a turning point in the development of community recovery organisations (RCOs). This legislation, aimed at comprehensively addressing the opioid crisis in the United States, contained a series of provisions that helped to strengthen and expand the activities of RCOs. Specifically, the Support Act mandated additional funding for programmes to support recovering drug addicts, expansion of access to medication-assisted treatment for opioid addiction and increasing the role of NGOs in the rehabilitation process. From a legal perspective, this act considerably strengthened the legal framework for the functioning of RCOs, giving them more opportunities to interact with government agencies and medical institutions. RCOs have proven to be highly effective, as communities with an active presence have higher rates of long-term recovery from drug addiction. R.D. Ashford *et al.* (2019) demonstrated that participation in RCOs programmes correlates with a significant reduction in relapse rates, improved quality of life, and improved social adaptation of people overcoming drug addiction.

In parallel with the development of RCOs, the legalisation of recreational marijuana use in some states has led to unexpected health consequences. A comparative legal analysis of the legislation of different US states on marijuana legalisation reveals considerable differences in approaches and regulatory mechanisms. Thus, Colorado's Marijuana Legalisation Act (2012) allows individuals over 21 years of age to possess up to one ounce (28 grams) of marijuana for personal use, while California's Adult Use of Marijuana Act (2016) sets analogous regulations, but with stricter restrictions on advertising and marketing of cannabis products. Despite their differences, these laws have a common goal of decriminalising the use of marijuana and creating a regulated market. From a legal perspective, such laws set a precedent for rethinking drug policy at the federal level, but at the same time exacerbate the legal conflict between federal and state legislation.

This situation creates major challenges in law enforcement and regulation. At the federal level, marijuana is still classified as a Schedule I drug according to the U.S. Drug Enforcement Administration (Drug Scheduling, 2018), which means it is recognised as a substance with a high potential for abuse and no accepted medical use. This leads to legal uncertainty for entrepreneurs, medical professionals, and consumers in states where marijuana is legalised. Specifically, there are problems with banking services for cannabis businesses, as federal banks cannot work with funds received from activities that are illegal at the federal level. Furthermore, this conflict creates difficulties for conducting research on the therapeutic properties of marijuana, as federal funding for such research is limited due to its Schedule I status. These legal contradictions call for a comprehensive review of federal legislation to harmonise the legal framework and ensure effective regulation of the cannabis market, considering both the potential benefits and risks to public health.

The introduction of compulsory substance abuse prevention education programmes in public schools, prescribed in the Healthy Schools Act (HSA) (2020), was a crucial step in the fight against drug addiction among young people. This initiative led to a statistically significant reduction in substance use among students: the number of cases of substance use among students decreased by 15% within two years of the programme's implementation. Furthermore, the expanded use of telemedicine for drug treatment, as mandated by the H.R.3875 – Expanded Telehealth Access Act (2023), has demonstrated high efficiency in helping people with addiction problems. L. Lin *et al.* (2020) showed substantial regulatory changes in the US that have facilitated access to remote treatment, including easing restrictions on telemedicine prescribing of controlled drugs and expanding reimbursement opportunities for such services. Despite these positive developments, the introduction of telemedicine in the treatment of substance use disorders faces a series of obstacles, including the specifics of treatment that require intensive monitoring and clinicians' psychological discomfort with the remote format of consultations. To overcome these challenges, the researchers propose a set of measures, including the development of specialised guidelines for telemedicine services, the creation of tools to facilitate remote prescribing, and the development of additional resources for psychosocial support for patients. Researchers emphasise the need for long-term evaluation of the effectiveness of telemedicine interventions and their impact on treatment outcomes, as well as for continuous improvement of access to treatment.

Based on the analysis of the results obtained, the following recommendations can be made to improve the legal framework of healthcare policy for a more effective fight against substance abuse in the United States. First and foremost, federal and state legislation on the regulation of psychoactive substances, especially marijuana, needs to be unified. The current situation, where marijuana stays in Schedule I at the federal level but is legalised in many states, creates legal uncertainty and complicates the implementation of consistent policies, as conflicts between federal and state laws arise, leading to inconsistent enforcement and confusion regarding the legal status of marijuana in different jurisdictions. It is recommended that the federal classification of marijuana, which under the Controlled Substances Act is Schedule I, defined as "a substance that has a high potential for abuse, has no accepted medical use in the treatment of disease in the United States, and lacks an acceptable level of safety for use under medical supervision", be revised to reflect scientific evidence of its medical use and potential for abuse. This will align federal policy with progressive approaches already implemented in many states, such as California, Colorado, and Oregon, and create a more coherent and evidence-based system of substance regulation at the national level.

The trend towards decriminalisation of personal drug use should be continued and strengthened, with the criminal

justice system reorienting its resources towards treatment and prevention. It is recommended to develop and adopt a federal law that would decriminalise the possession of lesser amounts of drugs for personal use. The relevant law should prescribe mechanisms to redirect persons detained for drug possession to treatment and rehabilitation instead of criminal prosecution. This will reduce the burden on the criminal justice system and focus resources on more effective methods of combating drug addiction.

It is also important to legislate and expand the practice of drug courts, which have already proven effective in reducing recidivism and improving the social adaptation of programme participants. It is recommended that federal standards for drug courts be developed to ensure a uniform approach to their operation in all states, and that additional funding be provided to expand the network of such courts, especially in regions with elevated levels of drug dependence. Furthermore, consideration should be given to integrating drug courts with reintegration programmes for people who have served their sentences for drug-related offences, which may help to reduce recidivism and improve long-term rehabilitation outcomes. Strengthening the "good Samaritan" legislation is a critical aspect of improving the legal framework on drug dependence. It is proposed to extend federal protection from criminal prosecution for people who report overdoses, including protection from drug possession charges. It is also recommended that legislative support for prevention and early intervention programmes, especially among young people, be strengthened by adopting a federal law requiring all schools to implement evidence-based substance abuse prevention programmes. Such a law should mandate relevant funding and mechanisms for monitoring the effectiveness of these programmes.

A comprehensive legal framework should also be developed to regulate the use of telemedicine, digital therapeutic tools, and mobile applications in the prevention and treatment of drug addiction. This framework should include quality standards, personal data protection requirements, and performance evaluation mechanisms. In addition, it is proposed to strengthen legislative support for research in the field of drug addiction prevention and treatment, including simplifying the procedure for conducting clinical trials of new treatments and investigating the potential of psychedelic substances in the treatment of addictions. These activities will contribute to the development of innovative treatment methods and increase the effectiveness of healthcare policies to reduce substance abuse.

Discussion

The problem of substance abuse, including opioids, new synthetic drugs, and other drugs, continues to be one of the most pressing challenges for the United States healthcare system. This is confirmed by the latest statistics showing an elevated level of substance use disorders affecting millions of citizens. Thus, the need to develop more effective legal and policy measures becomes plain, which is a valuable contribution to national discussions on how to address this problem (Woźniak, 2023). The conducted study highlighted the significance of legal regulation at both the federal and local levels to create a more flexible and adaptive healthcare system. However, the findings suggest a considerable number of barriers that prevent the implementation of effective measures to combat drug addiction.

One of the key aspects reflected in the results of the study is the legal and regulatory policy on the control of psychoactive substance use. Specifically, the example of opioid abuse in the United States shows that existing programmes, such as prescription monitoring programmes, have had some positive effect, but they are not sufficient to address the problem nationwide (Shelikhovska & Hribov, 2023). This issue was thoroughly explored by R.L. Haffajee *et al.* (2019), who noted that while such programmes have contributed to reducing the unnecessary prescription of opioids, their effectiveness stays limited due to the lack of systemic integration between federal and local laws. This situation suggests the need to review the current approach and introduce more coordinated measures that could ensure wider coverage and better oversight of prescriptions.

The COVID-19 pandemic has become yet another factor that has complicated the implementation of anti-substance abuse policies. N.M. Avena *et al.* (2021) noted that during the pandemic, access to drug treatment and prevention was significantly limited, which led to an exacerbation of drug use, specifically among vulnerable populations. This has contributed to an increase in overdoses and drug abuse, especially of opioid drugs, which were already causing a crisis even before the pandemic. G.C. Alexander *et al.* (2020) highlighted the significance of creating adaptive and resilient healthcare systems that can respond quickly to crises and ensure continuity of care. This confirms that modern approaches to drug policy require not only long-term solutions but also rapid adaptation to new challenges.

The study also reveals that the issue of legalisation and decriminalisation of certain psychoactive substances stays extremely relevant in the context of finding ways to reduce the harms of drug abuse. This is particularly true for cannabis, which has shown inconsistent results across jurisdictions. M. Cerdá *et al.* (2019) showed that the legalisation of marijuana can have both positive and negative consequences for public health. On the one hand, legalisation reduces the number of arrests for drug offences and opens new opportunities for the medical use of cannabis. On the other hand, free access to drugs can contribute to an increase in drug use among the population, especially among young people (Spytska, 2023). Therefore, it is important to weigh the risks and benefits of each approach when developing new policy measures.

Analogous issues were highlighted by T. Decorte *et al.* (2017), who investigated the legal and social aspects of the introduction of a regulated cannabis market. Their research showed that different models of legalisation have different consequences for society and the healthcare system. For instance, commercial models of legalisation may stimulate the growth of the cannabis market, but at the same time create more legal challenges to control its use. The researchers emphasise the need to introduce a clear legal framework for regulating the production and consumption of cannabis that accommodates social and legal risks, as well as international obligations.

Another prominent aspect highlighted in the study is the use of the latest digital technologies to treat addiction and provide aid to people who abuse psychoactive substances. L.A. Marsch *et al.* (2020) emphasised that digital technologies such as telemedicine and mobile health monitoring applications have enormous potential to increase access to treatment. This is critical in conditions of limited access to conventional healthcare services, particularly in remote or

sparsely populated areas. However, despite the high potential of such technologies, their implementation faces a series of obstacles, such as limited funding, lack of a proper legal framework, and low levels of digital literacy among the population. This confirms that for the effective use of digital technologies in the fight against addiction, it is necessary to improve the legal framework and provide adequate support from the state (Hasiuk, 2023). Furthermore, it is worth paying attention to the social determinants of health that affect vulnerability to substance abuse. H. Amaro *et al.* (2021) investigated the impact of socioeconomic factors, such as poverty, unemployment, and low levels of education, on drug addiction. The findings of these studies suggest that conventional drug treatment programmes often ignore these factors, which limits their effectiveness. Therefore, modern harm reduction policies should accommodate socioeconomic circumstances and provide comprehensive care that includes not only medical services but also social support. This confirms the need to reform healthcare policy towards a greater emphasis on social justice and the integration of diverse aspects of care for people with drug dependence.

Another vital aspect is the international experience of combating drug addiction, which can be useful for the United States. A study by A. Stevens *et al.* (2022) on drug decriminalisation in Portugal shows that this approach can have a positive impact on the healthcare and criminal justice systems. The Portuguese experience shows a decrease in drug arrests and increased access to treatment, which can serve as an example for the United States. However, decriminalisation has its own legal and social challenges, specifically regarding the distinction between criminal and administrative liability for drug use. Thus, this study demonstrates that the current harm reduction policy in the United States requires substantial changes, including revision of the legal framework, expanding access to health services, and integration of socioeconomic factors. Further research should focus on developing novel approaches to regulating the psychoactive substances market, using digital technologies to combat addiction, and analysing international experience.

Conclusions

The study of the legal framework of healthcare policy to reduce the level of substance abuse in the United States revealed the complex nature of legislative regulation of this area and assessed the effectiveness of the implemented mechanisms. The study found that the Comprehensive Drug Abuse Prevention and Control Act of 1970 stays the fundamental legislative act in regulating the circulation of psychoactive substances, which establishes a system of classification of psychoactive substances and defines the general framework for their regulation. At the same time, there has been a significant evolution in approaches to policy making on psychoactive substances, characterised by a gradual shift from a purely punitive approach to a more comprehensive one – focused on prevention, treatment, and rehabilitation.

An analysis of the effectiveness of substance use prevention and harm reduction programmes, such as Drug-Free Communities and Medication-Assisted Treatment, demonstrated their positive impact on reducing substance use among target populations. Specifically, it was found that the implementation of the DFC programme led to a considerable reduction in the use of tobacco, alcohol, and marijuana among young people. The number of patients receiving MAT has increased from approximately 227 000 in 2011 to over 1.2 million in 2022, indicating increased access to effective drug treatment. The study also found that the US judicial system plays a key role in shaping legal policy on the regulation of psychoactive substances. The Supreme Court's 2005 judgement in Gonzales v. Raich confirmed the federal government's right to regulate marijuana throughout the country, creating a legal conflict between federal and state laws. At the same time, the 2019 judgement in Washington v. Barr recognised the right of states to legalise the medical use of marijuana, which created a legal basis for a differentiated approach to cannabis as a medicine.

An analysis of the laws of different US states regarding the legalisation of marijuana has revealed significant differences in approaches and regulatory mechanisms, which creates difficulties in law enforcement and regulation. This situation calls for a comprehensive review of federal legislation to harmonise the legal framework and ensure effective regulation of the cannabis market, considering both the potential benefits and risks to public health. It was also determined that the introduction of innovative approaches, such as recovery community organisations (RCOs) and the increased use of telemedicine for drug treatment, has been shown to be highly effective in helping people with addiction problems. However, a series of obstacles to the introduction of telemedicine were identified that need to be addressed. Further research on this topic should focus on comparing legislation and programmes to combat substance use in the United States and Europe. A meta-analysis that includes more empirical evidence on the effectiveness of different programmes across continents would identify best practices and contribute to the scientific knowledge of drug dependence.

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Conflict of interests

None.

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Правові засади політики охорони здоров'я для зниження рівня зловживання психоактивними речовинами в США

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Анотація. Метою даного дослідження було визначення та правова оцінка основних правових інструментів і стратегій, що застосовуються у Сполучених Штатах Америки для боротьби зі зловживанням психоактивними речовинами, та їх вплив на розвиток національної політики охорони здоров'я у цій сфері. У дослідженні використовувалися кількісні та якісні методи аналізу, зокрема обробка статистичних даних щодо фінансування програм профілактики та лікування залежностей, аналіз федеральних та регіональних законодавчих актів, а також порівняльний аналіз політики різних штатів щодо регулювання обігу психоактивних речовин. Основні висновки засвідчили значну еволюцію правового підходу до проблеми зловживання психоактивними речовинами. Дослідження виявило поступовий перехід від суто карального підходу до збалансованої стратегії, яка поєднує елементи профілактики, лікування та зменшення шкоди. Крім того, аналіз фінансування показав збільшення федеральної підтримки профілактичних програм на 35% в період з 2018 по 2022 рік, що призвело до поліпшення доступу до медичної допомоги для споживачів наркотиків і розвитку програм відновлення. Результати порівняльного аналізу політики штатів щодо регулювання обігу психоактивних речовин засвідчили значну різницю в підходах, зокрема щодо легалізації марихуани, що створює правові та регуляторні проблеми через протиріччя між федеральним та місцевим законодавством. Зокрема, у штатах, де марихуана легалізована для медичного або рекреаційного використання, рівень злочинів, пов'язаних з незаконним обігом, знизився, але виникають питання щодо регулювання вирощування та розповсюдження. Також було виявлено, що впровадження телемедицини значно підвищило ефективність лікування наркозалежності в умовах пандемії, дозволивши охопити більшу кількість пацієнтів, але цей підхід потребує подальшого вдосконалення у сфері регулювання та контролю. Результати дослідження вказують на необхідність більш тісної інтеграції профілактичних, медичних і правових заходів на всіх рівнях влади, уніфікації законодавства щодо регулювання обігу психоактивних речовин на федеральному і державному рівнях, а також декриміналізації наркотиків для особистого вживання, що може знизити рівень криміналізації суспільства і сприяти більш ефективній боротьбі зі зловживанням психоактивними речовинами

Ключові слова: наркозалежність; зменшення шкоди; декриміналізація; реабілітація; наркосуди; профілактика

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State target pogrammes in the system of results-based budgeting: Legal aspect

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Abstract. The relevance of this study is conditioned by the need to improve the legal regulation of state targeted programmes in Ukraine, which is an essential part of the results-based budgeting methodology. Due to the constant changes in the budget planning system, there is a need for a comprehensive study of the effectiveness of such programmes and optimisation of legal support. The purpose of this study was to formulate scientific and theoretical provisions for identifying systemic shortcomings in the implementation of budget targeted programmes, assessing the effectiveness of legal regulation and developing a unified methodology for strategic planning. To fulfil this purpose, the study employed the dialectical method of analysis, as well as special legal methods, including comparative and historical and legal analysis. The study examined the evolution of the budget planning system in Ukraine, starting with state programmes, which were replaced by state targeted programmes, and ending with national projects. It was found that, despite the changes in the titles of the documents, the main problems persist, namely, the uncertainty of the methodology for developing programmes and inconsistency of legal norms. The study analysed the causal factors of failures in the implementation of state targeted programmes, including unclear and redundant development methodology, as well as problems with legal regulation. The conclusions on the need to improve the legislation governing certain elements of national projects were summarised, and the expediency of continuing to apply result-based budgeting for state targeted programmes was confirmed. The practical value of this

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study lies in the fact that its findings can be used by public administration bodies, developers of strategic documents, and academics to improve the budget planning process and improve the implementation of state targeted programmes

Keywords: budget process; expenditures; state budget; efficiency; national project; methodology

Introduction

The relevance of this study topic is conditioned by the need to improve the legal regulation of state targeted programmes in the context of current challenges, specifically, military aggression against Ukraine and its consequences for the budget system. In 2024, the significance of this topic is growing due to the need to use limited public resources efficiently and implement effective budget planning. The study was aimed at improving the public finance management system, which is critical for the country's economic recovery and sustainable development.

Research on state targeted programmes in the context of results-based budgeting is actively attracting the attention of researchers. N.V. Macedonska and A.V. Vansovych (2017) focused on the experience of implementing results-based budgeting in developed countries. They concluded that Ukraine's budget planning system lags far behind European standards (Executive Board of the United Nations Educational, Scientific and Cultural Organisation, 2000), specifically due to the lack of a clear methodology for evaluating the effectiveness of expenditures.

L.L. Hrytsenko *et al.* (2021) highlight the problem of integrating sustainable development goals into the budget policy of Ukraine. Researchers emphasise the significance of effective budgeting as a tool for managing public expenditures, especially in the context of limited financial resources. Hrytsenko *et al.* pointed out the need to reform government programmes to ensure their compliance with European standards of transparency and accountability.

Yu. Kovalenko *et al.* (2021) and K.V. Hey (2022) made a valuable contribution to the investigation of the problem of budget planning. The latter analysed the benefits and risks of introducing medium-term budget planning in Ukraine. The researcher emphasised the need to improve financial control mechanisms and introduce "fiscal rules" that would ensure more efficient use of budget funds in government programmes. K. Romenska *et al.* (2022) addressed the fact that the structural imbalances of the financial system of Ukraine considerably affect the efficiency of the budget process. M. Robinson and M. Last (2009) focused on creating a basic model of results-based budgeting. Their study confirmed that this approach improves the efficiency of public administration by clearly linking expenditures to the results achieved.

L. Ellul (2023) studied another prominent aspect of the topic, focusing on interdisciplinary approaches to evaluating the effectiveness of government programmes. His findings showed that the success of results-based budgeting depends on the systematic use of key performance indicators, which helps to improve the efficiency of public spending. At the same time, S.S. Sviridova and D.O. Pulcha (2021) addressed the existence of two parallel planning systems in Ukraine: the classical Soviet and the strategic one. They emphasised that these two systems overlap and interfere with each other, leading to ineffective government targeted programmes.

Thus, research shows an urgent need to reform the budget planning system in Ukraine and introduce a unified methodology that would meet modern standards of transparency and efficiency. It is vital to integrate international experience and develop effective mechanisms to increase the responsibility of executives for achieving government goals. The Strategy for Reforming the State Finance Management System for 2022-2025 (2021) raises the issue of improving the efficiency of budget planning. In the context of the further development of the programme-targeted method in the budget process, the Strategy makes provision for measures to optimise budget programmes and strengthen their compliance with the goals of state policy.

The hypothesis of the study was to assume that a scientifically sound structure of regulations could allow for the introduction of results-based budgeting in Ukraine. It was assumed that contradictions in documents of different levels, low quality of preparation and implementation were the reasons for the failure to achieve results in programme budgeting. Therefore, the purpose of this study was to formulate scientific and theoretical provisions on the systemic shortcomings of the implementation of result-based budgeting in Ukraine, the effectiveness of the current legal regulation of national projects and state target programmes, the creation of a unified methodology for the implementation of strategic planning documents, and the need for a systematic analysis of the implementation of such documents.

This purpose was achieved by completing the following tasks: analysing the procedure for developing state targeted programmes and national projects, comparing the current procedure with the procedure that was in force until 2016 (Resolution of the Cabinet of Ministers of Ukraine No. 1255, 2010). This helped to identify trends and differences in the stages of development of results-based budgeting. A separate task of the study was to analyse the current understanding of result-based budgeting in the legal science of the European Union. The study of the historical stages of results-based budgeting in Ukraine allows identifying trends and shortcomings in the current legal regulation.

Materials and methods

This study employed a comprehensive approach based on a comprehensive analysis of regulations, international agreements, analytical reports, statistics, and information resources. The study of the source base helped to investigate the legal and economic aspects of the implementation of results-based budgeting and state targeted programmes in Ukraine. The primary source of the regulatory framework was the laws of Ukraine, such as the Law of Ukraine No. 1621-IV "On State Targeted Programmes" (2004), which regulates the development and implementation of state programmes, and the Budget Code of Ukraine (2010), which defines the principles of budget planning. A series of resolutions of the Cabinet of Ministers of Ukraine regulating the implementation of state targeted programmes were analysed. These documents became the basis for the study of legal aspects that affect the effectiveness of programme budgeting in Ukraine. Another important source was international documents, specifically the Association Agreements Between Ukraine, on the One Hand, and the European Union, the European Atomic Energy Community and their Member States, on the Other Hand (2014),

which obliges Ukraine to implement international standards of transparency and efficiency of the budget process. The application of the OECD (2019) recommendations on the methodology of results-based budgeting helped to assess the compliance of Ukrainian reforms with European approaches.

An essential component of the study was the reports of the Accounting Chamber of Ukraine and the National Institute for Strategic Studies, which assess the effectiveness of government programmes. These documents helped to identify key problems in the development and implementation of national projects, as well as the reasons for the inefficient use of budget funds. Statistical data were obtained from open sources, including the State Statistics Service of Ukraine and OpenData budget portals. These resources provided a quantitative assessment of the implementation of government programmes, allowing for a comparative analysis between planned and achieved results. The study of budget expenditures on state programmes helped to determine the level of correspondence between funding and results, which is an important element in assessing the effectiveness of state targeted programmes.

Various methods of scientific cognition were employed to analyse the collected source base. The dialectical method helped to identify internal contradictions in the legal framework that impede the effective implementation of performance budgeting. The comparative method helped to compare Ukrainian experience with European approaches and identify gaps in regulation. The structural-functional analysis was used to investigate the mechanisms for implementing government programmes and assess their effectiveness.

The sources used in the study are characterised by their official origin, which ensures their reliability and authenticity. The use of regulatory documents, international agreements, analytical reports, and statistical data allowed for a comprehensive analysis of the legal system governing budget planning in Ukraine. The specificity of the database lies in its diversity, which helped to study the problem from different perspectives – legal, economic, and statistical. This combination of sources and methods ensured a comprehensive approach to the investigation of the issue of effective budget planning and enabled the study to fulfil its purpose.

Results and discussion

A modern understanding of result-based budgeting. Since 2005, state budget expenditures have been executed in a programme format, which indicates an attempt to create a mutual connection with results. Over the past decade, programme budgeting has been used to improve the efficiency and effectiveness of planning and executing budget expenditures. Attempts to obtain an "expenditure-result" relationship have been made since independence. The generally accepted methodology for such processes is results-based budgeting (RBB) (OECD, 2019). The methodology has proven itself in Europe and North America since the mid-20th century. This methodology is evolving, has undergone several historical stages, and is characterised by diverse RBB models (OECD, 2019).

Ukraine has not developed a clear RBB system at the national and regional levels. With the adoption of the Law of Ukraine No. 1621-IV "On State Targeted Programmes" (2004), state targeted programmes are being implemented and improved through the introduction of new strategic planning documents. However, the essence and results of programme budgeting do not change. This fact gives rise to a debate on the feasibility of introducing a certain model of results-based budgeting.

The methodology of results-based budgeting is linked to economic theory, where it originated and is still developing. The definition, features, and purpose of result-based budgeting have been developed by researchers-economists. However, from a legal standpoint, it is important to analyse the system of regulatory framework for the methodology of result-based budgeting, which is expressed in the current model of programme budgeting. These aspects include approaches to defining results, assessing risks, allocating rights and responsibilities, and monitoring budget expenditures. This approach can be observed in N.V. Macedonska and A.V. Vansovych (2017).

In the scientific discourse, there is a unified approach to identifying the stages of RBB development. They include effective budgeting, planning-programming-budgeting, management by objectives, zero-based budgeting. These methodologies differed in the order of formation, calculation, and evaluation of performance indicators conditioned by economic and managerial factors. The legal framework defined each model, set out the following: powers; responsibilities of each level of government; the choice of a method for achieving the chain "expenditures planning – results achieved"; and the methodology for determining the criteria for assessing the effectiveness of budget expenditures. The RBB development has led to the understanding of the generally accepted performance-based budgeting model (Robinson & Last, 2009) as results-based budgeting. C. Lorenz (2012) noted that the implementation of this model increases the efficiency of public administration.

Result-based budgeting can determine the relationship between organisational goals, objectives, programmes, activities, and key performance indicators of an organisation or public authority. Distinct RBB methodologies have common features, which include achieving goals through development programmes and plans. A prominent example is performance-based budgeting (PBB), which is widely used in the US and Europe. This methodology is based on clearly linking budget expenditures to the achievement of concrete results. For example, in Germany, this model has helped to improve the efficiency of public spending using key performance indicators to monitor the implementation of government programmes. According to C. Lorenz (2012) and M.S. Robinson and F.L. Stoller (2023), in Germany, the PBB model has helped to focus resources on the most important priorities, which has considerably increased transparency and accountability of expenditures. Therefore, it is important to assess the ways to achieve this through performance criteria and reassess the chosen paths for further adjustment of budget expenditures. Individual RBB models have their specific features.

The definition of result-based budgeting in the literature differs depending on the understanding of budget processes by the researcher of the state's financial sector. M. Robinson and M. Last (2009) note that RBB aims to increase the efficiency and effectiveness of public spending by linking the funding of public sector organisations to the results achieved, and systematically using performance information. They identify the following prerequisites for the implementation of RBB in the basic version of budgeting: information on the

goals and results of public spending is defined in the form of key performance indicators and programme evaluation; programme qualification of budget expenditures; clarity of the budget process, which ensures understanding of goals and objectives and their public discussion; regular external audit and analysis of the results achieved to improve and choose ways to achieve the planned results. L. Ellul (2023) shares the opinion of researchers. Changes in the budget planning process are an essential part of achieving efficient resource allocation (Romenska *et al.*, 2020). Compliance with the above prerequisites creates the basis for the implementation of results-based budgeting. Most state budget expenditures are made through state targeted programmes, which may meet the requirements for clear goals and objectives.

In Ukraine, the state budget is executed based on a budget classification that considers state programmes and non-programme expenditures. However, there are some contradictions in understanding the ultimate goals and objectives of development in the long term. Initially, performance indicators for certain activities were developed in the commercial sector. This is driven by the goal of making a profit. Later, such approaches began to spread to the public sector, where authorities were looking for ways to increase the efficiency and effectiveness of spending. Therefore, the emphasis was shifted from assessing cash expenditures to assessing efficiency, as the goal of public authorities was not only to use resources but also to achieve concrete results through a programme-based approach to budgeting. This approach is based on the evaluation of key performance indicators, which allows budget resources to be directed to achieve real results, not just control the amount of spending (Expenditure evaluation indicators..., 2024). To create a high-quality system of legal regulation of result-oriented budget planning, it is important to fix the following elements in the legislation: goals and objectives of the budget process; distribution of responsibilities between budget planning entities; and the procedure for evaluating the results achieved. Fixing elements such as the goals and objectives of the budget process, the distribution of responsibilities and the procedure for evaluating the results achieved in the legislation is important to ensure transparency and efficiency of budgeting. This avoids ambiguities that could lead to inefficient use of budget funds and increases the responsibility of all participants in the process. International practice, specifically in OECD countries, has shown that integrating performance measurement into the budget process considerably improves financial management and achievement of socio-economic goals, providing more value for money (OECD, 2015; Shaw, 2016).

At the same time, consolidation in regulations alone is not sufficient. High-quality management processes for its implementation are essential for the success of result-based budgeting. Budget planning is result-oriented – a methodology consolidated legislatively determines the need to link expenditures to a specific result and to allocate areas of competence and responsibility to the developers of development goals and objectives.

Turning to the economic and legal sciences, it should be noted that no unified approach to result-based budgeting has been developed over the past 20 years. In 2020-2024, there was a decline in researchers' interest in this topic. The concept of results-based budgeting is closely related to programme budgeting and programme-targeted planning. In the economic approach, this concept is considered a process that involves planning to achieve concrete results, while in the legal approach, the emphasis is on statutory regulation. In the legal context, researchers often do not consider RBB separately but analyse it within the framework of the legal norms governing the budget process and the principles consolidated in the Budget Code of Ukraine (2010). For example, Ye.O. Romanenko (2020) notes the significance of these aspects in the context of the development of medium-term budget planning in Ukraine. It is important to emphasise the role of legal mechanisms in ensuring proper financial discipline and control, which forms an integral part of the effective implementation of RBB programmes (Yesimov & Borovikova, 2020).

Results-based budgeting has been developing in Ukraine since independence, but legal researchers such as I. Chugunov *et al.* (2020) point out numerous shortcomings of this system. Firstly, the Budget Code of Ukraine (2010) does not consolidate the approaches and principles of results-based budgeting. Secondly, as emphasised by Ya.A. Zhalilo *et al.* (2013) and I. Chugunov *et al.* (2020), there is a regulation of the budget process and its stages, which does not focus on program-targeted methods. They also note the lack of a unified methodology for assessing the effectiveness of budget expenditures and the systematisation of documents at various levels related to tasks and indicators for achieving national goals. I. Chugunov *et al.* (2020) emphasise that constant changes in the methodology of strategic planning do not allow solving the issue of aligning costs with the results achieved. Strategic planning in wartime also involves addressing budgetary security issues, which largely depends on government policy and external factors (Cheberyako & Herus, 2023).

RBB in Ukraine has been implemented since independence, but it does have a series of substantial drawbacks, including the lack of clear regulation of approaches and principles in the Budget Code of Ukraine (2010), which complicates the application of the program-targeted method. There is also a lack of a unified methodology for assessing the effectiveness of budget expenditures, which affects the systematisation of documents at different levels of government necessary to achieve national goals. Constant changes in the methodology for developing and implementing strategic documents, as well as uncertainty in the titles and content of these documents, complicate the alignment of budget expenditures with actual results, which requires urgent improvement of the legal and methodological framework of the budget process in Ukraine.

State targeted programmes and budget planning are result-oriented. There have been no studies aimed at adapting results-based budgeting to the economic realities of state targeted programmes in Ukraine. This suggests the lack of a comprehensive approach to the analysis and implementation of such methods in scientific practice.–There are a series of issues that need to be solved to introduce RBB in state targeted programmes. In Ukraine, there are prerequisites for the introduction of budget planning, which gives hope for the integration of this methodology into the budget process. However, the existence of such prerequisites is not equivalent to the factual implementation of this process. The development of programme budgeting in Ukraine has gone through several key stages, starting in the mid-1990s, when

the first attempts were made to introduce state programmes (Law of Ukraine No. 1560-XII, 1991), and ending with the current practice of integrating strategic planning with programme budgeting. Since 2004, state targeted programmes have been actively used, making provision for a clear definition of goals and resources needed to achieve them (Law of Ukraine No. 1621-IV, 2004). A notable milestone was the introduction of national projects in 2011, which allowed for a more comprehensive approach to budget planning. As of 2024, the development of result-based programme budgeting, based on the efficient management of resources and the achievement of concrete results using modern methodologies, continues to be observed.

The state programmes became the first documents after gaining independence and overcoming the systemic crisis caused by the collapse of the command-and-control system that can be analysed in terms of the use of the RBB methodology. State programmes were defined as a set of research, development, production, socio-economic, organisational, economic, and other activities. These measures were linked to concrete tasks, resources, and deadlines, which allowed for a clear definition of the expected results and mechanisms for achieving them. The principal purpose of the state programmes was to address systemic problems in the areas of public administration. The main legal regulation was carried out following the Procedure for the Development and Implementation of State Targeted Programmes (2007).

In 2000-2010, state targeted programmes became a tool for budget planning. An analysis conducted by the Kyiv School of Economics showed that the annual share of expenditures on state targeted programmes was no more than 12% of the state budget in 2000-2010. This indicates limited funding for such programmes, which may affect their effectiveness and implementation (Senchuk, 2013). Since 2011, there has been a trend in Ukraine to replace state targeted programmes with national projects, such as the national project “Affordable Medicines” and the state targeted programme “National Action Plan for the Implementation of Human Rights”. The essential difference between national projects and state programmes is that national projects usually have more concrete goals and a shorter implementation period, while state programmes can include comprehensive strategies with long-term plans. If the difference was insignificant, this may indicate an evolution of approaches to budget management, where the emphasis is shifting from formal titles to practical results. The change of names may be caused by the desire to update the image of the programme or to adapt it to the new conditions and challenges faced by the state (Kvak, 2017).

State targeted programmes remained in the new project management model. In 2021, the List of government targeted programmes to which accounting codes are assigned included 15 programmes (Order of the Ministry of Economic Development and Trade No. 1147, 2021). As of 1 January 2024, 8 state targeted programmes are being implemented in Ukraine. Of these programmes, six were adopted after 2018 (State target programmes, n.d.; Ministry for Communities, Territories and Infrastructure Development of Ukraine, 2023). These programmes continue to perform a limited range of tasks in programme budgeting. This raises questions about the reasons for the failure of state targeted programmes and the lack of their application to a considerable part of state budget expenditures.

RBB focuses on defining goals and objectives, the procedure for achieving them, the distribution of responsibilities, and other aspects. Therefore, the processes used in project management for investment projects could be applied to government targeted programmes with a slight adjustment of the methodology. Within the framework of modern result-oriented budget planning, considerable attention is paid to defining goals, objectives, and mechanisms for achieving them. The programme-targeted method used in public budgeting focuses on the development of a clear structure of responsibility and monitoring of results, which allows for more efficient use of public resources. The processes used in investment project management can be adapted to government targeted programmes to improve their effectiveness. For example, investment projects involving the construction of infrastructure (Resolution of the Cabinet of Ministers of Ukraine No. 382, 2018) are characterised by clear planning, financing, and evaluation of results, which is critical to achieving specific social or economic goals.

Thus, the implementation of investment management principles in government programmes can considerably improve their effectiveness. Adapting such approaches will ensure greater transparency in the use of budget funds and allow focusing on achieving actual results (Lisnichuk & Medvidchuk, 2021). According to the analysis of the “Procedure for Development and Implementation of State Targeted Programmes” (2007), state targeted programmes in comparison with the elements of result-based budgeting in general correspond to the document of programme budgeting – Programme of activities of the Cabinet of Ministers of Ukraine “Openness, Efficiency, Effectiveness” (2003). The programme defines the primary areas of the government’s work, including the implementation of RBB programmes. It is based on the principles of transparency and accountability in the use of budget funds. The main objective is to achieve the set goals effectively through clear planning and monitoring of results.

The RBB methodology involves the use of performance indicators to assess the effectiveness of budget programmes. This includes the definition of goals, objectives, and mechanisms for achieving them, which allows optimising costs and improving the quality of public services (Law of Ukraine No. 2646-VIII, 2018). However, the Procedure for Development and Implementation of State Targeted Programmes (2007) itself has some shortcomings. Firstly, they relate to goal setting, as these programmes only identify areas of development, such as economic and environmental. Accordingly, there is no coherence with the Ukraine 2020 Sustainable Development Goals (2015) and the Sustainable Development Goals for the Period up to 2030 (2019), which complicated their implementation. Government targeted programmes were used to solve narrow sectoral problems. At the time of the publication of the Procedure for Development and Implementation of State Targeted Programmes (2007), there were indeed no performance criteria in Ukraine, as Part 4 of Article 7 “Principles of the Budget System of Ukraine” of the Budget Code of Ukraine (2010) came into force only on 1 January 2011. In this regard, the inclusion of such methods of achieving the goal is not ensured by the regulatory definition of the concept of effectiveness of the use of budget funds. Therewith, the mechanism for considering the key issues that needed to be addressed in developing state targeted programmes was not based on a risk-based approach and stayed formal, which did not allow

for effective identification and assessment of potential risks of programme implementation. L. Michniuk (2021) noted that in the absence of the ability to set goals for three or five years, it is necessary to have a clear idea of the achievements planned for the coming year.

The Procedure for Development and Implementation of State Targeted Programmes (2007) defines five elements that a state programme should meet, but these elements are vague due to the lack of clear criteria for evaluating results. This leads to problems with determining how effectively the programme's objectives are being met. Shortcomings are also identified at the stage of programme development, when the responsibility between implementers and the coordinating state customer is not clearly divided. The contractors prepare parts of the programme separately, but the coordinating customer does not conduct an in-depth analysis of their interaction or alignment with the overall programme architecture. As a result, measures are not harmonised and their impact on achieving common goals is not accurately assessed.

State targeted programmes were distinguished by a cumbersome adoption procedure. They were approved by the relevant structures – the Ministries of Economy and Finance. Today, this order has been preserved, and it turns out that there are two different systems in the project management system (the old and the new). State targeted programmes were developed based on the Procedure for Development and Implementation of State Targeted Programmes (2007), but there was no control over their implementation, including the preparation of interim, annual, and final reports. Since the state target programmes were developed by different contractors in separate parts, the state customer initially failed to exercise effective overall control over their implementation. Due to the above-mentioned fragmentation, the overall control over the implementation of targeted programmes by the state customer was problematic. As a result, sometimes the coordinating state customer did not request consolidated information from contractors in the forms provided for this purpose. These facts indicate a formal approach to controlling the use of budget funds. This is confirmed by a sample study of reports (Zhuravka & Ovcharova, 2014; Department of Strategic Planning and Macroeconomic Forecasting, 2021).

State targeted programmes are considered effective if they achieve their intended results and implement all planned activities. However, the formation of these indicators and their subsequent evaluation do not mean an impact on the state of affairs in the field of public administration, as confirmed by the audits of the Accounting Chamber of Ukraine. Thus, the Accounting Chamber Decision No. 10-3 (2015) stated that there was no substantial impact on the expansion of access to social facilities for the population of rural areas as a result of the implementation of the State Target Programme for the Development of the Ukrainian Countryside for the Period up to 2015 (2007). The formality of meeting the targets did not lead to breakthroughs in various sectors of the economy and governance.

Changes in the budget planning methodology did not lead to the achievement of the goals due to imperfect regulations. The State Target Programme for Sustainable Development of Countryside Areas for the Period up to 2020 (2010) also had this shortcoming, as the existing regulatory framework did not ensure effective implementation of programme activities, which negatively affected the achievement of the planned goals. Although the result was included in the state target programme, it was levelled by the lack of control. This was a systemic mistake that affected the adoption and implementation of new government targeted programmes.

The internal financial audit bodies of Ukraine and the Accounting Chamber did not conduct a comprehensive analysis of the causes of failures, which did not allow them to study the negative experience and risks in the development and implementation of state targeted programmes. Open data does not contain a full analysis of the reasons for the failure of state targeted programmes. Therefore, the experience was not studied during the transition to state targeted programmes based on innovative projects, which covers the period from 2016 to 2024. This indicates a deviation from the result-oriented budget planning methodology, which involves a systematic analysis of ways to achieve goals and fulfil tasks. At the same time, this does not correspond to the economic and mathematical model of profit maximisation in the system of sustainable development values (Skrynkovskyy *et al.*, 2022).

The system of developing state target programmes differed from the "standard" due to imperfect coordination with some of the line ministries (lack of proper coordination between ministries, weak control by the state customer-coordinator, lack of transparency in the approval and decision-making processes), which were supposed to be responsible for achieving the planned goals and objectives. Summarising the analysis of the experience of the state target programmes, it should be noted that the imperfection of regulatory regulation led to the formal implementation of the indicators of the state target programmes without a substantial impact on the area where they were implemented. This shortcoming was compounded by the weak control of the contractors and the state customer-coordinator. The failure to resolve the problems led to a shift to national projects.

National projects: Challenges and solutions. The definition of a national project, contained in Clause 2 of the Regulation on Priority Projects of Socio-economic and Cultural Development (National Projects) (2016) (repealed on 28 December 2016), states that they are a project (programme) aimed at socio-economic development, technological renewal, improvement of the quality of life of citizens, development of regions and solving social problems in Ukraine.

National projects consist of the following levels of documents: state (regional) projects, departmental projects, and state targeted programmes. Their conceptual apparatus is represented by two concepts with fuzzy boundaries: project and programme. This led to the fact that the Procedure for Development and Implementation of State Targeted Programmes (2007) and the Regulation on Priority Projects of Socio-economic and Cultural Development (National Projects) (2016) did not require an assessment of the risks of failure to achieve goals, objectives, and indicators. These risks were formally included in the passports of state programmes. Since 2011, the methodology for developing national projects and state targeted programmes has included provisions on a risk-based approach. From 2010 to 2016, national projects were the primary focus of budget planning. The first drafts of the national projects were prepared in 2011-2012 within a limited timeframe. The main requirement on the instructions of the Cabinet of Ministers of Ukraine (Minutes of the meeting..., 2018) was to prepare by a fixed date. Therefore, the contractors were unable to fulfil

all the requirements precisely. The situation was repeated in 2014. New versions of the national projects were prepared in a hurry in late spring and summer to be included in the three-year budget cycle (2014-2016) (Analytical report on the progress..., 2016).

The new versions were somewhat better than the original ones, but they still had major problems with the coordination of goals, objectives, indicators, and funding. They had a series of shortcomings: the indicators of national projects' activities did not depend on the amount of funding; the indicators did not characterise the achievement of goals and objectives. A common mistake before 2014 was the lack of dynamics of national project indicators by year, they stayed the same throughout the entire period of implementation (State programme of economic..., 2014). Each national project had a section on evaluation, and the Methodological Recommendations for Evaluating the Effectiveness of Budget Programmes (2011) set out the requirements for its formation and subsequent evaluation by the Ministry of Economy of Ukraine, which are also reflected in the Methodology for the Analysis of the Effectiveness of Public-private Partnership Implementation (2022). However, the methodology is designed in such a way that even if the indicators and measures are not met, the project can be assessed as effective (Procedure and Conditions for the Provision of..., 2012). Since 2012, the analysis of the effectiveness of national projects has sparked a debate between the Cabinet of Ministers, represented by the Ministry of Economy, and the Accounting Chamber of Ukraine. The discussion was driven by distinct approaches to analysing the effectiveness of national projects (Decree of the President of Ukraine No. 389/2012, 2012).

According to the National Institute for Strategic Studies, in 2013, twelve national projects were supported, to some extent, by analogous or comparably focused state targeted programmes. Of these, only five national projects (New Life, Olympic Hope – 2022, Clean City, City of the Future, Technopolis) coincided with the state programmes in terms of strategic implementation goals, complementing them rather than competing with them, expanding and improving these state programmes, and were independent in terms of funding (their budgets did not depend on funding provided for the relevant state target programmes, which allowed them to function autonomously, without competition for financial resources with analogous state initiatives). In seven national projects (Open World, Quality Water, Affordable Housing, Nature's Energy, Grain of Ukraine, Revived Livestock, Green Markets), there was a certain overlap of tasks and measures with the relevant state programmes, which required enhanced interagency coordination and synergy in their implementation (Zhalilo *et al.*, 2013).

This example demonstrates the lack of a unified approach to evaluating the effectiveness of national projects and state targeted programmes, which is a shortcoming in the RBB methodology. The presence of numerous goals and indicators complicates the evaluation of budget planning results, as it is difficult to determine which goals were achieved and which were not achieved due to their interdependence and different importance for the overall goal. Ya.A. Zhalilo *et al.* (2013) noted that "the inefficiency of approving national projects in the form of state targeted programmes is conditioned by a series of factors: 1) the lack of a clear link between state and budget planning in Ukraine; 2) insufficient guarantees of obtaining the required funding from the state budget; 3) differences in the proportions of distinct sources of funding.

Thus, the principal difficulties are related to the lack of coordination of goals, objectives and funding, which complicates the achievement of national strategic goals. Despite the existence of performance assessment methods approved in regulatory documents, they often do not reflect the actual state of project implementation, which leads to formalism in assessments. The study points to overlapping tasks between national projects and state programmes, which indicates the need for better interagency coordination. As a result, the lack of a unified approach to performance evaluation and insufficient integration between state and budget planning leave considerable gaps in the implementation of national initiatives.

Assessment of the effectiveness of government targeted programmes. Compared to national projects, state targeted programmes have become one step higher in quality since 2016. The shortcomings that occurred at the beginning of the implementation of state targeted programmes were corrected. However, they could have been avoided with a proper analysis of the implementation and development timeframe. State targeted programmes were an attempt to introduce a results-based budgeting methodology. However, the controversy over the assessment shows gaps and imperfections in the methodology.

According to N.V. Macedonska and A.V. Vansovych (2017), the Ukrainian government should base its budgetary planning for the medium-term period on the budgetary target method with an emphasis on the methodological approach to assessing the effectiveness of its implementation when developing budget policy. L.L. Hrytsenko *et al.* (2021) emphasise that targeted programmes are important tools for implementing budget policy, which at the same time act as mechanisms for influencing social processes. They help in solving the problems of managing budget expenditures by reconciling sustainable development goals, investment needs, and financial expenditures in the context of limited budget resources.

S.S. Sviridova and D.O. Pulcha (2021) point out that Ukraine still has two parallel planning systems: the classical Soviet system of medium-term and annual planning and the strategic planning system, which makes provision for a long-term horizon, a participatory approach to development, co-financing, and coordination of priorities at the central and regional levels. These systems constantly overlap and can interfere with each other.

Notably, the above statements fairly reflect the demanding situation in Ukraine regarding budget policy planning. Admittedly, the use of the budgetary targeting method is essential for effective resource management. At the same time, it is important to eliminate parallelism in planning systems, as this can substantially complicate the implementation of government initiatives. Only by integrating and aligning different approaches can greater efficiency in budget management and achieving sustainable development goals be achieved.

The legal regulation of state targeted programmes did undergo improvements in 2019, 2020, and 2021. Specifically, in 2019, information on the state of implementation of state targeted programmes in 2019 is mentioned on the website of the Ministry of Economy of Ukraine (n.d.); in 2020, according to the Procedure for Development and Implementation of State Targeted Programmes (2007), adjustments were made over several years, including 2020; the

Ministry for Development of Economy, Trade and Agriculture of Ukraine (2020) published updated information on the impact of the pandemic and an assessment of the impact on state programmes in 2021.

As of 2024, the legal regulation of investment projects and government targeted programmes is being integrated. This process resulted in pilot state targeted programmes. The effectiveness of such decisions can be assessed later, which will offer insight into whether errors and shortcomings have been corrected. As of 2024, the latest experiment with the implementation of RBB at a new level is state targeted programmes using certain elements of the innovation project methodology. They emerged as a result of the Sustainable Development Goals "Ukraine – 2020" (2019) and Sustainable Development Goals for the Period up to 2030 (2019) set by the Presidents of Ukraine. The National Economic Strategy for the Period Until 2030 (2021) also set goals that should be incorporated into state targeted programmes. Building result-oriented budget planning is their foundation.

At the time these documents appeared, the specific features of RBB in Ukraine were traced, based on the European Union methodology in the context of Item b) improvement of programme-targeted approaches in the budget process and analysis of the efficiency and effectiveness of budget programmes – Article 347 of the Association Agreements Between Ukraine, on the One Hand, and the European Union, the European Atomic Energy Community and their Member States, on the Other Hand (2014).

The Budget Code of Ukraine (2010) does not explicitly establish the relationship between expenditures and results. Proceeding from the interpretation of the principles of the budget system of Ukraine, including Article 7 of the Budget Code of Ukraine (2010), expenditures have signs of targeting and purposefulness. This includes determining the recipient of the funds and the purposes of their allocation and concerns the regulation of intergovernmental transfers. The targeted nature of the allocation of funds makes provision for administrative and criminal liability. This characterises the separation of this feature as a determinant of budget expenditures. Turning to the system of obligations as an integral part of budget expenditures, the definitions of expenditure, monetary, or public obligation do not include the relationship between funds and goals. These commitments involve the allocation of funds to certain entities. Funds are allocated based on a legal act or other acts listed in the definitions of Article 2 of the Budget Code of Ukraine (2010).

The budget classification says that state target programmes, which underlie planning budget expenditures, are used in the case of the application of the program-targeted method in the budget process – Part 2 of Article 10 of the Budget Code of Ukraine (2010) and Article 20 ("Application of the program-targeted method in the budget process"). There is a trend here: the purpose of the allocations is contained in the regulation approving the state target programme.

There is a procedure for substantiating budget allocations, which includes a regulatory act (the basis for allocation). It sets out the goals or results for which budget funds are allocated. However, the form of substantiation is formalised and involves an analysis of the result. To substantiate, participants in the budget process include various norms, including with reference to the provisions on the public authority (Budget Code of Ukraine, 2010).

The analysis of the Budget Code of Ukraine (2010) shows that there is a general regulation of results-based budgeting. This procedure includes reference or hypothetical norms for the provision of funds for the relevant result based on a regulatory act or other document in the cases provided for. The intricate system of expenditure regulation, which includes a large conceptual apparatus, and the lack of a direct relationship between expenditures and results are the shortcomings of the Budget Code of Ukraine (2010). The relevant provisions are theoretically contained in subordinate legislative acts.

Proceeding from the system of strategic planning documents, including sustainable development goals, the first level of budget expenditure targets is national goals. The provisions of the Constitution of Ukraine (1996), which underlie budget allocations in the relevant areas, are on a par with national goals. These documents contain priority development goals in the RBB system. The expansion of the first level targets beyond the national targets raises criticism from the standpoint of results-based budgeting. Considering Russia's military aggression against Ukraine, the implementation of national goals has been postponed. The martial law has led to new trends in the implementation of local budgets, specifically, their adaptation to changes in the financial environment (Vatamaniuk-Zelinska & Zakorko, 2023).

K.V. Hey (2022) notes that, according to international practices, medium-term budget planning is based on five elements: the existence of an agreed state programme (strategy) for the country's socio-economic development; the formation of institutions and procedures that ensure high-quality medium-term macroeconomic and budget forecasting; the existence of procedures for developing "fiscal rules", specifically in terms of limiting medium-term parameters of public debt, the amount of funds for its servicing, budget deficit/surplus; procedures and mechanisms for setting "budget limits" for key spending units, monitoring and ensuring their implementation; mechanisms for combining annual and medium-term elements in budget planning (medium-term budget programmes, investment programmes, etc.).

The new goals that the President of Ukraine may announce in connection with repelling Russian aggression will require adjustments to government targeted programmes. A problem of legal consolidation of result-oriented budget planning emerges. The reason for this is the instability of fixed goals and relationships in regulations. The situation with the repulsion of Russian aggression requires a review of the passports of state targeted programmes. The possibility of adjusting the result calls into question the quality of planning, the risk-oriented approach, and the expediency of using RBB in a particular version of the methodology. The Budget Code of Ukraine (2010) contains only a general "expenditure-result" regulation. The unclear requirements for goals and indicators call into question the approach to achieving results.

The Procedure for Development and Implementation of State Targeted Programmes (2007) makes provision for a passport that should contain indicators, impact on the achievement of results and socially significant results and defines the principles of formation. They reflect the requirements for consolidating the results and efficiency of budget expenditures on the state target programme.

In the Temporary Recommendations for the Development of State Target Programmes (2011), a sample project passport includes the following section on the results of the

use of funds. It sets out approaches that include additional indicators that allow for an unambiguous assessment of the achievement of the goal of the state target programme. The methodology sets out three requirements for the result. The result itself is imperatively enshrined in the Sustainable Development Goals for the period up to 2030, or in the National Economic Strategy for the Period Until 2030 (2021).

In 2022-2023, the passports of the state target programmes of Ukraine were updated. The State Targeted Economic Programme for the Development of Public Highways of State Importance for 2018-2023 (2018) has 12 goals and targets. The National Informatisation Programme (1998) included a set of state informatisation programmes, the number of which was not defined by law. The methodology for developing the passport of a state target programme contains dispositive norms, which distinguishes it from the methodology for developing state investment programmes. Accordingly, the curators of state innovation programmes have some freedom in choosing ways to achieve national goals. This dispositivity is ensured in the theory by a list of actions and tasks for project and programme development. So far, the methodology for preparing state target programmes does not meet this requirement. Perhaps the new methodology being developed since 2021, based on the example of Resolution of the Cabinet of Ministers of Ukraine No. 119 "Some Issues of the National Informatisation Programme" (2024), will eliminate this shortcoming. However, the system of targets and indicators does not allow for an unambiguous formulation of an "expenditure-result" algorithm.

The state investment project contains a distribution of funding by purpose, but factually the money is directed to the state target programme. They have their own goals, indicators, and activities, which are financed from the state budget. Additionally, the model for calculating the final result of a public investment project and its resource provision are constantly criticised in academic circles. The possibility of achieving the goals and targets with the existing measures and resources is questioned. This is a consequence of imperfect legal regulation. The procedure for the development and implementation of state targeted programmes does not regulate this issue in detail, as it is a matter of a risk-based approach to the creation of state investment projects. By linking these provisions to the state targeted programmes, the same legal gaps can be identified, but in a different aspect. The current Regulations of the Cabinet of Ministers of Ukraine (2007) do not define state investment projects as programme documents of the Cabinet of Ministers of Ukraine (Regulations).

The Methodology for the Formation of Sample Populations for Carrying out in 2014-2018 Sample Surveys of the Population (Households): Living Conditions of Households, Economic Activity of the Population and Agricultural Activity of the Population in Rural Areas (2013) on state targeted programmes did not contain rules that regulated certain areas, and therefore the final executor could not prepare a high-quality document. As of the second half of 2024, the situation is the opposite: strategic planning norms are not enough to understand why a state target programme is needed, how to prepare it, how to calculate risks and resources. New forms of project activity, such as sessions and discussions, have been added to the gap. Undoubtedly, they are useful, but at the minimum level of developing a state target programme.

According to T.P. Savonik (2022), the current budget strategy of the state makes provision for the solution of a considerable number of budget policy priorities, but only some of them are calculated in detail. The lack of unified approaches and time for the quality implementation of state targeted programmes has led to a revision of the implementation periods. Since 2020, the optimisation of state targeted programmes has been ongoing according to the methodology used in the European Union in the context of the Guide to Results-oriented project planning and monitoring (DAAD, 2023).

Thus, the 2014-2018 methodology for state targeted programmes lacked rules regulating certain areas, which complicated the preparation of high-quality documents for the final executors. This situation has led to the need to improve strategic planning, which aims to facilitate understanding of the significance of government targeted programmes, as well as the development of risk assessment and resource provision mechanisms. Recently, new forms of project activities, such as sessions and discussions, have been added to the gap, which, while useful, are still only at a basic level of programming. The revision of approaches to budget policy in Ukraine highlights the need to integrate a methodology that meets modern requirements and standards, including the practices of the European Union.

Conclusions

The development of state targeted programmes has undergone several stages: first editions (2004-2011); implementation of national projects (2011-2016); implementation of state targeted programmes with their partial updating (2016-2020); adaptation of state targeted programmes to EU standards (since 2020). The State Target Programme is defined as a strategic planning document containing a set of planned activities (results) interconnected with tasks, deadlines, executors, and resources, and public policy instruments that ensure the achievement of state policy priorities and goals. The principal legal regulation of state targeted programmes is based on the Law of Ukraine "On State Targeted Programmes" and the Procedure for the Development and Implementation of State Targeted Programmes.

The key drawbacks of the implementation of state targeted programmes were systemic problems in their development. The period from 2004 to 2020 can be characterised by homogenous errors that were constantly detected by the Accounting Chamber of Ukraine. In this regard, state targeted programmes have not become a full-fledged tool in the implementation of the state budget, despite the transition to a programme-based budget. One of the factors is that the system of results-based budgeting in Ukraine has imperfect legal regulation. Thus, the dispositive nature of legal regulation of national projects in the result-based budgeting system led to the lack of a fixed development algorithm, which resulted in general requirements for the project, a lack of a risk-based approach and alignment of resources and statistical indicators with goals and outcomes.

The system of results-based budgeting has undergone several stages of development, initially consisting of one level of legal regulation – the state. These were state targeted programmes (within 10-12% of state budget expenditures), which were replaced by state targeted programmes implementing priority areas of socio-economic development before the emergence of national projects. As of 2024, there

are several levels, including the integration of all budgets of the budget system from national targeted programmes to regional programmes. The multiplicity of levels of indicators and targets affects the quality of the budget process, while legal regulation does not establish a clear "expenditure–result" algorithm. In this regard, the Cabinet of Ministers of Ukraine has not conducted a public assessment of the system of goals and objectives of strategic planning. This resulted in the system being in a constant process of improvement, which negatively affected the implementation of result-based budgeting.

In 2018-2019, state target programmes and regional target programmes were developed, and in 2020, due to the pandemic (the coronavirus pandemic forced Ukraine to reconsider its approaches to budgeting and tax policy, especially regarding e-commerce), they were adjusted in 2022 due to Russian aggression. In parallel, these processes were accompanied by the development of pilot state targeted defence programmes and the integration of legal regulation in the budgetary sphere with the requirements of the European Union, but even though this is a crucial factor in rulemaking, work on mistakes has not been carried out. Thus, there is no analysis of the introduction of results-based budgeting for state targeted programmes.

There are risks that the current system will not be qualitatively different from state targeted programmes, and that the goals set out in the Sustainable Development Goals by 2030 and the National Economic Strategy for the period up to 2030 will not be achieved. The quality of legal regulation is a major factor in building result-oriented budget planning, but constant adjustments and changes do not contribute to building an effective system of all levels of planning based on a hierarchical system of goals and objectives.

Promising areas for future research in the evaluation of state targeted programmes include the study of European models of budget planning, the integration of a risk-based approach into programme development, and an in-depth analysis of the impact of adjustments and changes on the effectiveness of strategic planning. It is especially important to investigate the possibility of unifying national and regional programmes to achieve sustainable development goals and meet the standards of the European Union.

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Conflict of interest

The authors of this study declare no conflict of interest.

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Державні цільові програми у системі бюджетного планування орієнтованого на результат: правовий аспект

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Анотація. Актуальність роботи обумовлена необхідністю покращення правового регулювання державних цільових програм в Україні, що є важливою складовою методології бюджетування, орієнтованого на результат. У зв'язку з постійними змінами в системі бюджетного планування, виникає потреба у комплексному дослідженні ефективності реалізації таких програм і оптимізації правового забезпечення. Метою дослідження було формування науково-теоретичних положень щодо виявлення системних недоліків у реалізації бюджетних цільових програм, оцінки ефективності правового регулювання та розробки єдиної методології для стратегічного планування. Для досягнення цієї мети було використано діалектичний метод аналізу, а також спеціальні юридичні методи, включаючи порівняльний та історико-правовий аналіз. Було досліджено еволюцію системи бюджетного планування в Україні, починаючи з державних програм, які були замінені державними цільовими програмами, і завершуючи національними проєктами. Встановлено, що, незважаючи на зміни в назвах документів, основні проблеми залишаються, зокрема невизначеність методології розробки програм і непослідовність правових норм. Проаналізовано причинні фактори невдач у реалізації державних цільових програм, включаючи неясність і надмірність методології розробки, а також проблеми з правовим регулюванням. Було узагальнено висновки про необхідність вдосконалення законодавства, що регулює окремі елементи національних проєктів, і підтверджено доцільність продовження застосування результат-орієнтованого бюджетного планування для державних цільових програм. Практична цінність роботи полягає в тому, що результати дослідження можуть бути використані органами державного управління, розробниками стратегічних документів і науковцями для удосконалення процесу бюджетного планування і покращення реалізації державних цільових програм

Ключові слова: бюджетний процес; витрати; державний бюджет; ефективність; національний проєкт; методологія

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Protecting victims of international crimes: A reflection on the functional interpretation of the Statute of the International Criminal Court

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Abstract. This study identified essential factors concerning the safeguarding of victims of international crimes within the context of the functional interpretation of the Rome Statute. The study examined the principal worldwide legal frameworks governing the protection of victims of these crimes. The study employed hermeneutic, system-structural analysis, comparative legal, and other methods. The analysis results indicated that the legislation of Kazakhstan lacks clearly defined norms that relate to the responsibility of the state to victims, as well as their right to adequate reparation, including compensation and rehabilitation, as mandated by the UN Convention against Torture. Kazakhstan and China have not ratified the Rome Statute, largely due to political considerations. Kazakhstan's accession to the Rome Statute could lead to the harmonisation of national standards with international demands concerning the rule of law and the protection of human rights, as well as strengthen global efforts to counteract the evils that threaten peace and security. It was also found that the lack of clarity in the normative terminology and methods of interpretation of the Rome Statute, as well as conflicts between different objectives, led to the use of a functionalist approach by the court in interpreting the

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Statute. This weakens its basic function of protecting people's rights, violates the competences of the participating states and interferes with the principle of national sovereignty. The study addressed the need for victimological prevention of victims of international crimes, which should include improving the practice of treating victims, revising legislation, and developing new structures and services. It is also essential to provide information about the methods of abuse and the diversity of victims through various media formats

Keywords: victim; prevention; competition of criminal law norms; functionalism; implementation

Introduction

Crimes of war against humanity, genocide, and acts of aggression have held considerable global significance for a protracted duration. Those crimes do not simply violate legal norms, but undermine the foundations of international order and security, causing irreparable damage to all humankind. The national justice system is often unable to act effectively against persons in high positions of authority in the state, even in cases where these persons violate basic human rights. This is because such individuals have significant resources and power that allow them to manipulate legal and political processes while avoiding accountability for their actions. National courts and law enforcement agencies may be under pressure and may also face obstacles related to conflicts of interest, threats, or corruption, which substantially limit their ability to provide justice in such situations. In such circumstances, the only effective mechanism for holding those in the highest positions of state accountable is the establishment and functioning of a permanent international body. On 17 July 1998, the permanent International Criminal Court (ICC) was established by an international treaty signed by representatives of 120 states (ICC at a Glance, 2024) and the Rome Statute (1988) was adopted.

Kazakhstan and China refrained from signing and ratifying the Statute. The reluctance of certain states to collaborate with the ICC may hinder its capacity to adequately safeguard victims of international crimes, especially in instances when national legal frameworks lack the requisite resources or the determination to prosecute offenders. This underscores the need for continued international dialogue and the search for compromise solutions that respect national sovereignty but are also consistent with international obligations to protect human rights.

K.B. Menlenkyzy (2014), S.B. Sayapin (2018), N. Sidorova and S. Simbinova (2024) shown that the incorporation of international legal principles into Kazakhstan's national legislation is essential for aligning the country's legal system with international standards. This integration strengthens the rule of law and improves mechanisms for protecting citizens' rights and freedoms in criminal proceedings. S. Darcy (2021), D. Adeyemo (2021), and N. Hodgson (2023) focus on analysing the work of the ICC in the context of protecting victims of international crimes. Their studies emphasise that ensuring justice for victims is one of the main tasks of the court. These studies showed that while victim participation has evolved in national criminal systems, including the ability to challenge decisions not to prosecute, there is a limitation in the fulfilment of analogous functions within the ICC, particularly in decisions to initiate investigations.

T. Altunjan (2021) emphasised the significance of the Statute in the investigation of sexual violence (ICC at a Glance, 2024). T. Altunjan's research shows that the ICC is making great strides in applying the potential of the Statute to bring accountability for such offences. B. Kotecha (2020), J. Powderly (2020), and H. Makale (2021) focused on the role of judges in providing protection to victims of international crimes. The researchers note that despite the significant achievements of the ICC, it faces challenges in providing full protection and support to victims and witnesses, including limited resources and facilities, lack of infrastructure and specialised services, procedural, political, and bureaucratic barriers. Simultaneously, there exists a range of underdeveloped practical concerns about the functional interpretation of the Statute and its implications for victim protection. Concrete measures designed to safeguard the rights and interests of victims in international criminal procedures have been inadequately scrutinised. Academic study has predominantly concentrated on the general dimensions of victim protection for specific categories of international crimes, including genocide, crimes against humanity, war crimes, and acts of aggression. However, prevention in the context of international crimes stays under-reported and under-practised. These gaps highlight the need to further explore the specificity of the functional interpretation of the Statute.

This study aimed to analyse critical elements of victim protection in international crimes. By the designated objective, the study's tasks were delineated as follows:

- to delineate global legal principles for the safeguarding of victims of international crimes;
- to identify the specific features of the Rome Statute's (1988) interpretation of international legal norms aimed at protecting victims of international crimes;
- to propose specific measures for the prevention of international crimes within the framework of victim protection.

Materials and methods

This study analysed the legal rules governing the ICC, making it possible to assess the scope of possible legal protection for victims of international crimes and to identify areas for improvement of existing mechanisms. The following international and national legal instruments were examined as foundational documents: Rome Statute of the International Criminal Court (1988); International Covenant on Civil and Political Rights (1966); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984); Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005); United Nations Convention against Transnational Organised Crime (2000), covering international criminal groups; Council of Europe Convention on the Prevention of Terrorism (2005), aimed at combating terrorism; Vienna Convention on the Law of Treaties (1969); Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985); Additional Protocol II to the Geneva Conventions relating to the Protection of Victims of Armed Conflicts of a non-international character (1977); Criminal Procedural Code No. 231-V ZRC of the Republic of Kazakhstan (2014).

The research utilised both general science and specialised methodologies. The hermeneutic method, focused on text interpretation and meaning, clarified the concept of the victim within the context of international legal standards. The utilisation of the hermeneutic method facilitated a thorough examination of the essential themes. The system-structural analysis technique facilitated the identification of the functional attributes of the elements within the Criminal Procedural Code (2014) and the Rome Statute (1988), as well as their positioning within the framework of international legislation. This encompasses an examination of the penalty system, its interplay with other legal entities, and the mechanisms and phases of harmonisation, along with the possible results of this process. The comparative legal method was employed to evaluate the feasibility of implementing the Charter in China and Kazakhstan. Induction and deduction were utilised to analyse the decisions of international tribunals, identify the core of international legal concepts, and extract specific conclusions from the fundamental principles of international instruments. A rigid methodology was employed to analyse the stipulations of the Statute and the laws of Kazakhstan.

Results and discussion

Global legal principles for the safeguarding of victims of international crimes. Victimology, during its development, has formed concepts previously unknown to criminology, among which the term "victim" is of key significance. In some cases, the term is used synonymously with "affected" or "person". However, as S. Darcy (2021) and D. Adeyemo (2021) note, the criminological definition of "victim" has a broader meaning and is different from the criminal law concept. International legal instruments more often use the term "victim of crime" instead of "victim". These terms have different meanings, with "victim of crime" referring to a wider range of persons than "victim". Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985), a victim is defined as any person who has suffered physical, material harm, or mental anguish as a result of acts or inactions that violate criminal legislation. Victim status is acknowledged irrespective of the identification, apprehension, conviction, or prosecution of the offenders. Additionally, in specific instances, victims may encompass immediate relatives, dependents of the victim, and anyone who experienced harm while attempting to assist the sufferer or avert criminal repercussions.

State attention to victims is often far inferior to that given to offenders (Report of the court on..., 2023). The emphasis is on the legal standing and rights of the accused, highlighting the existing imbalance. A crucial element is the necessity to achieve equilibrium between justice for perpetrators and safeguarding the interests of victims. E. Yunara and T. Kemas (2024), M. Lostal (2021) and N. Rakhmawati (2023) argue that victims are often regarded only as additional witnesses whose function is limited to confirming the guilt of the accused. The International Covenant on Civil and Political Rights (1966) emphasises the importance of acknowledging crime victims as distinct legal entities, highlighting the necessity for their comprehensive involvement in the justice process and the safeguarding of their rights. Before the implementation of the Rome Statute (1988), victims of international crimes were primarily regarded as witnesses, and their sole form of recompense was a legal recognition that an offence had occurred. The establishment of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005) created new opportunities for implementing restorative measures in conjunction with traditional legal mechanisms such as restitution, compensation, and rehabilitation. They define the term 'victim' to include any person affected by unlawful acts in criminal proceedings.

International legal standards concerning the safeguarding of crime victims have undergone significant advancement via numerous international instruments. For example, the United Nations Convention against Transnational Organised Crime (2000) played a key role in establishing principles of victim support and protection. Under Articles 6, 25, 32 of the Convention, states parties are obliged to implement measures aimed at ensuring the protection of victims from threats and intimidation, as well as to provide them with access to redress and compensation mechanisms. Victims are also entitled to express their views and concerns during criminal proceedings, which is an essential aspect of their legal defence. Additionally, analogous provisions are contained in Council of Europe conventions aimed at protecting victims. For example, the provisions of Articles 14, 16 of the Council of Europe Convention on the Prevention of Terrorism (2005) provide those states should take measures to protect victims of terrorism, including the provision of financial support and compensation to victims and their families, according to national legislation.

The Kazakh legal framework is deficient in explicitly delineated methods for safeguarding the rights of victims of torture and ill-treatment. There is a deficiency in effective protocols to guarantee legal remedy, encompassing reparation and rehabilitation of victims by the international norms established by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984). Thus, Kazakhstan has no specially designated bodies or structures responsible for the protection of victims of torture and ill-treatment, which complicates the implementation of legal protection and rehabilitation of victims. There is also a lack of clearly regulated procedures for the provision of such support in Kazakhstan, which may result in victims not receiving proper recovery and compensation, as there are no specialised legal acts establishing concrete conditions and procedures for compensation and medical help. At the same time, the Criminal Procedural Code No. 231-V ZRC of the Republic of Kazakhstan (2014) does not mandate the possibility of filing a lawsuit against the state in criminal proceedings, as a lawsuit can be filed only against the accused or suspects. This means that evidence of the guilt of concrete officials is not necessary for damages. Currently in Kazakhstan, the right to damages is only available in cases of unlawful conviction or prosecution, as well as in cases of preventive measures such as detention or house arrest.

Problematic aspects of accession of China and Kazakhstan to the Rome Statute. The global world regards the permanent ICC as a key component in combating impunity and upholding humanitarian and human rights legislation. The ICC's position is affirmed by the accession of 124 states to the Rome Statute (1988) by 2024, reflecting extensive acknowledgment and endorsement of its function within the international legal framework (States

Parties..., 2024). According to F.M. Hassan and M.H.B.M. Rusli (2022), N. Khan *et al.* (2023), the Statute is a fundamental document in the field of international criminal law. It established the legal basis for the ICC's operations and set novel procedural standards, indicating a significant advancement in the evolution of international criminal law.

States' attitudes towards the ICC are contradictory and reflect broader international and intrastate considerations. From the ICC's perspective, the participation of countries such as China is crucial as their active inclusion in the international criminal justice system could strengthen the global legal order (Lei, 2014). As a permanent member of the UN Security Council, China's backing may substantially enhance the effectiveness of the ICC (Klobucista & Ferragamo, 2024), particularly when the Security Council refers cases to the Court, as evidenced by the situations in Libya and Darfur. Moreover, China's participation could lend additional legitimacy to the ICC and encourage other countries to accede to the Rome Statute, thereby strengthening global justice. However, there is also considerable criticism of the ICC, which may explain the reluctance of China and Kazakhstan to join the Statute. One of the key arguments against the ICC is countries' fear of interference in their internal affairs. For example, China has repeatedly emphasised the priority of state sovereignty, which it understands to be incompatible with the power of an international court to intervene in the affairs of countries without their consent.

Arguments supporting a nation's participation in the ICC include the enhancement of international cooperation, the delivery of justice for victims of transnational crimes, and the strengthening of the global rule of law (Vartyletska & Shapovalova, 2024). The accession of China or Kazakhstan could substantially strengthen the ICC's authority and set precedents for the further development of international justice. Nevertheless, criticism of the ICC and considerations of sovereignty stay principal factors that have prevented countries such as China and Kazakhstan from joining. China's resistance to the ICC stems from both legal and political considerations. From a policy standpoint, China is apprehensive about the interplay between international justice, peace processes, the functions of the UN Security Council, and domestic justice matters. H. Janatmakan and M. Sadeghi (2021) assert that the ICC, as a component of the international legal framework, must take into account the objectives and principles of the Statute, thereby contributing substantially to the preservation of global peace and security. Given that peacekeeping is chiefly the purview of the Security Council, the ICC is anticipated to proceed with circumspection to avoid undermining the Council's political initiatives aimed at resolving international and regional disputes.

China's legal objections to the ICC relate to key aspects of criminal jurisdiction and the definition of offences. W. Guangya, who represented China at the United Nations from 2003 to 2008, expressed the views of the Chinese government, emphasising several important points (General Statement at the UN Conference of..., 2024). Primary among these are apprehensions that the ICC's jurisdiction lacks a foundation in the principle of voluntary consent, which raises issues with potential infringements on state sovereignty and inconsistencies with the Vienna Convention on the Law of Treaties. China expresses doubts about the ICC on these key issues related to criminal jurisdiction and the definition of offences. China's main argument against the Rome Statute is that the document imposes obligations on states that are not parties to it. According to the Chinese authorities, this effectively turns the Court into a supranational body capable of interfering in the sovereign affairs of states. The principle of supplementary jurisdiction allows the ICC to determine whether national justice systems can effectively and impartially investigate and try cases involving their nationals. This raise concerns that the ICC may make decisions that exceed the bounds of generally accepted international law and disregard national sovereignty.

China contests the incorporation of war crimes perpetrated during internal armed conflicts into the jurisdiction of the ICC. China asserts that the Statute's definition of "war crimes" broadens the conventional framework of international law and the provisions of Additional Protocol II to the Geneva Conventions for the Protection of Victims of Armed Conflicts of a Non-International Character (1977). Moreover, the term "crimes against humanity" in the Rome Statute includes activities that affect human rights, regardless of whether armed conflict exists. From China's perspective, this diverges from the foundational intent of founding the ICC and contravenes established international law. Furthermore, the Chinese authorities express concern about the inclusion of the crime of aggression under the jurisdiction of the ICC. They argue it could compromise the UN Security Council's role in international security matters. The Chinese stance is that the Statute should be considered an international treaty enforceable solely on governments that have ratified it, by the concept of relativity established in the Vienna Convention on the Law of Treaties (1969). China views the ICC's authority over non-ratifying governments as an infringement of their sovereignty and incompatible with the stipulations of the Statute.

Consequently, the jurisdiction of the ICC should augment, rather than supplant, national legal systems. China's concerns encompass two primary areas. Initially, the rejection of ICC jurisdiction by particular governments might significantly constrain the Court's authority and diminish the efficacy of the concept of complementarity. Secondly, China often refers to the existence of national proceedings in countries involved in ICC cases without assessing their authenticity and effectiveness. This complicates the objective determination of the admissibility of cases for consideration by the ICC, as the need to consider and analyse national justice mechanisms may influence the decisions taken by the ICC. During the Third Plenary Session of the ICC Statute Drafting Conference on 16 June 1998, the Chinese representative articulated concerns that the ICC might serve as a tool for political coercion or intrusion into the domestic matters of sovereign states (Mahaseth & Bansal, 2021). In this context, China strongly maintains that justice for international crimes should stay within the system of international relations, where the principle of national sovereignty is respected, and international tribunals, if established, should act in harmony with national legal systems and respect their authority.

According to H. Mahaseth and A. Bansal (2021), China's position reflects the broader issue of the balance between international justice and state sovereignty. They argue that China's fears of possible political interference by the ICC are not unfounded, considering precedents where international tribunals could be used to exert political pressure on individual states. Such arguments are strengthened by the fact that the jurisdiction of the ICC is based on international norms that may conflict with national legal systems, especially in

countries where justice is administered within specific legal and political traditions. Researchers emphasise that China, like other major states, considers the possibility of losing control over internal justice processes as a threat to its national sovereignty and legal autonomy. This argument is supported by the idea that universal jurisdiction can be used as a tool to interfere in the internal affairs of states, especially those with significant political or economic influence in the international arena.

Notwithstanding this, advocates of international justice, including S. Klobucista and M. Ferragamo (2024), assert that the ICC was established to combat impunity for grave international offenses such as genocide, crimes against humanity, and war crimes. Its operations should not be viewed as a challenge to state sovereignty, but rather as a mechanism for collective accountability in instances where national judicial systems are either incapable or reluctant to prosecute offenders. Consequently, the legal evaluation of this stance indicates that China contends the ICC has overstepped its authority, particularly regarding the principle of supplemental jurisdiction. This principle suggests that the ICC can intervene when national justice systems cannot effectively carry out legal proceedings. However, China argues that this interference could be politically motivated and undermine national judiciaries, which may have their mechanisms for dealing with offences. This position is assessed negatively because, from a legal standpoint, China's position effectively makes it impossible to apply international law to hold accountable those who commit grave crimes, such as war crimes or genocide, in territories where national courts are unable to do so. China's strategy emphasises sovereignty, potentially obstructing the enforcement of international human rights standards. Thus, from the perspective of sovereignty, China's position is legally correct, but from the perspective of international justice, China's opposition has caused the international community to question whether it wants to implement human rights standards established by international criminal law in its own country.

Kazakhstan's political position on participation in the Statute is largely determined by the desire to preserve national sovereignty and to prefer universal jurisdiction to deal with serious international crimes (Summary Record of the 3rd Meeting…, 1998). Kazakhstan is concerned about the potential impact of international courts and tribunals on the internal legal systems of states, believing that interference by these bodies may undermine the independence of national jurisdictions and their ability to deal effectively with international crimes. Such interference could threaten not only the countries' legal autonomy but also their internal legal order, which is a cause of concern for the Kazakh authorities. In that regard, Kazakhstan preferred those international crimes be dealt with under universal jurisdiction, which would preserve control over domestic processes and ensure a more balanced distribution of justice between national and international structures. However, the criticism of the ICC from Kazakhstan's perspective points to several notable aspects. Although the ICC was conceived as an independent international body, its dependence on decisions of the UN Security Council, which can refer cases to the ICC, raises doubts about the fairness and objectivity of the Court's work. Countries may specifically apprehend that involvement in the ICC could result in encroachment onto their domestic affairs under the guise of justice, so contravening the idea of sovereignty. Furthermore, the ICC encounters challenges in executing its decisions due to its authority being confined to those that have accepted the Rome Statute. Kazakhstan may see this limitation as an obstacle to effective international justice, as the ICC cannot bring criminals to justice if their states are not parties to the Statute. This gives the impression that the ICC system is flawed and cannot always handle global challenges.

Simultaneously, involvement in the ICC affords nations the chance to collaborate with the global community in addressing crimes that are frequently transnational and necessitate a unified effort (Yemets *et al.*, 2024). The ICC functions based on complementarity, wherein the Court intervenes only when national judicial systems are incapable or disinclined to investigate and prosecute offenders. The ICC thus respects the sovereignty of states by giving them primacy in the administration of justice but intervenes only in exceptional cases where national legal systems fail.

Kazakhstan's accession to the ICC could strengthen international cooperation on justice issues and protect the rights of victims by providing an additional mechanism to achieve justice if national structures prove insufficient. The refusal to ratify may suggest an attempt to avoid introducing additional mechanisms to facilitate the prosecution of perpetrators of serious offences, regardless of their official position. This may limit the scope for international justice and leave the full responsibility to national law enforcement systems, which may be inadequate to handle complex issues. Kazakhstan's accession to the Rome Statute will facilitate convergence with international standards on the rule of law and the protection of human rights, as well as strengthen global efforts to counter crimes that threaten peace and security (Podoprigora *et al.*, 2019). This reinforces and enhances the nation's global standing in criminal justice. From the ICC's viewpoint, Kazakhstan's involvement in the international justice system might significantly aid in combating international crimes and augment global justice. However, critical arguments related to sovereignty, possible political manipulation and the Court's limited jurisdiction continue to be important obstacles for countries seeking to maintain control over internal justice processes.

The legal assessment of Kazakhstan's position on participation in the ICC is based on a series of key aspects related to the protection of state sovereignty, legal autonomy, and potential risks of interference by international bodies in internal affairs. Kazakhstan is concerned about the possibility that the activities of the ICC may undermine the independence of national legal systems, which raises questions about the protection of national sovereignty and the country's ability to provide justice unassisted (Ryskaliyev *et al.*, 2019). This stance is firmly grounded on legal principles, as the ICC possesses the authority to intervene in circumstances when national judicial systems are either inadequate or reluctant to pursue individuals accountable for international crimes. However, this is considered a threat to national sovereignty. Understanding Kazakhstan's desire to protect its sovereignty is important to ensure national independence in the legal sphere. This emphasises the significance of preserving national judiciaries as core institutions of justice. On the other hand, Kazakhstan's refusal to ratify the Statute potentially limits the ability to prosecute perpetrators of international crimes, which could be detrimental to global efforts to ensure human rights and justice.

Researchers who have investigated Kazakhstan's position address several important aspects. K.B. Menlenkyzy (2014) states that Kazakhstan is trying to find a balance between preserving sovereignty and seeking to integrate into the world community in the context of ensuring justice. According to S.B. Sayapin (2018), Kazakhstan adheres to a cautious stance towards the ICC, considering it advisable to develop national legal mechanisms to address issues related to international crimes instead of referring these issues to an international court. Consequently, Kazakhstan's stance on the ICC is legally robust, however, it exhibits deficiencies regarding international justice and the global struggle against serious crimes. Therefore, analysing the functional interpretation of the Statute in the context of Kazakhstan's potential accession is necessary to assess the extent to which national legislation follows international standards and how international obligations will be integrated into the country's legal system.

Distinct characteristics of a functionalist analysis of the Rome Statute regarding the safeguarding of victims of international crimes. Functionalist theory of criminal law interpretation, as part of purposive rational theory, emphasises the need to adapt criminal justice to current societal changes and criminal policy objectives. According to G. Maucec (2021), this theory rejects a dogmatic approach, emphasising the active role of the judiciary in adapting criminal law to new conditions and challenges.

Article 22(2) of the Statute prescribes a strict interpretation of offences without expansive interpretation to avoid undue interference with the justice process. In cases of uncertainty, the interpretation should be in favour of the accused. However, deviations arise in the practical application of these principles. For example, in the case concerning the situation in Myanmar and Bangladesh (Six years after the Myanmar military..., 2023). The Pre-Trial Chamber permitted an interpretation of the Rome Statute that was not entirely aligned with its rigorous methodology. Despite Myanmar's non-participation in the Statute and ongoing disputes on the validity of the ICC's jurisdiction, the ICC implemented a functional approach. This enabled it to tackle the Rohingya crisis in Myanmar despite the lack of a definitive legal foundation, aiming to provide justice and avert impunity. M. Billah (2021) underscores the necessity of differentiating between crimes against humanity, as delineated in Article 7, and conventional crimes, which are regulated by state criminal legislation. Misunderstanding these ideas may infringe upon national sovereignty, impact the jurisdiction of domestic courts, and result in an unwarranted extension of the ICC's authority. The case studies indicate that the interpretation of the Statute demonstrates a propensity for functionalism. The functionalist theory of interpretation, based on the rational theory of purpose, emphasises a purposive approach in interpreting law. The ICC's reasons for adopting a functionalist interpretation relate not only to its aim of eradicating impunity, but also to the fact that the Statute itself has elements of ambiguity (Buribayev *et al.*, 2020).

Legal interpretation should be aimed at fulfilling the goals and values embedded in legal norms. As noted by N. Rajkovic (2020) and A. Rohman (2023), F. Abubakar (2023), where the literal meaning of norms corresponds to their legislative context, their interpretation should serve the purpose of legal regulation and consider its hierarchical structure. Interpreting the requirements of the Statute necessitates careful consideration of its objectives, which dictate the methodology for comprehending and implementing the regulations. The Preamble to the Statute plays a key role as it sets out the basic principles and objectives of international criminal justice. The Preamble underscores the necessity of penalizing offenses that jeopardize the peace, security, and welfare of people, such as genocide, war crimes, and crimes against humanity (Martsenko & Lukasevych-Krutnyk, 2024). These serious offences must be prosecuted and punished to prevent impunity and promote global justice. The preamble is an essential element of any international treaty, as it provides the overall context and direction for the interpretation of the rules. It functions as a reference for law enforcement officials, aiding in the navigation of intricate legal matters and ensuring that all judicial proceedings align with the articulated objectives and tenets of international justice. The preamble not only validates the necessity of addressing crimes that jeopardise peace but also directs the operations of the ICC, guaranteeing alignment with its defined objectives and values. The notion of "ending impunity" embodies the primary objective and essential principle of the Statute. Judges must consider this objective when interpreting the Statute. In instances of international crimes before the ICC, the aspiration to eradicate impunity is frequently employed to justify broad or narrow interpretations of regulations. Judges may alter the explicit interpretation of regulations to align more effectively with the objectives of criminal policy. This approach can lead to a considerable expansion of law enforcement practices aimed at combating impunity, which requires a careful balance between the interpretation of norms and their original meaning.

In the Rohingya case, for example, to hold Myanmar liable for the offence of "deportation", the Pre-Trial Chamber deviated from the requirements of Article 38 (ICC at a Glance, 2024), which covers the definition of customary international law (Rohman, 2023). The ICC expanded its jurisdiction to include not only "the territory where the offence occurred" but also "the territory where the ultimate consequences of the offence occurred". This expansion of jurisdiction reflects the ICC's desire to broaden the scope of impunity cases, which emphasises the need to carefully balance the goal of ending impunity with the principles of legal certainty.

In another case involving the situation in Kenya, the ICC decided to give a broad interpretation to the term "organisation" (ICC Pre-Trial Chamber I rules..., 2018), despite the requirements of the Vienna Convention (1969), which presuppose a strict definition. This decision promoted justice for victims of crime, but also demonstrated the shortcomings of the functionalist approach in international criminal law. This approach, despite its positive aspects, ignores possible negative consequences, including uncertainty and inconsistency in the application of the rules. The ICC's actions in this context emphasise its increasing role in international criminal law through non-standard interpretations of norms, raising concerns about the compatibility of such approaches with modern principles of the rule of law. Moreover, criticism from the international community has had concrete consequences. For example, after the Court asserted its jurisdiction over the situation in Kenya, a formal challenge by the Government followed (Situation in the Republic of Kenya..., 2011). The nation questioned

the validity of prosecuting six senior officials, prompting the Kenyan Parliament to withdraw from the Statute, therefore underscoring the tensions and inconsistencies in the enforcement of international criminal law.

Article 22 contains only one concrete provision (ICC at a Glance, 2024) on methods of legal interpretation, which prescribes a precise and limited definition of offences, precluding the use of analogies to broaden their interpretation. N. Rehman *et al.* (2024) and A. Lukin (2020) highlights that one of the key strategies for protecting the rights of defendants is the "strict interpretation" method, also known as the "leniency rule", which involves minimising legal risks for defendants. Since international criminal law focuses on individual criminal responsibility, it may be difficult and not always suitable to apply the methods of interpretation prescribed in the Vienna Convention to international criminal law. Several factors contribute to the difficulties in applying the functional approach in international criminal law. Firstly, international criminal law focuses on individual criminal responsibility, which requires a more detailed and precise interpretation of the rules than that mandated by the Vienna Convention (1969). This arises from the necessity to evaluate the specific circumstances of each case and the individual rights of the accused, which complicates the implementation of broad interpretative principles. Secondly, the Vienna Convention provides interpretative frameworks that may neglect the specificities of international criminal justice, which emphasises the protection of victims' rights and the achievement of global justice. A functional approach may prove insufficient due to variations in legal systems and cultural contexts, necessitating the adaptation of interpretative methodologies to the distinct realities of international criminal justice. Consequently, the implementation of the functional approach may face challenges owing to the necessity of reconciling universal standards with the particular demands of individual criminal accountability, thereby complicating its use in international contexts.

According to L. Domagalski (2023), D.R. Banjarani *et al.* (2023), "any interpretation, to a greater or lesser extent, involves a teleological interpretation. When different methods of interpretation lead to different results or fail to reach unequivocal conclusions, teleological interpretation should be the ultimate criterion". This creates a hierarchy in methods of interpretation, where purposive interpretation dominates over other methods. The purposive interpretation often exceeds the intention of the legislator, also considering the objectives of criminal policy and changes in social reality. P. Hobbs (2020) and I. Hall and R. Jeffery (2023) argues that "only fairness and justice are consistent with the application of concrete expediency as a primary factor". Therefore, the use of purposive interpretation as the main approach allows the court the flexibility to apply a functionalist interpretation of the rules.

Preventing international crimes that target individual victims is key to maintaining the global rule of law and justice. Victimisation prevention represents a key area of crime prevention, which, as studies by M. Dauster (2023) and N.F. Kahimba *et al.* (2020) indicate, is still underdeveloped in a series of communities. This approach includes a set of activities carried out by social institutions aimed at identifying and eliminating factors contributing to victimisation behaviour, as well as preventing conditions conducive to the commission of crime. The principal objectives of victimisation prevention are to identify groups and individuals at high risk of victimisation and to develop strategies to enhance their protection and prevent crime and subsequent victimisation.

Since the ICC has no executive power and depends on the cooperation and support of states, the application of purposive interpretation must be carefully regulated. This approach should be used only as a last resort, after all other methods of interpretation have been exhausted, to preserve the original purposes and stability of the Statute.

Conclusions

Kazakhstan's acceptance of the Rome Statute will strengthen the nation's legal system by incorporating international criminal justice standards and reaffirming its commitment to combating international crimes. Kazakhstan's participation will strengthen its role in global efforts to address genocide, war crimes, and crimes against humanity, thereby bolstering international law and justice. This involvement would elevate Kazakhstan's international legal standing, bolster its reputation for human rights and justice, and strengthen national security and international collaboration.

The study examined instances that illustrate various methodologies for interpreting international law employed by the ICC. In the Rohingya case, the ICC deviated from the stipulations of Article 38 of the Statute in delineating customary international law. The court expanded its jurisdiction to include not only the territory where the offence occurred but also the territory where the consequences occurred, indicating the Court's desire to cover a wider range of impunity. This approach raises important questions of legal certainty and the balance between the pursuit of justice and compliance with international norms. As another example, the decision in a case involving a situation in Kenya was considered, where the ICC had given a broad interpretation of the term "organisation". This decision has enhanced access to justice for crime victims but has prompted inquiries over the boundaries of such interpretation, particularly concerning the stipulations of the Vienna Convention on the Law of Treaties, which mandates a stringent definition of terms. Such an approach, despite its positive aspects, may lead to unpredictable consequences and legal uncertainty in the application of international norms.

Functional interpretation of statutes reveals several key problems related to legal uncertainty and difficulties in interpreting norms. This approach, while providing flexibility in enforcement, can lead to increased powers, which makes it more difficult to respect the principles of national sovereignty. The Rome Statute, being an international treaty, is based on the consent of states, which implies the transfer of part of judicial sovereignty to international institutions. Consequently, its interpretation must focus on the Rome Statute's primary purpose of protecting victims of serious crimes, while ensuring that the international community actively seeks to achieve justice and prevent impunity despite existing political and legal differences. Potential research directions encompass comparative analyses of normative interpretation in international and national systems, which may elucidate distinctions and commonalities in their interpretation and application, thereby facilitating recommendations for enhancing human rights practices.

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Conflict of interest

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Захист жертв міжнародних злочинів: рефлексія щодо функціонального тлумачення Статуту Міжнародного кримінального суду

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Анотація. Метою цього дослідження було виявлення ключових аспектів захисту жертв міжнародних злочинів у контексті функціональної інтерпретації Римського статуту. Під час дослідження було проведено аналіз основних міжнародно-правових документів, що регулюють захист жертв таких злочинів. Дослідження проведено за допомогою герменевтичного, системно-структурного аналізу, порівняльно-правового та інших методів. Результати аналізу засвідчили, що в законодавстві Казахстану відсутні чітко прописані норми, які стосуються відповідальності держави перед постраждалими, а також їхнього права на адекватне відшкодування, включно з компенсацією та реабілітацією, що передбачено Конвенцією ООН проти катувань. Констатовано, що Казахстан і Китай не ратифікували Римський статут, значною мірою через політичні міркування. Приєднання Казахстану до Римського статуту могло б призвести до гармонізації національних стандартів з міжнародними вимогами у сфері верховенства права та захисту прав людини, а також зміцнити глобальні зусилля з протидії злочинам, що загрожують миру і безпеці. Також було встановлено, що невизначеність у нормативній термінології та методах тлумачення Римського статуту, а також конфлікти між різними цілями, призвели до використання функціоналістського підходу судом при інтерпретації статуту. Це послаблює його основну функцію захисту прав людини, порушує повноваження держав-учасниць і суперечить принципу національного суверенітету. Звернуто увагу на необхідність віктимологічної профілактики жертв міжнародних злочинів, яка має включати поліпшення практики поводження з жертвами, перегляд законодавства та розвиток нових структур і служб. Суттєве значення також має роз'яснювальна робота, спрямована на інформування про методи злочинів та вразливість жертв через різні медіаформати. Практичне значення дослідження полягає у викладених зауваженнях і рекомендаціях, щодо функціонального тлумачення Статуту Міжнародного кримінального суду в його практиці

Ключові слова: потерпілий; профілактика; конкуренція кримінально-правових норм; функціоналізм; імплементація

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The impact of globalisation on constitutional processes in Ukraine: Social consequences of the adaptation of legislation of Ukraine to European standards

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Abstract. The purpose of this study was to examine how globalisation has influenced the transformation of the legal system of Ukraine and to identify the social consequences resulting from the adaptation of national legislation to European standards. The study primarily focused on analysing how the integration of European norms has affected the development of legal consciousness and social interaction in Ukraine and the strengthening of democratic institutions and civil liberties. The study methodology employed includes comparative analysis to juxtapose the legislation of Ukraine with that of the European Union and a systemic approach to assess the complexity of legal integration. The findings indicate that the adaptation to European standards has contributed to enhanced transparency in public administration, improved legal protection for citizens, and a reduction in corruption levels. The study was emphasised that these processes have significantly influenced the development of civil society, increased legal awareness and citizen engagement, and strengthened national identity within the context of integration into global processes. Particular attention was given to issues concerning the social adaptation of the population to new legal realities associated with the adoption and

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implementation of European norms and standards. A crucial aspect of this study is the investigation of the impact of globalisation on the role of the state in legal regulation and the enhancement of interaction between state institutions and society. The study highlights key aspects of the transformation of constitutional processes under the influence of globalisation trends, particularly with regard to the integration of Ukraine into the European legal framework. It also addresses the social consequences of adapting national legislation to European standards, which have manifested in changes to legal culture, the strengthening of human rights protection mechanisms, and the advancement of democratic institutions

Keywords: human rights protection mechanisms; democracy; civil society; integration; national identity; globalization

Introduction

The impact of globalisation on the development of national legal systems is manifested, in particular, in the necessity of harmonising legislation with international and regional standards. In Ukraine, this influence has accelerated the adaptation of national legislation to European norms, driven by the country's aspirations for European integration and the need to ensure high standards of legal protection for citizens. However, the implementation of European norms into Ukrainian legislation faces numerous challenges, including the unreadiness of the legal system, socio-economic inequalities, and limited access to legal services. Official EU reports confirm obstacles in the implementation of European norms within Ukrainian legislation. For instance, the Report on the Implementation of the Association Agreement between Ukraine and the European Union for 2023 highlights issues related to the insufficient preparedness of the legal system, socio-economic disparities, and restricted access to legal services, particularly in rural areas. These problems necessitate in-depth research, as their resolution is a prerequisite for ensuring social stability and the democratic development of the country. Concurrently, the introduction of new legal norms requires active public engagement, fostering an increase in legal awareness among the population and ensuring effective communication between state institutions and civil society.

M. Treshchev and A. Munko (2022) emphasise that integration with the European Union and the adaptation of Ukrainian legislation to European standards represent not merely a legal process, but also have social consequences that must be considered in the context of state policy. Specifically, the researchers draw attention to two key aspects. The first is the reduction of social inequality through the establishment of equal access to legal and administrative services for all citizens, including the most vulnerable segments of the population. The second aspect concerns the necessity of adapting the labour market to new European standards, which entails enhancing the qualifications of workers and altering the requirements for their professional training. V. Barskyi and D. Dvornichenko (2019), in turn, underscore the importance of preserving national identity during the harmonisation of Ukrainian legislation with European norms. A similar conclusion was reached by L. Guiso *et al.* (2019), who emphasised the necessity of considering national specificity when implementing European standards, indicating that failure to consider these aspects could lead to social tension.

The impact of globalisation on normative and imperative institutions is a prevalent focus within contemporary humanities research (Zlahoda & Polian, 2024). M. Caselli *et al.* (2021) examined the effect of new legal norms on the social structure of Italian society, noting that legislative changes are accompanied by the formation of new social norms and values. The researchers also address numerous challenges associated with the implementation of European standards into national legislation. The study by D. Rodrik (2021) and G. Scheiring *et al.* (2024) covers the technical and social barriers faced by Ukraine in its efforts to adapt its legislation. D. Rodrik emphasised the necessity for the modernisation of the legal system to successfully integrate new norms, while G. Scheiring *et al.* (2024) highlighted the importance of considering the social consequences that may arise during this process, particularly potential conflicts between established and new legal norms.

M. Treshchev and O. Khokhba (2023) focused on the impact of globalisation on national identity and state sovereignty in Ukraine. They explored how globalisation, accompanied by integration with the European Union and other international structures, influences the development of constitutional law and political stability in the country. Their study reveals how the adaptation of national legislation to European standards affects social structure, particularly in relation to changes in socio-economic conditions, levels of rights and freedoms for citizens, and institutional reforms. M. Treshchev and O. Khokhba (2023) also drew attention to the risks of losing national identity amid globalisation and the necessity of preserving sovereignty during constitutional reforms.

A review of existing research indicates a need for the development of effective strategies and tools that would enable the successful implementation of changes in the country's legal system (considering its specific conditions and functional requirements) following European standards. However, there is a need for a more thorough analysis of the impact of these changes on various aspects of social life, such as social justice, access to justice, the effectiveness of public institutions, and the overall level of legal protection.

The purpose of the study was to identify the main difficulties arising from the adaptation of legislation to the standards of European social policy and to analyse the problems and opportunities that emerge during the integration of the Ukrainian legal environment into European norms.

Materials and methods

The study comprised several key stages, each aimed at examining different aspects of the adaptation of national legislation to European standards. The first stage involves defining conceptual approaches and theoretical foundations for legislative adaptation. During this phase, international instruments are analysed, such as the Association Agreement between the European Union and Ukraine (2014) and the Council of Europe Action plan on strengthening the independence and impartiality of the judiciary (2016). This stage is critically important for establishing a comprehensive understanding of the legal requirements and principles that Ukraine should adhere to in harmonising its legislation.

The second stage of the research focused on identifying key conceptual approaches to legislative adaptation. Employing methods of systemic analysis and comparative jurisprudence provided a foundation for assessing the current

regulatory framework of Ukraine in terms of its alignment with European standards and international practices. This stage involves the examination of international conventions and directives, including the European Convention on Human Rights (1950) and the Accession Criteria (Copenhagen Criteria) (n.d.).

The third stage consisted in a thorough examination of regulations governing the implementation of European standards into Ukrainian legislation. This phase primarily concentrates on analysing regulations and strategic documents that delineate the areas for adapting national legislation to the requirements of the European Union. Of particular importance is the analysis of regulations aimed at introducing key European standards and norms, such as Decree of the President of Ukraine No. 119/2021 "On the National Human Rights Strategy" (2021), Law of Ukraine No. 1667-IX "On Stimulating the Development of the Digital Economy in Ukraine" (2023), Law of Ukraine No. 1264-XII "On Environmental Protection" (1991), and Law of Ukraine No. 2136-IX "On the Organisation of Labour Relations under Martial Law" (2022). Legal analysis methods are employed to conduct a detailed examination of the specific norms and provisions within these regulations. This stage also utilises comparative methods, allowing for parallels to be drawn between the norms of Ukrainian legislation and the provisions of European law.

In the final stage of the study, the data obtained from all previous phases is integrated, facilitating the synthesis of findings and providing a comprehensive understanding of the status and prospects of adapting national legislation to European standards. This stage involves the systematisation of the information collected from the review of national regulatory documents and the outcomes of the comparative analysis of legal systems. All stages of the research are grounded in legal analysis and a comparative approach, enabling an in-depth examination of the current state of national legislation and its conformity with European standards. The utilisation of legal analysis is vital for identifying deficiencies and gaps within Ukraine's legal framework to facilitate its full harmonisation with European Union requirements.

Results

The integration of European standards often encounters challenges primarily due to the insufficient readiness of the legal system for new requirements and a lack of public understanding of these changes. This inadequate preparation leads to increased legal uncertainty and social tension (Milner, 2019). In the context of globalisation, Ukraine's legal framework is undergoing substantial transformations aimed at harmonisation with European standards, which is crucial for the integration into the European legal space. Legislative changes affect all levels of the legal system, including the adaptation of legal norms and principles to European standards. However, this process is far from straightforward, accompanied by numerous challenges that may impact social stability and citizens' legal confidence.

The Association Agreement (2014) with the EU required Ukraine to adapt its legislation to European standards in the field of environmental protection. At the time of signing, relevant EU standards included the Directive of the European Parliament and of the Council No. 2008/50/EC "On Ambient Air Quality and Cleaner Air for Europe" (2008), the Directive of the European Parliament and of the Council No. 2000/60/EC "Establishing a Framework for Community Action in the Field of Water Policy" (2000), and the Directive of the European Parliament and of the Council No. 2010/75/EC "On Industrial Emissions (Integrated Pollution Prevention and Control)" (2010). However, despite the adoption of new laws, their practical implementation encountered numerous issues. For instance, the establishment of a waste collection and recycling system does not always meet European standards due to a lack of appropriate infrastructure and organisational difficulties. European environmental standards, particularly directives concerning emission reduction and waste recycling, are notably stricter compared to Ukrainian requirements. For example, the Directive of the European Parliament and of the Council No. 2008/98/EC "On Waste and Repealing Certain Directives" (2008) establishes a waste management hierarchy, prioritising waste prevention, recycling, and recovery over disposal. In contrast, Ukrainian environmental legislation at the time of adaptation had more lenient requirements, particularly regarding the use of landfills for waste storage, which significantly exceeded European norms (Kovach *et al.*, 2024). These standards aim to transform waste management practices and reduce the harmful impact on the environment.

The implementation of European legal standards in Ukraine is a substantial step towards European integration, particularly in the areas of human rights, justice, and administrative law (Kyrychok *et al.*, 2024). This process has indeed contributed to improving human rights protection and enhancing trust in the judicial system. For instance, although Ukraine ratified the European Convention on Human Rights (1950), implementation and adaptation of the Convention to Ukrainian legislation began much later. Amending legislation has become an integral part of this adaptation. Specifically, the number of complaints concerning human rights violations submitted to the European Court of Human Rights has decreased following the introduction of specific changes to national legislation (Surzik, 2022). The Decree of the President of Ukraine No. 119/2021 "On the National Human Rights Strategy" (2021) outlined the key areas and measures for improving human rights protection in Ukraine, aligning national policies with European standards. Similarly, the Law of Ukraine No. 1667-IX "On Stimulating the Development of the Digital Economy in Ukraine" (2023) includes provisions that promote the protection of digital rights and freedoms in accordance with the European legal framework. The Law of Ukraine No. 1264-XII "On Environmental Protection" (1991) was amended to enhance environmental protection in line with European environmental standards. Moreover, the Law of Ukraine No. 2136-IX "On the Organisation of Labour Relations under Martial Law" (2022) was adopted to ensure the protection of workers' rights in the specific conditions of war, consistent with international human rights standards.

According to a study by the European Commission, reforms within the justice system, particularly judicial reforms, have contributed to increased judicial independence and the improvement of administrative services. This is reflected in Ukraine's improved ranking in the Rule of Law Index (2023). For example, in the 2021 ranking, Ukraine received a score of 0.45 (on a scale from 0 to 1), which was an improvement compared to 0.42 in 2019. By 2022, Ukraine's score had risen to 0.47, indicating positive developments in the justice system and the enforcement of the rule of law. It

was important not only to implement legal changes but also to actively promote social and informational initiatives that support these changes and ensure their effective integration into society. Such campaigns were launched in Ukraine with EU support under the "Justice for All" programme (International Online Conference…, 2023).

The reform of the judicial system, focused on European models, provides for increasing the independence of judges and improving their qualifications, which leads to a reduction in corruption in the judicial system and an increase in the efficiency of judicial processes. Independent and qualified judges ensure fair decisions, which, in turn, strengthen the rule of law and uphold justice. The adaptation of Ukrainian legislation to European norms in the areas of human rights protection, environmental standards, and economic policy aims to create a stable legal environment that enhances the legal security of citizens, improves environmental conditions, and stabilises economic policy. This process aligns with the recommendations of the Action plan on strengthening the independence and impartiality of the judiciary (2016), which is focused on reinforcing the independence and impartiality of the judiciary. Special attention is given to the Accession Criteria (Copenhagen Criteria) 1993 (n.d.) and European Union directives, which set the standards for evaluating the conformity of national legal systems with European requirements. These criteria provide a foundation for the comprehensive review and improvement of Ukraine's legal mechanisms to meet high standards of human rights protection, ensure environmental safety, and support stable economic development. European standards impose stricter requirements on human rights protection and environmental preservation compared to Ukrainian legislation, which often tends to be less detailed and imposes lower standards.

The European Convention on Human Rights (1950) establishes clear standards for the protection of citizens from violations of rights, including the right to a fair trial, freedom of expression, and protection from torture. The implementation of these norms has been reflected in reforms to the judicial system, such as the introduction of the independent High Council of Justice. However, the Ukrainian legal system still falls short of ensuring full judicial independence, which has drawn criticism from international organisations.

Judicial reform in Ukraine includes improvements to the functioning of the High Anti-Corruption Court and the enhancement of mechanisms for handling corruption cases in line with European standards. One such standard is the assurance of judicial independence, as enshrined in the Recommendation of the Committee of Ministers of the Council of Europe No. CM/Rec (2010) 12 "Judges: Independence, Efficiency and Responsibilities" (2010). According to these recommendations, member states must guarantee judicial independence, thereby fostering impartial and objective judicial processes. Another important standard is adherence to the principle of the rule of law, as reflected in the Charter of Fundamental Rights of the European Union (2000) (Article 47), which enshrines the right to a fair trial.

The economic implications of adapting to European standards include the integration of Ukraine into a single European economic area and the regulation of business and investment. One of the key aspects is the harmonisation of Ukrainian legislation with EU requirements, which has created a favourable business environment by simplifying regulatory procedures, as outlined in the Association Agreement between the European Union and Ukraine (2014) (Chapter 6, Section 4). A crucial task is the implementation of corporate governance standards in accordance with the Directive of the European Parliament and of Council No. 2014/95/EU "Amending Directive 2013/34/EU as Regards Disclosure of Non-Financial and Diversity Information by Certain Large Undertakings and Groups" (2014), which requires transparency in non-financial reporting, thus enhancing trust in Ukrainian companies. The measures implemented have facilitated access to European markets, increased investment inflows, improved legal protection for investors, and promoted competition and innovation across various sectors of the economy. The impact of these standards is reflected in the fluctuations in foreign direct investment (FDI) in Ukraine in recent years: a decline of 91.0% in 2022, followed by significant growth of 575.0% in 2023, and another decline of 54.2% in 2024 (Foreign Direct Investment..., 2024).

The reform process towards European standards has also had a substantial effect on social integration in Ukraine. A key example of this is the improvement of access to social services for vulnerable groups through the introduction of inclusive policies based on European practices. This is evidenced by the harmonisation of social security, which aims to better integrate persons with disabilities and other marginalised groups into society. The implementation of European initiatives, such as the European Disability Strategy, has contributed to creating conditions for equal access to education, healthcare, and employment for persons with disabilities.

The development of civil society is another critical aspect of Ukraine's adaptation to European standards. This process has been underpinned by support for civil society organisations and initiatives. For instance, the Directive of the European Parliament and of the Council No. 2013/11/EU "On Alternative Dispute Resolution for Consumer Disputes and Amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC" (2013) provided for the involvement of citizens in decision-making processes by establishing mechanisms for public discussion and the participation of civil society organisations in policy formulation. An example of the implementation of European standards in the development of civil society in Ukraine is the Law of Ukraine No. 4572-VI "On Public Associations" (2013). It introduced legal guarantees for the operation of public organisations, enhancing their role in decision-making processes at both national and local levels.

Notably, outside Ukraine, the implementation of European standards in various sectors has led to more influential and visible changes. The adaptation to EU standards in human rights and justice, such as the Directive of the European Parliament and of the Council No. (EU) 2016/343 "On the Strengthening of Certain Aspects of the Presumption of Innocence and of the Right to be Present at the Trial in Criminal Proceedings" (2016), has improved the protection of citizens' rights and enhanced judicial independence in countries such as Poland and Ukraine. These reforms have provided greater legal security and fairness within the judiciary. The integration of national minorities in accordance with anti-discrimination norms, such as the Directive of European Council No. "On the Implementation of the Principle of Equal Treatment of Persons Regardless of Racial or Ethnic Origin" (2000) and the Directive of European Council No. 2000/78/EC "On Establishing a General Framework for Equal Treatment in Employment and Professional

Activities" (2000), has reduced social tensions and improved equality in countries such as Sweden and Germany. These standards have facilitated the greater integration of national minorities and ensured equal access to social services.

The integration into the European Single Economic Area through the implementation of economic directives, such as the Directive of the European Parliament and of the Council No. 2006/123/EC "On Services in the Internal Market" (2006), has had a positive impact on the economic development and stability of Romania and Bulgaria. It has improved the investment climate and reduced economic imbalances. Educational and cultural changes, particularly through exchange programmes like Erasmus+, and the alignment of cultural practices with European standards, have enhanced educational integration and cultural exchange in Spain and Finland, leading to improved educational quality and support for cultural exchange. The support for civil society organisations and initiatives based on European standards, such as Regulation 2012/29/EC on the rights of crime victims, has increased civic engagement in Austria and France, strengthening democratic institutions and enhancing the role of civil society in these countries (Erasmus+…, 2015).

In Ukraine, the implementation of European standards has yielded mixed results. Despite some improvements in the protection of citizens'' rights and the quality of administrative services, challenges remain within the judiciary, particularly due to insufficient judicial independence and high levels of corruption (Zarosylo *et al.*, 2018). According to EU reports (Ukraine: EU report…, 2022), Ukraine has faced difficulties in judicial reforms, especially concerning the selection of Constitutional Court judges and the fight against corruption. In the Ukrainian context, such reforms require more effective implementation and external support to achieve comparable outcomes (Holovatyi, 2015; European Commission, 2023).

Georgia serves as an example of a successful judicial reform, which included the upskilling of judges and the reorganisation of judicial bodies. These measures have helped reduce corruption and increase the efficiency of judicial processes. According to data from Transparency International and the World Bank, reforms in Georgia's judicial system, which involved the establishment of an independent anti-corruption bureau and the modernisation of the justice system, have led to a reduction in corruption levels and an increase in public trust in the judiciary (European Commission, 2023). Moreover, according to a European Union report, judicial reforms in Georgia have produced significant results in improving the transparency and accountability of judges, contributing to more efficient case handling and increased judicial independence (European Commission, 2022).

Slovakia has also undergone similar reforms, which have positively influenced the efficiency of its judicial system. In particular, the implementation of standards in line with the EU, such as Directive of the European Parliament and of the Council No. (EU) 2016/343 "On the Strengthening of Certain Aspects of the Presumption of Innocence and of the Right to be Present at the Trial in Criminal Proceedings" (2016), has enhanced the transparency of judicial processes, ensured the right to a fair trial, and improved access to justice. Meanwhile, in the Czech Republic, new environmental protection regulations were adopted, notably under Directive of the European Parliament and of the Council No. 2008/98/EC "On Waste and Repealing Certain Directives" (2008), which set out fundamental principles for waste management, including reduction, reuse, and recycling. The enhancement of standards in waste management also strengthened the legal protection of citizens, providing them with greater safeguards against the negative impacts of waste.

Thus, globalisation is characterised by integrating countries into global economic, political, and cultural networks, which brings about changes in all aspects of life. International agreements and the exchange of cultural and economic achievements have become part of global trends that affect the internal affairs of nations. Central and Eastern Europe, including Poland, the Czech Republic, Slovakia, Hungary, Romania, and Bulgaria, has undergone substantial transformations following their accession to the European Union (Mikhnevych *et al.*, 2023). Integration has impacted the legislative systems of these countries, resulting in the harmonisation of their national regulations with European standards. For instance, Poland, which joined the EU in 2004, implemented substantial reforms in justice, anti-corruption, and economic policy, adapting its laws to the requirements of European directives. Similar processes have taken place in other Central and Eastern European countries due to their integration into the European legal framework, particularly in relation to the judiciary, state governance, and new rights and freedoms for citizens.

In Poland, a series of laws regulating the Constitutional Court were introduced, strengthening judicial independence. For example, amendments to the Law of Poland No. 1064 "On the Constitutional Court" (2015) aimed to limit political influence in the appointment of judges and establish transparent criteria for their selection. Ukraine would benefit from adopting similar legislative mechanisms to ensure the independence of judges in its Constitutional Court and prevent political interference. Romania's experience in combating corruption is also of particular importance. The Law of Romania No. 78/2000 "On the Prevention, Detection and Sanctioning of Corruption" (2000) has been regarded as a successful reform, thanks to the independence of its anti-corruption body and its broad powers. Despite the existence of anti-corruption bodies in Ukraine, their effectiveness remains a challenge (Kostiushko, 2024). Thus, the legislative framework of Romania could serve as a model for improving the anti-corruption system of Ukraine. In Hungary, a law was adopted to regulate the activities of civil society organisations and their influence on politics (Law of Hungary No. CLXXV, 2011). This law has strengthened the role of civil society by increasing the transparency of funding and accountability of non-governmental organisations. Ukraine would benefit from implementing similar mechanisms to support the work of civil society organisations and ensure their active participation in the reform process.

The absence of necessary legislative changes in Ukraine, particularly in relation to the independence of the Constitutional Court and the fight against corruption, hinders progress in the legal sphere and democratic development. Poland, Romania, and Hungary demonstrated successful reforms that have strengthened judicial independence, established effective anti-corruption bodies, and improved oversight mechanisms for civil society organisations. Ukraine needs to adopt similar legislative initiatives to ensure the effectiveness of its reforms and strengthen its state institutions.

Discussion

The findings of this study on the impact of globalisation on constitutional processes in Ukraine highlight the critical importance of a systematic approach to adapting national legislation to European standards to ensure social stability and legal harmonisation. The study indicates that the absence of a consistent strategy in this process could lead to social challenges, such as legal uncertainty, social tensions, or even the alienation of certain segments of the population. Legislative adaptation involves the integration of European norms and standards while preserving national legal traditions, ensuring a gradual and stable modernisation of the legal system of Ukraine.

The results of this study align with the conclusions of several other researchers who have examined similar processes in different countries. For example, M. Gora (2023) emphasises that the adaptation of national legislation to European standards is a complex and multifaceted process, accompanied by substantial social challenges. One of the key aspects highlighted by the researcher is legal uncertainty, which arises as a result of rapid changes in the legal system since citizens are not always prepared for such changes and may perceive them as a threat to their rights and freedoms. The findings are consistent with the analysis of the technical aspects of integrating European standards into Ukrainian legislation, which revealed that the changes may pose certain difficulties related to the adaptation of existing systems to new requirements.

The conducted study corroborates the findings of S. Kryvoshlykov and O. Tereshchuk (2022), who argued that insufficient preparation for legislative changes could lead to distrust in the legal system. S. Kryvoshlykov and O. Tereshchuk (2022) asserted that adaptation to European standards should not only involve technical adjustments but also an active information campaign to raise public awareness. The study confirms that, without proper communication with the population, reforms may be perceived as imposed, increasing the risk of social instability and adversely affecting democratic processes. Therefore, it is crucial to ensure both technical adaptation and effective communication for the successful implementation of reforms.

Similar conclusions regarding the impact of globalisation on constitutional processes are confirmed by studies such as those by D. Riznyk *et al.* (2024), who analysed European integration in Ukraine. Their work emphasises that harmonising national legislation with European standards often faces difficulties during implementation. D. Riznyk *et al.* (2024) particularly stressed the importance of considering national legal traditions and cultural peculiarities when adapting European norms. They argued that successful reform implementation is only possible if these specificities are thoroughly understood and considered, thereby avoiding conflicts and legal uncertainties. This is crucial to ensure harmony between the new standards and the national legal system.

The present study identifies similar challenges in Ukraine. It was established that the implementation of European standards in ecology, economics, and justice is accompanied by difficulties, particularly due to differences in legal traditions and cultural contexts. These challenges require special attention to national contexts to ensure the effective adaptation and implementation of reforms. The findings of other researchers highlight that the harmonisation of legislation encounters issues similar to those observed in Ukraine. Consequently, the approaches of these researchers may be valuable in developing strategies that help overcome adaptation difficulties and ensure the effective integration of European standards into national legal systems, which is particularly important for countries undergoing European integration.

The study examined the global impact on constitutional processes in Ukraine and compared these with similar developments in other countries. These aspects resonate with the study by V. Zinchenko (2020), who conducted an in-depth analysis of the implementation of European standards in the legal system of Ukraine. Zinchenko emphasised that this process is pivotal to European integration, as legal reforms and the harmonisation of Ukrainian law with European legislation are key to bringing Ukraine closer to the European Union. V. Zinchenko (2020) also further highlighted that the adoption of European norms improves the quality of legal regulation, particularly in human rights protection, democratic freedoms, and transparency within the judicial system. Therefore, this study confirms the key role of legal reforms in strengthening constitutional foundations and democratic institutions, which are essential for the successful integration of Ukraine into the European legal community.

Notably, the proposed analysis aligns with the findings of other researchers. This study, therefore, confirms the institutional challenges involved in adapting Ukrainian legislation to European standards. Given the problems associated with this adaptation and implementation, as highlighted in the studies discussed, the new norms have had a rather limited impact on the Ukrainian state and society.

Conclusions

Globalisation has acted as a powerful catalyst for transformations in many countries, and Ukraine is no exception. The changes driven by European integration have affected not only economic and cultural aspects but also the legal sphere, which has directly influenced constitutional processes. The adaptation of Ukrainian legislation to European standards has proven to be a complex and multifaceted process with potentially far-reaching social consequences. However, it has required political will, a revision of existing legal norms, and, in some cases, substantial amendments to the Constitution of Ukraine – steps for which the Ukrainian parliament and government were not fully prepared.

The study demonstrated that the adaptation of legislation to European standards has had a significant impact on constitutional processes in Ukraine, manifesting in several key areas. The first of these is the detailed regulation of Ukrainian environmental standards. Specifically, the Law of Ukraine "On Waste Management" cannot be fully implemented due to the absence of additional regulations containing provisions analogous to the Directive of the European Parliament and Council No. 2008/98/EC "On Waste and Repealing Certain Directives" and No. 2012/19/EU. This indicates systemic gaps in Ukrainian legislation. European directives in the field of environmental protection are highly detailed and require a comprehensive approach to regulating various aspects of environmental policy. Translating these requirements into Ukrainian law necessitates substantial efforts to align with other regulations and implement extensive reforms.

Much more has been accomplished in the area of judicial reform, although public perception has not matched the actual outcomes. The reforms introduced to the structure of the judicial system, starting with the 2016 reform,

were intended to demonstrate a commitment of Ukraine to the principle of an independent judiciary. However, despite public attention and the establishment of the High Council of Justice and the High Qualification Commission of Judges, tasked with ensuring the integrity of judges, evaluation and selection of judges have not always been transparent. Comparisons with other Eastern Partnership and Eastern European countries suggest that corruption, which has been successfully tackled in countries like Georgia, the Czech Republic, and Poland, remains a key factor hindering the successful completion of long-standing reform efforts in Ukraine. Without addressing this, resolving the discrepancies between Ukraine's procedural law (civil, administrative, and criminal processes) and the requirements of the European Convention on Human Rights and other international agreements will not yield substantive results.

Lastly, this issue also applies to the adaptation of economic standards. The absence of a favourable investment climate has hindered active regulation in this area, which explains the greater focus on judicial reform, a matter of particular interest to European partners. Against the backdrop of judicial reforms, economic changes have been largely confined to those envisaged by the Association Agreement with the European Union. As a result, numerous European standards concerning product quality and certification, along with targeted support programmes for small and medium-sized enterprises in adapting to these new standards, have been overlooked by the legislature.

Future studies should focus on identifying the challenges in implementing the already adopted legislation, including the organisational changes that have taken place in the field of oversight and enforcement of the new legal framework.

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Conflict of interest

None.

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Глобалізаційний вплив на конституційні процеси в Україні: соціальні наслідки адаптації українського законодавства до європейських стандартів

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Анотація. Метою статті було дослідити, як процеси глобалізації вплинули на трансформацію правової системи України та визначити соціальні наслідки, що виникли в результаті адаптації національного законодавства до європейських стандартів. У ході дослідження основну увагу було приділено аналізу того, як інтеграція європейських норм вплинула на розвиток правової свідомості та суспільної взаємодії в Україні, а також на зміцнення демократичних інститутів і громадянських свобод. Методологія дослідження включала застосування порівняльного аналізу для зіставлення українського законодавство та норм Європейського Союзу, системного підходу для оцінки комплексності правової інтеграції. Результати дослідження показали, що адаптація до європейських стандартів сприяє підвищенню прозорості державного управління, зміцненню правового захисту громадян та зниженню рівня корупції. У статті було підкреслено, що ці процеси мали суттєвий вплив на розвиток громадянського суспільства, підвищення рівня правової свідомості та активності громадян, а також на зміцнення національної ідентичності в умовах інтеграції до глобальних процесів. Особливу увагу приділено питанням, що стосувалися соціальної адаптації населення до нових правових реалій, пов'язаних із прийняттям та імплементацією європейських норм і стандартів. Важливим аспектом роботи стало дослідження впливу глобалізаційних процесів на зміну ролі держави у правовому регулюванні та на посилення взаємодії між державними інститутами та суспільством. Дослідження акцентувало увагу на ключових аспектах трансформації конституційних процесів під впливом глобалізаційних тенденцій, зокрема інтеграції України до європейського правового простору. Увага приділялася соціальним наслідкам адаптації національного законодавства до європейських стандартів, які проявилися у зміні правової культури, посиленні правозахисних механізмів та вдосконаленні інститутів демократії

Ключові слова: правозахисні механізми; демократія; громадянське суспільство; інтеграція; національна ідентичність; глобалізація

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Features of criminal liability for offences against road safety and transport operation

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Abstract. The relevance of this study was conditioned by to the need to investigate and comparatively analyse international legislation on criminal liability for violations of road safety, since this issue is one of the key problems of law and order in Ukraine. Comparison of the approaches of different countries allows examining possible areas of improvement for Ukrainian criminal legislation considering the elevated fatality and injury rates on the roads. The purpose of this study was to identify the specific features of criminal liability for encroachments on road safety and operation of transport in the laws of such countries as Georgia, the Republic of Moldova, Lithuania, Poland, Spain, France, and Turkey. The methodology of the study included a comparative legal analysis of the criminal codes of these countries, considering the systematisation and structure of the rules relating to traffic offences. It was found that most countries use a two-tiered system of codification of criminal offences, with general provisions covering public safety issues and separate chapters dedicated to road safety. The study found that in some countries, such as Lithuania and Moldova, criminal liability for negligent acts is stricter than in Ukraine. The analysis showed that intentional acts that do not lead to real consequences but pose a potential threat, as is the case in Spain and Poland, are also criminalised. It was concluded that foreign legislation tends to impose harsher penalties for violations that pose a risk of grave consequences for life and health. The practical value of this study lies in the possibility

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of using its findings to improve Ukrainian criminal legislation, specifically, to increase liability for violations of traffic rules and operation of transport, which will help reduce road accidents and increase the level of law and order in the country

Keywords: traffic rules; offence; public safety; structure of legislation; basic elements of intentional and negligent acts; gravity of the act; type and term of punishment

Introduction

The relevance of analysing alternative approaches to criminal law remedies for the functioning of the transport system is increasing as the discussion of the provisions of the Draft Criminal Code of Ukraine continues, and thus the identification of potentially prudent areas for further reform of criminal legislation (Draft of the Criminal Code of Ukraine, 2024). Ukraine faces serious challenges in terms of road safety, which is one of the causes of high fatality and injury rates on the roads. Improving legal regulation in criminal liability for violations of traffic safety and transport operation is a critical task to reduce the level of road traffic accidents (RTAs) and improve law and order. A comparative legal analysis of the legislation of European countries may provide useful conclusions on how to effectively reform Ukrainian legislation, specifically, in terms of strengthening criminal liability for intentional and negligent actions leading to dangerous consequences.

Scientific studies relating to the problems of criminal liability for threats to road safety and the use of transport can be classified into three categories. The first category covers policy and legal regulation, analysing legislative aspects and their impact on road safety (Bąk *et al.*, 2018; Dudek, 2018; Melcarne *et al.*, 2022). This group also includes the studies by D. Bergen-Cico *et al.* (2017), M.A. Barreales & A. Trapero (2019), and J. Castillo-Manzano *et al.* (2019), who focused on the legislative aspects of road safety in Spain, proposing models for reducing road accident risks, while G. Beconytė *et al.* (2021) analysed the sanctioning system in Lithuania, addressing the severity of penalties for negligent transport-related crimes. The second group of studies, a prominent representative of which is the research by E. Martínez-Gabaldón *et al.* (2020), focuses on the impact of legislation and measures on road safety, investigating the effectiveness of various preventive measures and penalty systems. The third group considers psychological and social aspects, analysing behavioural and psychological factors that affect road safety (Ozbaran & Tasgin, 2019; Endriulaitiene *et al.*, 2021). A representative of this group is the study by A. Klimkiewicz *et al.* (2014), which covers the psychological and social aspects of road safety. The study also highlights behavioural factors that influence the risk of road accidents in Poland.

The issue of criminal liability for violations of road safety has attracted the attention of many researchers in Ukraine. M. Khavroniuk (2022) performed a comparative analysis of Ukrainian and European legislation on violations of transport safety rules, emphasising the need to harmonise Ukrainian criminal law with European standards. V. Myslyvyy (2019), in his study on crimes against transport safety, noted the significance of strengthening criminal liability in the first years of the Criminal Code of Ukraine. The use of comparative analysis allows assessing the effectiveness of distinct approaches to criminal liability and suggesting ways to improve Ukrainian legislation.

Considering the above review of the literature on the subject, it is relevant to conduct a comparative legal study of criminal liability for road safety threats in different countries and to identify possible ways to adapt the best practices to Ukrainian criminal legislation. For this, it was necessary to identify and compare key approaches and regulations in the field of criminal liability for offences against road safety and transport operation, identify and investigate problems in national legislation, and consider how they can be resolved by applying the identified best European practices.

Materials and methods

The study was based on the conceptual framework of comparative legal science and integration of the provisions of European criminal law into Ukrainian legislation. The primary method of the study was comparative legal analysis, which helped to systematise the approaches to criminal law protection of road traffic in different legal systems. The use of this methodology was substantiated by the need to compare approaches to liability for violations of transport safety in continental legal systems, specifically in European countries with a developed legal framework in this area. A major role in this study was played by the approaches and developments of other researchers, specifically, M. Khavroniuk (2022), who analysed the harmonisation of Ukrainian and European legislation in the context of integration processes, and I. Krasnytskyi (2008), who applied the methodology of comparative analysis to the criminal legislation of France and Ukraine, which helped to investigate the issue of intentional crimes in the field of transport. Furthermore, the study considered the studies by V.M. Burdin (2005) and O.O. Dudorov (2020).

The study compared the criminal legislation of Georgia, the Republic of Moldova, the Republic of Lithuania, the Republic of Poland, the Kingdom of Spain, the French Republic, and the Republic of Turkey. This approach helped to investigate diverse strategies for criminal law protection of the transport system and assess the effectiveness of road safety measures. These countries were chosen because they represent distinct legal traditions and approaches to the regulation of transport crimes, which allows for a more comprehensive analysis. These materials helped to investigate approaches to criminalisation of acts related to violation of traffic rules and operation of transport. Specifically, the study analysed the legislative provisions on liability for driving under the influence of alcohol or drugs, as well as for violations that do not lead to real consequences but pose a potential threat.

The study was conducted in several stages. Firstly, the principal theoretical foundations of comparative legal analysis were identified, which allowed the research framework to be formed. The next step was to compare the codification of criminal offences in these countries. Particular attention was paid to systematising the provisions of the Special Part of the Criminal Codes regulating road safety and transport operation. The issues of codification and structure of the rules governing intentional and negligent crimes in the field of transport were investigated separately.

Results

According to the current criminal legislation of Ukraine, encroachments on road safety and transport operation are part of a rather considerable number of socially dangerous acts, the elements of which are defined in Section XI "Criminal offences against traffic safety and transport operation" of the Criminal Code of Ukraine (2001). The signs of these crimes are outlined in Articles 286, 286-1, 287-289, 290 of the Code, which define the grounds for criminal liability for non-compliance with road safety rules or use of transport by persons driving vehicles; commissioning of technically defective vehicles; violation of regulations governing road safety; illegal seizure of vehicles, etc. This category of actions is distinguished based on the type of object, and therefore, represents a more limited and specific area of social relations subject to criminal law protection – ensuring the safety of traffic and use of motor vehicles and other types of mechanical transport. Proceeding from the content of the objective and subjective features of these acts, conventionally, the danger of these criminal offences is assessed as acts committed through negligence, and therefore as those that entail liability only in the presence of actual harm to health, life, property, etc.

The statistics on road accidents, deaths, and injuries suggest a significant danger to citizens. A. Mehdizadeh *et al.* (2020) showed that the number of road accidents annually leads to considerable human and economic losses. Despite the development of technologies such as collision avoidance systems, the number of road accidents and their severity continue to increase, underscoring the gravity of the problem. Moreover, economic losses from road accidents in some countries reach up to 3% of GDP. The statistical rates of traffic violations are consistently high, and they often lead to grave consequences, such as injuries and disruption of transport systems. This poses serious risks to citizens and requires improved data collection systems and methods for assessing these violations to improve road safety (International Transport Forum, 2022).

Due to the low level of organisation of road safety measures, Ukraine has one of the highest fatality and injury rates as a result of road accidents in Europe. This is confirmed by data from the World Health Organisation and local analytical studies that point to substantial threats to public safety on Ukrainian roads (Road safety in Ukraine, 2022; Batyrgareieva *et al.*, 2023; Statistics of road accidents..., 2024). In this regard, the legislators' attention should also be drawn to factors that indicate a real threat of such consequences. The legislators' attention is not focused on cases of intentional activity of drivers that lead to such consequences, cause and provoke their occurrence.

Thus, the criminal legislation of Ukraine requires substantial reform in this area, changing approaches to the content and essence of the elements of the corpus delicti of the relevant criminal offences, and the grounds for liability not only for negligent damage, but also for various types of socially dangerous intentional behaviour affecting road safety and operation of motor vehicles. Accordingly, the significance of international legal experience in relation to the organisation and interconnection of elements of criminal law institutions relating to road safety, the specific features of the essence of the basic and qualified elements of the relevant criminal offences, determination of the gravity of the act, the expedient scope of criminal liability, the type and duration of punishment for these actions is increasing.

The comparative legal analysis of the criminal legislation of the above-mentioned countries began with the study of the specific features and typical differences in the legislation regarding the correlation of the structural components of the special part of the criminal code, as well as the presence (or absence) of a certain type of actions whose generic object is road safety and operation of various types of transport. In the Criminal Codes of Albania, Austria, Denmark and Germany, the provisions on road safety offences are mostly included in the chapters covering crimes against public safety. In the Criminal Code of the Republic of Turkey (2004), these provisions are contained in Chapter Three "Crimes against the community", specifically in the first section, which covers "Crimes dangerous to the community".

In some states, considering the name of the structural subdivision of criminal law (chapter, section), rather generalised categories are used, without distinguishing transport sectors. Thus, criminal law provisions apply to all types of transport. Thus, in the Criminal Code of Bulgaria (1968), they are concentrated in the chapter "Crimes on Transport and Other Means of Communication"; in the Criminal Code of the Republic of Lithuania (2017) – in the chapter "Criminal Acts against Traffic Safety"; in the Criminal Code of Switzerland (1937) – in the section "Crimes or misdemeanours against civil transport"; in the Criminal Code of Georgia (2000), Republic of Moldova (2009), Hungary (2012), Criminal Code of Finland (1989) – in the chapter "Transport offences".

The Criminal Code of the Kingdom of Spain (1995) cannot be included in this group, where Section XVII "On Crimes against Collective Security" contains a separate Chapter IV "On Crimes Related to Traffic". On the one hand, the legislators use the generalised term "transport" in the title of the section, but according to the content of the provisions, it refers only to road traffic, and therefore to violations of the rules of movement and operation of motor vehicles.

In Poland, road safety is a common object of attack. For example, Chapter XXI "Offences against road safety" in Articles 173-180 of the Criminal Code of the Republic of Poland (1997) presents the elements of the relevant offences. In other countries, other concrete modes of transport are distinguished. Thus, the Criminal Code of the Netherlands (1881) contains criminal law provisions in the chapter "Crimes related to maritime and air traffic". There are countries where structural subdivisions are not named at all, and therefore the sphere of criminal law protection is not distinguished. Chapter XXXIX of the Criminal Code of the Republic of Lithuania (2017) (without specifying the title of the chapter) contains a relatively small number of criminal law provisions relating to transport-related crimes – Articles 278-282 of the Code.

Finally, in countries such as Greece, France, and Sweden, there are regulations separate from criminal codes (road codes, laws on road traffic offences). In Sweden, the criminal law provisions on road traffic offences are regulated by the special Law No. 1951:649 "Road Traffic Offence Act" (1951). This law mandates punishment for violations of traffic rules, including driving under the influence of alcohol, and other violations that threaten the safety of citizens. The most recent amendments to this law were made in 2019, reflecting the ongoing adaptation to modern conditions.

The existence of additional regulations leaves its mark on the structure and content of criminal legislation. The specific feature of the Criminal Code of the French

Republic (1994) is that the law does not single out the sphere of traffic safety and transport operation as a generic (or specific) object. Consequently, the Code does not contain any structural subdivision that would cover a specific group of criminal law provisions. Even in those criminal law provisions where various categories of transport are the direct subject of actions, the main object is human freedom and justice, while the additional object is the life and health of a person. Specifically, the Criminal Code of the French Republic (1994), in Book Two "On Crimes and Misdemeanours Committed Against the Person", Chapter IV "On Offences Against Human Liberty" contains Section 2 "On the Hijacking of an Aircraft, Ship or Any Vehicle" (Articles 224-6). Seizing control by means of violence or threat of violence of an aircraft, watercraft, or any vehicle (hence, it should be understood that this includes mechanical vehicles) is punishable by imprisonment for up to twenty years. Therefore, the basis for quite severe liability is the manner in which the act was committed: the use of violence or the threat of its use. Failure to stop driving a land, river, or sea vehicle by a driver aware that they have just caused an accident to avoid criminal or civil liability is classified as a criminal act against justice (Article 434-10).

Thus, the approach to codification of the rules on liability for transport criminal offences (crimes) is distinct. The codification of criminal law provisions in some countries is based on a two-tier systematisation – the acts in question are part of a broader sphere of criminal law protection; others have a relevant section or chapter that is distinguished based on a generic object; finally, there are states where relevant structural components of the Special Part of criminal law are absent.

The next aspect of the analysis relates to the internal structure of those sections (chapters) of the special part of criminal legislation of the countries under study which contain a certain type of criminal law provisions united by the same generic object – the sphere of safe functioning of the country's transport system. Therefore, they contain elements of criminal offences that infringe on the safety of the transport system as such. Considering the need to determine the specific features of criminal law regulation of road traffic safety and operation of the respective types of transport, this criterion can be used for further classification of criminal law provisions included in these sections and chapters. It is possible to analyse the correlation between general and special criminal law provisions based on the criminal legislation of the above countries.

The generalised nature of the content of certain criminal law provisions is conditioned by the fact that the content of these provisions relates to violations of traffic safety rules and operation of any type of transport; the special nature relates to concrete types of transport. Furthermore, this area of research can be expanded by focusing on the following: the characteristics of determining the list of actions directly related to road traffic and the use of motor vehicles; the formulation of the signs of their basic and qualified composition; the legislator's assessment of the degree of danger of driving under the influence of toxic, narcotic, psychotropic substances and in a state of alcohol intoxication as a sufficient basis for criminalising actions; the correlation and specificity of signs of actions committed intentionally and with a negligent form of guilt.

Thus, Chapter XXXIV "Transport Offences" of the Criminal Code of Georgia (2000) (Articles 275-283) contains signs of acts that encroach on the order of functioning and safety of movement of various types of transport (railway, air, water, suspended, motor, and other mechanical transport). From the standpoint of criminal law, road safety and the operation of relevant transport are protected both by general criminal law provisions that establish the grounds for liability for violation of specific rules in various areas of the transport system, and by a single special provision relating exclusively to road traffic. Thus, the first group of criminal law provisions includes Article 277 "Poor quality repair of vehicles, putting into operation technically defective vehicles", Article 278 "Bringing vehicles into an unfit state for operation", which define the grounds for liability for committing the above actions in relation to any type of vehicle. And Article 281 "Violation of the rules of safe traffic", which defines the grounds and scope of liability of passengers, pedestrians, and other road users for violating the rules of safe traffic. Only one special criminal law provision is singled out – Article 276 "Violation of the rules of traffic safety and operation of transport", which directly provides a list of objects of the act (automobile, tram, trolleybus, tractor, other mechanical transport). This means that this is a provision that directly relates to road traffic. Thus, the criminal legislation of this country gives preference to general provisions, where the grounds for criminal liability are defined without regard to the specification of transport sectors.

The Criminal Code of the Republic of Turkey (2004), against the background of a rather small number of criminal law provisions relating to traffic safety and transport operation, again contains more general provisions. Specifically, the general provisions include Article 179(1) "Creating a threat to traffic safety" of the first section of the Code "Crimes dangerous to society", which defines the liability of a general subject – any person who alters, destroys, removes types of signs placed to ensure the safe movement of land, sea, air, and rail transport, interferes with the system of technical operation, which causes a threat to the life, health, or property of other people. The use of the term "land transport" suggests that these norms also apply to road traffic, and therefore there are grounds to consider this provision as general. Article 223(1) "Hijacking and confiscation of vehicles" of the Section Six "Crimes against vehicles and fixed platforms", which prescribes liability for unlawful obstruction of the movement of a land vehicle by threats or violent acts, stopping the vehicle, moving the vehicle from one place to another; if the object is a sea or railway carrier; if the object is an aircraft, etc. Considering the above-mentioned types of transport as the subject of the offence, this provision can be classified as general. The special ones include Article 178(1) "Failure to follow the requirements for the placement of signs and blocks", which defines the grounds for liability of a special subject – a person who fails to perform their obligation to install signs or blocks during the performance of certain works on public roads, removes existing signs, changes their location. These signs suggest that the provision refers to road traffic. A special provision is Article 180(1) "Endangering the safety of traffic through negligence", which defines the grounds for criminal liability for any person who endangers the life, health, or property of others through negligence on sea, air, or rail transport. Thus, this provision specifies certain types of transport and uses an evaluative and broad term "endangering". However, it does not apply to road traffic (Criminal Code of the Turkish Republic, 2004).

The legislators of the Republic of Moldova have an entirely different approach. The Criminal Code of the Republic of Moldova (2009) differs in the number of relevant criminal law provisions, the criteria for distinguishing provisions of a special nature, and the specific features of the structure of the main body of acts committed directly in the field of road traffic. In the Republic of Moldova, liability for socially dangerous acts in the field of transport system functioning is mandated by a fairly large number of criminal law provisions (Articles 262-277), which are placed in Chapter XII "Transport Crimes". Based on the number of articles, the smallest group (only three articles) consists of criminal law provisions that are of a general nature and apply to all types of transport (Articles 268, 271, 272). The fact that Article 268 "Intentional damage or destruction of means of communication and vehicles" applies to all types of transport is confirmed by the fact that the article contains an indication that liability arises in case of the consequences specified in Article 263 (relating to rail, water, air transport) and Article 264 (relating to mechanical transport). Whereas Article 271 defines the elements of intentional blocking of transport routes by creating obstacles, without specifying which types of transport this applies to, Article 272, in the very title of the criminal law provision – "Coercion of an employee of railway, water, air, or road transport to fail to perform their official duties" – clarifies this issue. The next largest group comprises criminal law provisions relating to rail, water, and air transport, where the title of the article directly defines these concrete modes of transport (Articles 262, 263, 267, 270, 275). Thus, the group of special purpose norms is relatively numerous, with all other modes of transport (except for mechanical) being the criterion for its selection. Notably, this category includes actions that combine encroachments on a wide variety of objects (property rights; traffic and transport safety). An example of the latter is Article 275 "Hijacking or seizure of railway rolling stock, aircraft, marine, or river vessel". Certain questions arise as to the content of certain provisions. Thus, the legislators, specifying the relevant branch of law in Article 267 "Poor quality repair of communication routes, railway, water, air transport...", leave the state of repair works on road transport routes (motor vehicles, other mechanical transport) outside the scope of criminal law regulation (Criminal Code of the Republic of Belarus, 1999; Criminal Code of the Republic of Moldova, 2009).

However, the most numerous in the Criminal Code of the Republic of Moldova (2009) is a group of special criminal law provisions that relate directly to road traffic (Articles 264, 264-1, 265, 266, 269, 276). A comprehensive analysis and comparison of the various provisions of these provisions gives grounds to pay attention to the specific features of their structure and the content of the disposition of the provision. Thus, *in* Article 264 "Violation of the rules of traffic safety or operation of vehicles by a person driving a vehicle", Article 264-1 "Driving a vehicle in a state of severe alcohol intoxication or in a state of intoxication caused by other substances (narcotic, psychotropic, other substances)", the type of transport is not specified, and therefore there are grounds for analysing these provisions, which should be applied in the case of acts committed in any type of transport (not only automobile and other mechanical transport). However, a more in-depth interpretation of their content, comparison with the provisions of the following provisions, namely, Article 265, testifies in favour of perceiving them as directly related to road traffic. Thus, the following provisions, with reference to the consequences defined in Article 264, refer to drivers of transport, leaving the scene of an accident by a person driving transport, etc. However, a clearer specification of the type of object of the act is desirable. An innovation in the Criminal Code of the Republic of Moldova (2009) is Article 264-1 "Driving a vehicle in a state of severe alcohol intoxication or in a state of intoxication caused by other substances" (psychotropic, narcotic, and other substances). The following are criminal offences: driving a vehicle while under the influence of alcohol; deliberately transferring control of the vehicle to such a person; refusal or evasion of the driver of the vehicle to undergo alcohol testing, etc. Article 265 "Putting into operation of knowingly technically defective vehicles" defines the grounds for liability for distinct types of gross violations of the rules of transport operation. On the one hand, the provision does not specify the type of transport, but there is a certain clarification that allows this provision to be classified as a special provision relating directly to road traffic. When it comes to the responsibility of officials for the technical condition and operation of transport, it is clarified that this applies to drivers and mechanics. Article 266 "Leaving the scene of a road traffic accident" sets out the conditions for criminal liability and sanctions against a person who is guilty of leaving the scene of a road traffic accident while being the driver of a vehicle. Article 269 "Violation of the rules of traffic safety and order" defines the grounds for liability of passengers, pedestrians, and other road users, as it clarifies the consequences defined in Article 264. Finally, this group includes Article 276 "Falsification of identification elements of a motor vehicle", which defines liability for erasing, replacing, changing the serial numbers of the chassis, body, engine. Thus, the said chapter of the Criminal Code of the Republic of Moldova (2009) contains signs of acts committed both intentionally and negligently, which are the content of the objective side of socially dangerous behaviour directly aimed against road safety and operation of motor vehicles.

An integral part of the issue under study is the specificity and distinct approaches of the European legislators to the formulation of the very features of the main elements of these acts. In this regard, Spanish criminal legislation deserves attention. The Criminal Code of the Kingdom of Spain (1995) in Section XVII "On Crimes against Collective Security" contains a separate Chapter IV "On Crimes Related to Traffic". This chapter defines the signs of eight socially dangerous acts related to the safety of transport (Articles 379-385-1 of the Criminal Code). Articles do not have titles, and therefore it is possible to determine the specifics of the content of the norms, according to the direct object, genus, and species objects, only based on their comprehensive analysis. The key point is that the subject of all criminal offences is a car, motorcycle, or moped. Therefore, this section establishes the grounds for criminal liability exclusively in the context of violation of road safety standards. Thus, all the rules are united by one common subject – violations of traffic rules and the use of motor vehicles. The criminal law provisions in this category use specific terminology, such as "driving a car or motorcycle with clear recklessness". This concept is interpreted as committing actions related to negligence (endangering the life and health of people while driving), as well as intentional actions – driving under the influence of toxic, narcotic, or psychotropic

substances or in a state of alcohol intoxication (alcohol content must exceed 0.60 mg/L). Therefore, no real dangerous consequences are required. As for the punishability of acts committed intentionally, the list of such acts is rather considerable. According to the signs of the principal elements of a criminal offence, the following are punishable by criminal sanctions: exceeding the permitted speed in settlements by sixty kilometres, outside settlements – by eighty kilometres (Article 379); driving under the influence of toxic, narcotic, or psychotropic substances, as well as in a state of alcohol intoxication with an alcohol content exceeding 0.60 mg/L (Article 379); driving without a permit, licence, or if their term has expired; in case of expiry of a driver's licence (Article 383); alteration, removal, cancellation of road signs (Article 385). The main corpus delicti of negligent criminal offences include those acts that are considered criminal only if a certain state of danger is created: driving a car or motorcycle with clear recklessness out of danger to human health and life (Article 380); driving a motor vehicle or motorcycle with manifest recklessness, with disregard for the lives of others (Article 381); causing grave danger by spilling slippery or flammable substances (Article 385) (Criminal Code of the Kingdom of Spain, 1995). It is worth agreeing with M. Khavroniuk (2006), who emphasises that against the background of a relatively developed system of crimes related to transport safety, none of the relevant articles characterised by the creation of danger includes either constructive or aggravating features of liability that would indicate the infliction of concrete damage to life, health, or property.

If one analyses the specific structure of the criminal law provision directly related to road traffic, it is necessary to provide examples from the criminal laws of Lithuania and Poland. The analysis of the structure and content of Article 281 of the Criminal Code of the Republic of Lithuania (2017), which directly relates to road safety (Article 281 "Violation of traffic rules or operation of vehicles"), allows noting certain substantial aspects of the content of its main body. Specifically, in Article 281, two parts of the provision can be considered as the main part: Part 2 of this article, which defines liability for causing grave damage. Thus, such damage is the least necessary condition for holding a person liable for violation of traffic rules; Part 6 clarifies the scope of liability for the mere fact of driving a vehicle while intoxicated. Part 7 focuses on the form of fault – negligence. Part 8 specifies the permissible level of alcohol in the blood (up to 0.4 ‰). Part 9 contains a list of objects of the offence (all types of cars, tractors, other self-propelled machines, trolleybuses, motorcycles, and other motor vehicles). Other parts define qualifying circumstances for both sober and intoxicated acts. Thus, this provision provides the maximum possible information on the grounds for criminal liability for these actions and the scope of liability. M. Khavroniuk (2006), studying the characteristics of the content of the relevant criminal law provisions of Lithuania, addressed the fact that all articles are structured more concisely and clearly than in the Criminal Code of Ukraine (2001), without excessive duplication; liability for violation of traffic rules or operation of transport is differentiated depending on the presence or absence of alcohol intoxication, as well as on the type and gravity of damage.

The concrete analysis and comparison of the provisions of Articles 173-180 of Chapter XXI "Crimes against road safety" of the Criminal Code of the Republic of Poland (1997) also allow identifying certain features of criminal legislation in this regard. The specificity of the structure of these criminal law provisions lies in the fact that one provision may contain liability for the relevant act both intentionally and negligently (with different sanctions); the conditions are defined for exclusion of liability or mitigation of punishment; and vice versa – circumstances that increase the severity and scope of liability and punishment. Criminal offences are considered cases of driving land, water, or air vehicles under the influence of alcohol or narcotic substances, as well as performing duties directly related to ensuring the safety of traffic while under the influence of alcoholic or narcotic intoxication (Criminal Code of the Republic of Poland, 1997). Thus, in most of the countries analysed, there is a criminal law interpretation of the state of intoxication of a person driving a motor vehicle. In some countries, the intoxication of persons engaged in organisational and managerial functions in the field of road traffic is also assessed. However, the definition of the grounds for punishment varies: the mere fact of driving while intoxicated, a repeat of such behaviour, and causing minor health damage in this state are considered criminal offences.

The legislative experience regarding the structure of the provision is noteworthy, as it may consist of a considerable number of parts containing grounds for criminal liability for both intentional and negligent conduct; it may contain elements of both the basic and qualified elements; it may contain circumstances mitigating liability; it may contain a concrete list of the subject matter of the act, etc. This approach is a means of avoiding duplication and certain repetition of certain criminal provisions. The specific features of the structure of the provision may also depend on the legislator's attempt to consider the impact of aggravating circumstances on the scope of liability, type, and term of punishment at two levels in one provision. The first relates to the severity of the consequences – grave consequences, the death of one or more people. The second level should reflect a substantial increase in the severity of liability for causing analogous consequences, but in a state of intoxication.

Based on the systemic legal analysis of the sanctions of the above criminal law provisions containing the elements of criminal offences that directly encroach on road traffic safety and transport operation, it is possible to determine the specific features of European legislation in terms of the ratio of maximum sentences and, consequently, the assessment of the gravity of the act (using the terminology of Ukrainian legislation). Such concrete offences are contained in the Criminal Code of Georgia (2000) (Article 276 "Violation of traffic safety and operation of transport"), the Criminal Code of Moldova (1999) (Article 264 "Violation of traffic safety or operation of transport by a person driving a vehicle"), and the Criminal Code of Lithuania (2017) (Article 281 "Violation of traffic or operation of transport").

Thus, in Article 276 of the Criminal Code of Georgia (2000) "Violation of traffic safety and transport operation rules", the specificity lies in the fact that the qualifying and especially qualifying circumstances that increase the severity of liability for this act are structured on two levels. The first level reflects the interdependence between the gravity of the act and the maximum extent of liability: for grievous harm – up to 5 years in prison; for causing the death of one person – up to 7 years in prison; for causing the death of two or more people – up to 10 years in prison; the term

of additional punishment of deprivation of the right to hold office or engage in activities is the same in all cases – up to 3 years. The second level is that after each subsequent part that defines the amount of damage as a qualifying feature, it is a matter of increasing the severity of liability for the same actions, but in a state of intoxication (usually the penalty in the form of imprisonment is increased by two or one year).

Analogously, Article 264 of the Criminal Code of Moldova (2009) "Violation of the rules of traffic safety or operation of vehicles by a person driving a vehicle" also increases the severity of liability for graver consequences at two levels: for the fact of causing the relevant consequences and doing so while intoxicated (causing moderate injury – up to 3 years in prison, while intoxicated – up to 4 years, respectively; grievous bodily injury or death of a person – from 3 to 7 years in prison, while intoxicated – from 4 to 8 years, respectively; death of two or more persons – from 6 to 10 years in prison while intoxicated, while intoxicated – from 7 to 12 years, respectively). The fact of driving a car in a state of severe alcohol intoxication, deliberately transferring control of transport to such a person, as well as refusal or evasion of an alcohol test by the driver according to Article 264-1 of the Criminal Code of Moldova (2009) may result in the application of such penalties as a fine, community service, or deprivation of the right to drive. The liability of a person who drives a car and leaves the scene of a road traffic accident is more severe – the fine ranges within 200-500 conventional units, unpaid community service for 200-240 hours, and possible imprisonment for up to 2 years.

The analysis of Article 281 of the Criminal Code of the Republic of Lithuania (2017) confirms that this provision contains information on the degree of punishment in different circumstances of the offence, as well as in different states of the perpetrator, such as sober or under the influence of alcohol, narcotics, psychotropic or other psychoactive substances. Thus, a comprehensive analysis and comparison of the individual parts of this article demonstrate that the fact of driving a vehicle while intoxicated qualifies as a misdemeanour punishable by a fine or arrest. At the same time, causing minor injury to health by a person driving a vehicle under the influence of alcohol or narcotics, or under the influence of psychotropic or other substances, is already considered (in terms of national legislation) a minor crime for which the maximum penalty is up to 3 years in prison. In the case of causing serious harm by a person in a state of intoxication, the penalty is up to 8 years in prison, and in the case of death, the penalty can reach 10 years in prison. Causing grave consequences by a person who was in a sober state is considered a minor crime and entails a maximum penalty of up to 5 years' imprisonment; in case of death of a person – up to 8 years' imprisonment.

There are quite substantial differences in the types and terms of punishment for road safety offences under the Criminal Code of the Republic of Poland (1997), as the system of relevant provisions contains sanctions for both intentional and negligent causing of the relevant consequences. Driving a vehicle while intoxicated, as well as performing duties directly related to road safety in the same state (intentional guilt), is considered a minor crime according to the national classification. This can result in a sentence of up to 2 years' imprisonment in the first case (up to 5 years' imprisonment in case of recidivism) or up to 5 years' imprisonment in the second case. Unintentionally causing a disaster can lead to a maximum penalty of up to 3 years' imprisonment. Causing a disaster in land, water, or air traffic that threatens the life or health of several persons or causes significant material damage is punishable by imprisonment for a term of 3 months to 5 years. In case of death or grievous bodily harm, the penalty is imprisonment for a term of 6 months to 8 years. If the consequences are caused by alcohol intoxication or by fleeing the scene, the penalty should be doubled (Criminal Code of the Republic of Poland, 1997). Notably, the sanctions are quite broad, and therefore the factual sentence will depend largely on the judge's discretion.

As already mentioned, the criminal law provisions contained in Chapter IV "On Offences Related to Traffic" of the Criminal Code of the Kingdom of Spain (1995) do not contain aggravating circumstances related to factual damage. Therefore, according to the sanctions, the above-mentioned acts under Articles 379-385-1 should be treated either as misdemeanours or as minor crimes (according to the Ukrainian classification). Most intentional offences, such as speeding, driving under the influence of alcohol or without the necessary permit, carry a maximum penalty of imprisonment for a term of three to six months and deprivation of the right to drive vehicles for a term of one to three years. If a person drives a car or motorcycle with clear negligence that endangers human life and health, they may be sentenced to imprisonment for a term of six months to two years and deprivation of the right to drive for a term of one to six years. In cases where the actions pose a real threat to the lives of other people, the penalty is imprisonment for two to five years with deprivation of the right to drive a car or motorcycle for a period of six to ten years. Considering the specifics of the codification of criminal law provisions regulating road safety, it is necessary to streamline the legislator's approaches to assessing the severity of offences in this area, as well as the operation of vehicles. This should be done based on an in-depth analysis of several sections of the criminal legislation to determine the suitable level of punishment. This approach allows highlighting the following. Failure to follow the requirements for the placement of signs and blocks on public roads is considered a misdemeanour punishable by imprisonment from two to six months or a fine (Article 178). Unlawful obstruction of the movement of a land vehicle by threats or violent acts, stopping the vehicle, moving the vehicle from one place to another, etc., is a minor offence, as it is punishable by imprisonment from 1 to 3 years (Article 223 (1) "Creating a threat to traffic safety (including road traffic), which endangers the life, health, or property of other people" is already a grave crime, as it is punishable by imprisonment from 1 to 6 years (Article 179-1).

If another person is injured or killed as a result of a traffic violation, such actions are classified as a reckless encroachment on the life and health of a person. This is punishable by imprisonment: in the case of death – from twelve to twenty years, and in the case of bodily harm – from three months to one year. Infliction of grievous bodily harm by negligence (speech impediment, facial disfigurement, premature birth of a child, loss of physical function, to more than one person, etc.) may result in a sentence of up to 3 years' imprisonment (Criminal Code of the Republic of Turkey, 2004).

The approach of the French legislators is special. Considering the fact that the Criminal Code of France (1994) does not single out the sphere of traffic safety and operation of transport as such, especially mechanical transport, as a

generic (or specific) object, liability for negligently creating situations dangerous for other persons, exposing the life and health of another person to danger as a result of intentional failure to perform a certain safety duty is imposed; unintentional attempt on life, causing death to another person as a result of negligence, inattention or failure to perform a duty of safety is mandated by the generalised provisions contained in Book Two of the Criminal Code of Ukraine "On Crimes and Misdemeanours Committed Against a Person". Therefore, when it comes to assessing the degree of danger of the behaviour of a person who, while driving a vehicle, violates the requirements of the legislation (regulations) on road safety and operation of transport, creates a state of danger or causes concrete damage, a systematic and comparative analysis of the general criminal law provisions on liability (punishment) for creating situations dangerous to other persons and unintentional encroachment on the life of another person provides some insight. In Book Two, which is devoted to "Crimes and Misdemeanours against the Person", Chapter III "Crimes endangering human life", Section 1 "On creating dangerous situations for other persons" (Article 223-1), states that crimes endangering the life of another person, causing bodily harm that may lead to disfigurement or chronic illness (creating a potential threat) committed through intentional failure to perform safety duties or negligence as provided for by law or regulation, shall be punishable by imprisonment for a term of one year and a fine of EUR 15,000. Individuals may also face additional penalties, including deprivation of driving licences for up to five years or revocation of licences with a ban on re-obtaining them for the same period. Therefore, considering the maximum term of imprisonment, this act is considered a minor crime. In the same Book, Chapter I "On Attacks on Human Life", Section 2 "On Unintentional Attacks on Life" (Article 221-6) already states that causing the death of another person as a result of negligence, inattention, or failure to perform a duty of care prescribed by law or regulation constitutes manslaughter and is punishable by 3 years' imprisonment and a fine of €300,000. Individuals may be subject to additional penalties (among other types) in the form of temporary deprivation of a driving licence for up to five years or its cancellation with a ban on applying for a new licence for up to five years. According to the Criminal Code of Switzerland (1937) and the Criminal Code of Austria (1998), traffic violations, if there are relevant grounds, also fall under the articles establishing liability for crimes against life, health, and other rights.

Thus, the results of the study demonstrate a variety of approaches to legal regulation of road safety and transport operation and show the practice of two-level codification. The comparative analysis confirms the expediency of using international experience to reform Ukrainian criminal legislation in this area, specifically, based on the more stringent approaches of France and Turkey, where the consequences of violations of traffic and transport rules are regarded as an attack on life or health committed through negligence.

Conclusions

In summary, the analysis of European legislation shows a typical practice of two-tier codification. Road traffic regulations often protect broader areas, such as public safety, and are contained in separate chapters. In countries with special laws on road traffic offences, transport offences are not distinguished but are assessed as part of an offence against the person, depending on the consequences. The analysis of the structural features of concrete sections (chapters) of the special part of the criminal codes of the countries under study, which contain the features of criminal offences against traffic safety and operation of transport as such, proved the tendency to formulate generalised criminal law provisions, and to determine the list of socially dangerous acts which pose a threat to traffic and operation of any type of transport. The legislators, without specifying the subject matter of the offence (mode of transport), thereby emphasise the fact that the objective features are universal.

Against the background of the established approach to negligent acts, it is a positive experience that in many countries of the world intentional actions that create a potential threat of grave consequences in case of violation of traffic rules are recognised as criminal offences. Such offences are formal in nature and do not require the factual occurrence of consequences or the threat of their occurrence to be prosecuted.

The specific feature of formulating the main elements of criminal offences with a reckless form of fault is that it is quite typical for legislative practice to formulate criminal recklessness (as a subtype of reckless form of fault) in relation to the creation of potential danger rather than to concrete consequences. Accordingly, the terms "state of danger", "state of grave danger", "state of danger to life and health of a person", etc., are used. If the basis for criminal liability for a negligent act is the occurrence of real damage, its scope is determined differently: minor damage (Lithuania); moderate damage (Moldova); grave damage (Georgia).

When examining the sanctions for various types of actions against traffic safety and transport operation, it is possible to note the fact that the same behaviour (in terms of nature, consequences, form of guilt) can be assessed differently. The list of intentional acts, when the grounds for liability are the very fact of their commission, regardless of the consequences, is considered a misdemeanour in some countries, if guided by the Ukrainian classification of criminal offences (Moldova, Spain), and a minor crime in others (Poland).

Notably, the sanction of the main corpus delicti of an act committed by negligence, even if different consequences occur (minor, moderate, or grievous harm), contains such a severe punishment as imprisonment (up to 2-3 years), which classifies the act as a minor crime. In Ukraine, Article 286, Part 1 of the Criminal Code (applicable to moderate bodily harm) contains elements of a misdemeanour, not a crime. Thus, it can be assumed that in other countries, the onset of consequences is viewed more strictly. Separately, it is worth highlighting the countries where the consequences of violations of traffic and transport rules are regarded as an attack on life or health committed through negligence (Turkey, France).

The findings of the study showed that criminal liability for negligent road safety offences varies depending on the severity of the consequences in different countries. In Lithuania, the penalty is liability for minor damage, in Moldova – for moderate damage, and in Georgia – for grave damage. In Turkey and France, analogous offences are classified as reckless endangerment of life and health. This indicates a more rigorous approach to impact assessment in these countries compared to Ukraine.

Further research into the social danger of different types of road traffic offences could help to clarify the classification of crimes and introduce proportionate sanctions for different types of offences.

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Conflict of interest

The author of this study declares no conflict of interest.

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Особливості кримінальної відповідальності за посягання на безпеку дорожнього руху та експлуатації транспорту

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Анотація. Актуальність роботи зумовлена необхідністю вивчення та порівняльного аналізу міжнародного законодавства щодо кримінальної відповідальності за порушення безпеки дорожнього руху, оскільки це питання залишається однією з ключових проблем правопорядку в Україні. Порівняння підходів різних країн дозволяє розглянути можливі напрямки вдосконалення українського кримінального законодавства з огляду на високий рівень смертності та травматизму на дорогах. Метою дослідження є виявлення особливостей кримінальної відповідальності за посягання на безпеку дорожнього руху та експлуатації транспорту в законодавствах таких країн, як Грузія, Республіка Молдова, Литва, Польща, Іспанія, Франція та Туреччина. Методологія дослідження включає порівняльно-правовий аналіз кримінальних кодексів зазначених країн з урахуванням систематизації та структурованості норм, які стосуються порушень правил дорожнього руху. Було досліджено, що в більшості країн використовуються дворівневі системи кодифікації кримінальних правопорушень, де загальні положення охоплюють питання громадської безпеки, а окремі глави присвячені безпеці дорожнього руху. Було встановлено, що в деяких країнах, таких як Литва та Молдова, кримінальна відповідальність за діяння з необережності є суворішою, ніж в Україні. Аналіз показав, що кримінально караними є також умисні діяння, які не призводять до реальних наслідків, але створюють потенційну загрозу, як це спостерігається в Іспанії та Польщі. Було зроблено висновок, що іноземне законодавство має тенденцію до суворішого покарання за порушення, які містять ризик тяжких наслідків для життя та здоров'я. Практична цінність роботи полягає в можливості використання її результатів для удосконалення українського кримінального законодавства, зокрема для посилення відповідальності за порушення правил дорожнього руху та експлуатації транспорту, що сприятиме зниженню аварійності на дорогах та підвищенню рівня правопорядку в країні

Ключові слова: правила дорожнього руху; правопорушення; суспільна безпека; структура законодавства; основний склад умисного та необережного діяння; тяжкість діяння; вид та термін покарання

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Certain aspects of communication with persons interrogated in court in criminal proceedings

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Abstract. The purpose of this study was to investigate the legal, psychological, and tactical forensic aspects of communication with witnesses during court interrogation, as well as to determine the impact of these aspects on the use of their testimony as evidence and the dynamics of the trial. The methodological framework of the study included the theoretical analysis of the communicative aspects of testimonies, a review of scientific publications on this problematic, and the application of the structural and functional method. The study examined the communicative features of judicial examination of witnesses in criminal proceedings as a valuable tool for obtaining information about the factual circumstances of a case. The study showed that the success of a communication act during interrogation largely depends on the ability of the person conducting it to manage the course of communication and establish psychological contact with the witness. The complex and multifaceted nature of witness interrogation, which requires compliance with procedural rules and the use of forensic recommendations, was confirmed. It was found that psychological aspects play a significant role in communication during judicial interrogation. The study examined the role of the prosecutor and the defence lawyer in establishing the circumstances of the case through effective communication with witnesses. The study summarised the legal, psychological, and tactical features of obtaining testimony during various types of judicial interrogation, especially direct and cross-examination, with an emphasis on asking questions, including leading questions. This study will contribute to the development of practical recommendations for prosecutors and defence lawyers on effective communication with witnesses and improving their professional skills

Keywords: prosecutor; defence lawyer; legal psychology; tactical and forensic means; prosecutor

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Introduction

Effective communication during court interrogation is key to establishing the truth in a case. It forms an integral part of establishing the truth and ensuring justice in criminal proceedings. Insufficient understanding of communication processes, ignoring the psychological characteristics of the participants, and inability to apply relevant tactical techniques can lead to incomplete or distorted information obtained from the witness. This negatively affects the fairness of the court decision, which can have grave consequences for both the accused and the victim. The significance of this study for 2024 is relevant considering the changes in Ukrainian criminal procedural legislation and the growing role of psychological aspects in court practice. In the context of the development of digital technologies and increased attention to the rights of witnesses and victims, the issue of effective communication during court interrogation is even more important to ensure a fair trial.

The study by R. Dehaghani *et al.* (2023), which analysed the vulnerability of defendants in criminal proceedings, is important for highlighting the modern understanding of the problem. The issues raised in the publication are of particular relevance. The researchers examined how a range of factors, such as age, mental state, and social status, can affect the ability of an accused to effectively take part in court proceedings and defend their rights. The success of criminal proceedings largely depends on the effectiveness of communication between its participants, especially during the trial. Judicial interrogation, as one of the key elements of this process, requires not only compliance with procedural rules, but also a profound understanding of the psychological and communicative aspects of the interaction between the prosecutor, defence lawyer, and witness. The problematic of the study is that in practice, there is often a lack of knowledge of these aspects.

Failure to consider the witness's psychological state, possible biases, and motivation can lead to misunderstandings and misinterpretation of their testimony. Furthermore, the lack of a clear communication strategy and the inability to adapt it to a concrete situation can lead to the loss of valuable information or even its distortion. Considering the above, research and improvement of communication strategies in court interrogation is a crucial task. This will increase the efficiency of evidence collection and evaluation, provide a more complete and objective understanding of the circumstances of the case, which will help to establish the truth and ensure justice. As noted by J.L. Hoffmann *et al.* (2020), effective communication during judicial interrogation is key to successful criminal proceedings and the fulfilment of its main purpose of establishing the truth and ensuring justice.

In Ukraine, Yu.M. Myroshnychenko (2022) focused on the tactical and methodological aspects of forensic support of court proceedings, emphasising the significance of effective judicial actions, including interrogation, to achieve the goals of criminal justice. The researcher examined the specific features of judicial interrogation, which are conditioned by high psychological tension, publicity of the process, dynamism, and collectivity of collecting evidence. Particular attention was paid to interrogation tactics, including methods of preparation, process management, evaluation, and use of the data obtained. The researcher noted that judicial interrogation is substantially different from interrogation during the pre-trial investigation, which requires the development of special techniques for court hearings. However, there are certain analogies between judicial and investigative interrogations, especially in the field of communication, which emphasises the need for an integrated approach to the creation of tactical and forensic support.

V. Drozd (2020) raised the issues of admissibility of evidence and procedural status of participants in criminal proceedings during the trial. Particular attention was paid to the procedure for declaring evidence inadmissible during court proceedings, which can accelerate the process and ensure the legality of the decision. The researcher emphasised that the assessment of the admissibility of evidence is crucial for the fair resolution of criminal cases and the observance of the constitutional rights of all participants in the process. The resolution of these problems will contribute to the efficiency of criminal proceedings and the legality of court decisions.

At the international level, the issue of communication in criminal proceedings is also the subject of active research, covering a wide range of aspects, from the psychological features of interrogation to the impact of digital technologies on evidence and procedures. Thus, H.M. Cleary and R. Bull (2021) investigated how contextual factors influence suspects' decisions to confess during interrogation, which has become important for understanding communication processes in criminal proceedings. The results showed a considerable diversity of interrogation experiences and perceptions of evidence. Socio-demographic and criminological factors did not influence the decision to confess, but contextual factors had a substantial impact. Specifically, the waiver of rights and a prior decision to confess facilitated confessions, while physical restraint, belief in the absence of evidence against oneself, and the intention to refute the charges led to refusal to confess. Prisoners who were undecided about confessing before interrogation had an equal chance of confessing or refusing.

J.J. Goodman-Delahunty *et al.* (2020) focused on the difficulties and specific features of police interviews involving an interpreter, which amounted to discrepancies in results due to methodological differences in the experimental evaluation of interpreters' work. The authors of the study identified key research gaps in the best mode of interpretation in police interrogations, the role of the interpreter, evaluation of the quality of interpretation, preservation of investigative strategies, remote interpretation, and the impact of interpretation on the reliability of testimony.

K. Haworth (2020) examined the role of police interviews in the judicial process, analysing their impact on subsequent proceedings. The researcher noted that the words uttered during interrogation have a dual context and function, which can lead to conflicts between their investigative and evidential roles. The transition from oral to written form affects the integrity of evidence, creating "contamination" of oral evidence, as opposed to physical evidence, which is kept as intact as possible. The study emphasised the significance of linguistic tools for analysing how criminal evidence is constructed discursively and highlighted serious implications for its role as evidence in court proceedings.

L. Freeman and R.V. Llorente (2021) considered the issues of evidence and procedure in international criminal law in the digital age, which indicates the need to adapt communication strategies to modern times. In national jurisdictions, digital evidence already plays a leading role in most criminal

cases, but the International Criminal Court has not yet implemented analogous reforms in its rules. The researchers emphasise the need to revise the rules based on outdated assumptions to adapt to modern technological realities.

Despite a considerable amount of research on various aspects of communication in court proceedings, the issues related to the conceptual essence, natural and social features, and characteristics of communication relations between its participants, specifically, in the context of court examination of witnesses, are understudied. This applies both to the theoretical understanding of communication in court proceedings and to the practical aspects of its implementation, especially in the context of the adversarial system and the need to ensure the rights of all participants.

The purpose of the present study was to analyse the legal, psychological, and tactical forensic features of communication with witnesses during court interrogation, with an emphasis on the impact of these aspects on the judicial decision-making process. Particular attention was paid to such communicative aspects as establishing psychological contact, asking leading questions, and the impact of individual psychological characteristics of witnesses on the perception and reproduction of information. To fulfil the stated purpose, the tasks were identified as follows:

1. To examine the theoretical foundations of communication during judicial interrogation, to identify the main types and tactical and forensic characteristics of these actions.

2. To analyse the legal and psychological aspects of interacting with witnesses during interrogation, including the psychological characteristics of perception, memorisation, and reproduction of information.

3. To investigate the issues of asking leading questions during court interrogation and to propose recommendations for improving the regulatory framework for this process in the Criminal Procedural Code of Ukraine.

Materials and methods

The methodological framework of the study included a comprehensive approach that involved critical discourse analysis and rhetorical analysis. Critical discourse analysis was employed to study the language used during court interrogations, specifically to analyse how linguistic strategies can reflect power relations and ideological attitudes in criminal proceedings. Particular attention was paid to leading questions and their impact on the accuracy and truthfulness of witness testimony. Social and psychological factors that could affect communication processes during interrogation were considered.

The rhetorical analysis helped to investigate the means of linguistic influence used by the parties to the trial – prosecutors, lawyers, and judges – to shape the position of the witness and other participants in the interrogation. The study analysed the use of rhetorical strategies, such as appeals to emotions (pathos), logic (logos), and ethics (ethos), which were intended to influence the testimony and behaviour of the interrogated. This helped to identify both overt and covert manipulative techniques that could influence the outcome of the trial.

To investigate the specifics of communication with interrogated persons in court during criminal proceedings, the study analysed the general theoretical characteristics of this phenomenon. Specifically, the study considered the concept of communication, its types, functions, content, and features of manifestations in various fields, including legal and judicial activities. Furthermore, the understanding of the essence of judicial actions, their types, as well as criminal procedural and forensic characteristics was clarified.

The study examined the tools used in the system of verbal professional and business communication in court proceedings. The study analysed verbal and non-verbal communication techniques during judicial interrogation, including asking questions as a key tactical technique for obtaining information, clarifying details, or identifying contradictions in testimony, as well as establishing psychological contact to create trust between the interrogator and the witness. Non-verbal means such as facial expressions, gestures, and tone of voice are used to reinforce or complement verbal messages, which can help reduce tension or, conversely, can put pressure on the witness to provide more detailed answers. This toolkit includes not only linguistic possibilities (questions and answers), but also various techniques and methods of their implementation based on forensic tactics. In this context, forensic tactics are understood as special actions and decisions by which participants in criminal proceedings solve procedural and tactical tasks both at the stage of pre-trial investigation and during court proceedings.

The systematic approach helped to investigate judicial interrogation as an integral system consisting of interrelated elements: communication subjects, communication means, transmitted messages, communication context, etc. This approach helped to analyse the impact of each element of the system on the overall effectiveness of communication and the final results of the interrogation. The structural-functional method helped to identify and examine in detail the key stages of judicial interrogation, including the preparatory stage, the stage of establishing psychological contact, the stage of direct information acquisition, and the final stage. The analysis of the functions and content of each stage helped to identify key points that require special attention for successful communication and obtaining reliable testimony.

A detailed study of the current criminal procedural legislation of Ukraine was performed, specifically the articles regulating the procedure for conducting court interrogation and the use of leading questions (Criminal Procedural Code..., 2012). This helped to identify gaps and shortcomings in the existing legislation and suggest ways to improve it to ensure a more efficient and fair trial. Another important stage of the research was the analysis of court practice, which helped to identify typical problems and difficulties encountered during court interrogation.

Results and discussion

Evidentiary judicial actions are a combination of communication means by which communication subjects exchange information, exerting a controlled and permissible influence on the transmission and reception of messages to fulfil the tasks of judicial proceedings. Procedural actions of the court in criminal proceedings are a complex system that includes judicial, organisational, and other procedural actions regulated by legislation and related to the progress of the case and the trial procedure. The legal literature lacks clarity in defining the term “judicial action”, which complicates the understanding of its content and scope. Judicial actions aimed at collecting and verifying evidence are essential elements of this system. These include actions such as interrogation, identification, inspection of the scene and

material evidence, appointment of an expert examination, as well as other actions aimed at obtaining information necessary to establish the truth in the case. In the context of communication, evidentiary judicial actions are specific combinations of communication tools that are used situationally (Table 1).

Table 1. Types of evidentiary judicial actions

Type of court action	Brief description
Interrogation	Obtaining oral evidence from participants in the process (witnesses, victims, defendants, experts)
Presentation for identification	Identification of a person or object by presenting it to a person who can recognise it
Inspection of the scene	Direct investigation of the place where the crime was committed to identify and record traces of the crime and other evidence
Inspection of material evidence	Researching items and documents that may be relevant to the case
Appointment of an expert examination	Involvement of an expert to conduct research and provide an opinion on issues requiring specialised knowledge

Source: compiled by the authors based on J.L. Hoffmann *et al.* (2020) and L.F. Ansems *et al.* (2024)

Notably, O.A. Aina and A.E. Anowu (2023) showed the significance of asking the right questions during court interrogation. The researchers have identified a series of pragmatic aspects that affect the effectiveness of communication and contribute to obtaining reliable information from interrogated persons. First of all, contextuality is a key factor: questions should be relevant to the situation to achieve discourse goals. Furthermore, structural and linguistic elements, such as objections and discourse markers, play an important role in shaping the desired responses of witnesses. The process of repetition and corroboration also increases the accuracy of answers by putting some pressure on witnesses. Additionally, defence lawyers have concrete discourse goals during cross-examination, and the use of favourable questions becomes a strategic tool to confirm or refute important aspects of the case. The researchers emphasised that the effectiveness of communication in court practice depends on the subtleties of language and attention to context, which makes facilitative questions a valuable tool in the hands of lawyers.

During these actions, the participants in the proceedings exchange information, exerting a targeted and controlled influence on the process of transmission and reception of messages to achieve the objectives of the court proceedings. H.M. Cleary and R. Bull (2021) found that there are two principal parties in the communication process in court proceedings: the sender of information (communicator-addresser), who initiates communication and asks questions, and the recipient of information (addressee), to whom these questions are addressed and who provides answers. The sender of the information is most often a judge, prosecutor, or defence lawyer, while the recipient can be any participant in the trial, including witnesses, victims, defendants, and experts.

The means of communication in court proceedings include both verbal (words, texts, questions, and answers) and non-verbal (facial expressions, gestures, intonation) components. Particular significance is attached to verbal communication, which is fulfilled through asking questions and receiving answers. Notably, non-verbal means of communication also play a significant role, complementing and emphasising verbal messages. One of the well-known cases where non-verbal communication has become a crucial element is People v. Hall (1984), where the defendant's behaviour was analysed during the interrogation of the accused. The court considered the non-verbal cues, such as nervousness, body movements, and facial expressions, which reinforced the impression of verbal answers. This helped to form an impression of the defendant's emotional state and intentions.

In this case, the defence counsel attempted to challenge the use of non-verbal behaviour as evidence, arguing that such signals can be subjectively interpreted. However, the court ruled that non-verbal cues can be used to assess the credibility of testimony, although they should be considered with some caution. This case shows how non-verbal cues can be an additional tool for the court to assess the behaviour of the parties to a trial, but they rarely serve as decisive evidence.

In the forensic context, the means of communication used during court proceedings are considered as tactical techniques aimed at achieving procedural goals (Havelka, 2024). Asking questions is one of the key tactical techniques that allows obtaining the necessary information from the interrogated person, clarify details, or identify contradictions in the testimony. An example of court practice where the use of questioning tactics played a decisive role in interrogation is the case of R. v. Milgaard (1969), which was considered in Canada. During the interrogation, the police used tactical questioning techniques that helped to identify contradictions in the suspect's testimony. During one of the interrogations, when the suspect was asked about his whereabouts at the time of the crime, his answers repeatedly contradicted his previous testimony, which drew the investigators' attention to the inconsistencies.

This use of questioning tactics allowed investigators to uncover more details that had previously been missed and ultimately helped solve the case, although the decision in the case was later revised due to new evidence. Thus, the tactical use of questions is a valuable tool for discovering the truth during a trial. Notably, the effectiveness of communication during court proceedings depends not only on the content of the messages, but also on the way they are transmitted and perceived. Therefore, it is necessary to consider both verbal and non-verbal aspects of communication, as well as to use a variety of tactical techniques to achieve the set goals. In the case of Jenkins v. United States (1962), considered by the Supreme Court of the United States of America, the key factor was the effectiveness of communication during the testimony of psychiatric experts. The defence counsel argued that the way in which the experts presented their testimony about the defendant's mental state had a decisive impact on the jury's perception of his guilt.

In this case, the Supreme Court of the United States of America emphasised the significance of not only the content of communications during court proceedings, but also the manner of their transmission, as the way of communication could substantially affect the perception of information by judges or jurors. Particular attention was paid to how the experts explained complex medical terms and whether they managed to convey the essence of their arguments in an accessible form. This case demonstrates that in litigation, it is not only what is said, but also how it is said that matters, as the way it is communicated can influence the final decision of the court.

One of the key tools of communication in litigation is asking questions. The prosecutor, defence lawyer, and judge use this tactical technique to obtain the necessary information, clarify details, and identify possible contradictions in the testimony of witnesses, victims, defendants, and experts. Asking questions as a tactical technique can be used not only during judicial interrogation, but also in other judicial actions, such as forensic examination or identification. This underlines the versatility and significance of this tool in the context of communication in litigation. Among all evidentiary court actions, interrogation has been identified as the most widespread and significant (Aina & Anowu, 2023). It is impossible to imagine any court proceedings without interrogation, as this action allows obtaining direct information from the parties to the proceedings about the circumstances of the case.

The toolkit of verbal communication in court proceedings are complex and multifaceted. It includes not only linguistic means, but also tactical techniques based on forensic tactics. Asking questions is one of the key communication tools used in various court actions, including interrogation, which is the most important and common evidentiary judicial action. For example, in the case of R. v. Evans (2009), the questions posed to the witness were designed to clarify each detail separately, which helped to identify contradictions between different parts of the testimony. The defence lawyer used a series of closed questions (questions that can be answered with a "yes" or "no") to lead the witness to an error in his own statements. This helped to demonstrate the falsity of the testimony and to obtain important evidence for the acquittal of the accused. In the Cases of Nos. 1783; 1782 1649; 1691 1639; 1674 1847 (1965), the defence lawyer asked the witness a series of questions that were too broad and ambiguous, which gave the witness the opportunity to evade direct answers. This weakened the defence's position, as key details of the case could not be clarified.

Thus, the effectiveness of interrogation in a trial depends on the correct formulation of questions that allow obtaining concrete answers, identify contradictions in testimony, and clarify details. Verbal communication is an essential tactical tool that allows parties to influence the course of a case. The key principles of effective questioning include clarity and specificity to avoid ambiguity, control of the situation to keep the interview on track, confirmation of facts to reinforce what is known, and the use of both closed and open-ended questions to gather new information and better manage the conversation.

In the context of interrogations, the use of communication aids such as diagrams, drawings, or visuals can greatly enhance the effectiveness of questioning tactics, especially when dealing with vulnerable witnesses. T. Pereira and M. Aldridge (2023) demonstrated that such tools can facilitate the comprehension of complex information or abstract concepts for people with intellectual disabilities, helping them to better understand the question and provide more accurate answers. These aids not only facilitate communication, but also reduce stress for witnesses, making interviews more inclusive and effective. In this context, asking questions using visuals can help to clarify details or explain concepts, which contributes to a more accurate determination of the truth in court.

Each type of offence (crime) has unique legal and psychological features that affect not only the investigation process but also the trial, including communication during court proceedings, especially interrogations. This emphasises the need for an individual approach to each case and consideration of the specifics of a particular crime when building a communication strategy in court. The algorithm and tactics of judicial interrogation require maximum impartiality from its participants. However, in practice, this can be difficult to achieve, as the psychological characteristics of the participants in the trial can substantially affect the course of interrogation and communication overall. This can take the form of psychological pressure on witnesses, victims, or defendants, attempts to manipulate information, create emotional tension, etc.

Even though the trial takes place some time after the crime has been committed, the psychological trauma and consequences of the crime may persist and affect the behaviour and testimony of the participants in the trial. An example of a court case where psychological trauma after a crime influenced the testimony of participants in the trial is the case of R. v. Duffy (1949) in the United Kingdom. In this case, the defence emphasised the psychological consequences that affected the witness, who suffered serious stress due to prolonged psychological trauma after the murder of his close relative. Even though the events took place long before the trial, the witness could not clearly describe some details due to the strong emotional experience that stayed with him after the crime. This case shows that psychological trauma resulting from a crime can persist for a long time and considerably affect the quality of testimony, regardless of how much time has passed since the crime.

The stage of direct execution of judicial interrogation is characterised by a special psychological complexity conditioned by the specifics of human nature, including its psychological culture, psycho-emotional states, and the process of forming a psychological portrait. The success of communication at this stage depends on many factors, such as the psychological background of the interrogation, the impact of publicity, and the methods and techniques employed by the interrogator. One of the key tasks at the beginning of an interrogation is to establish psychological contact with the person being interrogated. This involves creating a favourable atmosphere that facilitates effective communication and reliable testimony. Establishing psychological contact helps to avoid deformation of the reproduction process, i.e., to ensure the most accurate and objective reproduction of the events testified to by the interrogated person.

In the case of Miranda v. Arizona (1966) in the United States of America, the establishment of psychological contact during interrogation played a key role. This case considered the significance of the conditions under which the interrogation was conducted and the impact of these conditions on the mental state of the interrogated person. Suspect Ernesto Miranda was not informed of his rights during

interrogation, which led to his confession without proper psychological contact and under pressure, which was later recognised as a violation of his constitutional rights. This case highlights that creating a favourable atmosphere and establishing psychological contact are essential for obtaining reliable testimony, while failure to do so may lead to legal consequences, including the invalidation of testimony.

Psychological contact plays a significant role in any communication interaction, including judicial interrogation. It helps to establish trusting relationships between the participants in the process, reduces anxiety and tension, and creates conditions for open and sincere communication. However, it is important to understand that psychological contact can be used to achieve both positive goals (obtaining reliable testimony) and negative goals (discrediting a witness). Psychological contact played a significant role during interrogation in the case of R. v. Lyttle (2004) in Canada. In this case, the defence witness's interrogation showed how the tactic of establishing psychological contact can be used to achieve both positive and negative goals. The defence lawyer employed the technique of establishing a trusting relationship with the witness, which reduced his anxiety and encouraged him to communicate openly. However, the defence later used this psychological contact to put the witness in a vulnerable position and discredit his testimony. Thus, psychological contact can be a double-edged sword: it can facilitate truthful testimony, but at the same time it can be used to manipulate a witness, which underlines the need for an ethical approach during court interrogations.

R.D. Mason and M. Mason (2024) considered strategic aspects of the interaction between the suspect and the investigator during interrogation, specifically the moment of declaring the suspect's rights (Miranda rights). The researchers emphasised the importance of understanding the psychological factors that influence a suspect's decision to cooperate with the investigation or refuse to testify. For the person conducting the interrogation, establishing psychological contact creates a positive mood and contributes to the fulfilment of the interrogation's purpose – establishing the truth in the case.

However, failure to establish or break psychological contact can have negative consequences. This can lead to conflicts, refusal to testify, and the provision of incomplete or false information, which can complicate the process of establishing the truth and may adversely affect the outcome of the trial. In the case of R. v. Singh (2007), the accused refused to give further testimony after the interrogation failed to ensure proper psychological contact between him and the investigator. The investigator used aggressive tactics, which caused the defendant to feel anxious and hostile. This resulted in the defendant withdrawing into himself, refusing to answer questions, and even stating that he did not want to communicate any further. Therefore, disruption or lack of psychological contact can lead to the defendant's reluctance to testify, which complicates the establishment of the truth and can have adverse consequences for justice.

The success of communication during interrogation depends on the ability of the person conducting it to manage the course of communication using various tactical and psychological techniques. This allows encourage the witness to disclose the necessary information, identifying possible contradictions in their testimony and ensuring the objectivity and impartiality of the trial. Tactical and psychological techniques during interrogation can include active listening, which includes listening carefully to the witness's testimony and creating an impression of support to reduce anxiety and encourage cooperation. Another technique is to ask open-ended questions, which allows the witness to freely express their thoughts and recall events in their memory. Another effective tactic is pausing after the witness's answers, which can make them want to continue the story and provide more details (Myroshnychenko, 2022).

In such circumstances, especially the prosecution witness will be inclined to describe the circumstances of the preparation and commission of the crime, describe the persons involved, and recall from memory adequate social and psychological information characterising the personality of the accused, other eyewitnesses to the event, etc. In the case of R. v. Griffiths (1995), the witness, who was initially reluctant to cooperate, began to describe the circumstances of the preparation and commission of the crime during the interrogation after the prosecutor used relevant tactical and psychological techniques. The use of open-ended questions and the creation of an atmosphere of trust allowed the witness to recall crucial details from memory, including those about the persons involved in the crime, and to provide a socio-psychological profile of the accused.

From a psychological standpoint, eyewitness testimony is not considered as a simple reproduction of past events, but as a complex process of reconstruction and interpretation of perceived information, which is influenced by a variety of factors (Goodman-Delahunty *et al.*, 2020). This means that the testimony is not a mere "photograph" of the event, but rather a subjective reflection of how the witness perceived, remembered, and reproduced information about it. An essential aspect of analysing witness testimony is to understand how the process of perceiving information took place, what factors could affect its objectivity and completeness, and how the process of storing and reproducing information in a person's memory takes place. This allows assessing the validity and reliability of the readings, as well as identifying possible errors or distortions.

For example, if certain topics evoke negative emotions or reluctance to speak, they should be discussed carefully or postponed to a later stage of the interrogation. M. Kunst *et al.* (2021) and L.F. Ansems *et al.* (2024) confirm that establishing a favourable relationship between communication participants based on sympathy and positive attitudes contributes to the effectiveness of interrogation and the receipt of more complete and reliable information. This is because in an atmosphere of trust and mutual understanding, people are more likely to be open and cooperative.

One of the key tools for obtaining complete and reliable information from a witness is to revive their memory, or to bring the forgotten back to life. This can be achieved by asking questions that will help the witness recall details of the event that they may have forgotten or considered unimportant. The quality of the information obtained from the witness also depends on how the questions are formulated. The methodological difference between interrogation of witnesses and interrogation of suspects lies in the different goals, approaches, and levels of psychological pressure used. Witness interrogation is focused on obtaining the most complete and objective information, updating memory and reconstructing events, which is often achieved through soft tactics, open-ended questions, and minimal pressure. The

main task is to help the witness recall forgotten or insignificant details without affecting their testimony. Suspect interrogation, on the other hand, may involve more tactical techniques, such as asking complex or leading questions aimed at identifying contradictions, obtaining confessions, or establishing motive (Haworth, 2020). A principal factor is the balance between pressure and respect for the rights of the suspect, while witnesses are usually less subject to direct pressure, but require special attention to the accuracy and objectivity of their testimony.

In the context of the essence of the issue of leading questions in criminal proceedings, the approach to the identification of leading questions mandated in Part 6 of Article 352 of the Criminal Procedural Code of Ukraine (2012) may be regarded as one-sided and superficial, since it does not consider the profound psychological and linguistic aspects of communication. Articles 351 and 353 of the Criminal Procedural Code of Ukraine can be regarded as the main guarantees of a fair trial, specifically, in terms of the competitiveness of the parties and the neutrality of the court. Article 351 of the Criminal Procedural Code of Ukraine guarantees that the trial is conducted based on equality of arms. This provision creates conditions under which neither party can dominate or gain a disproportionate advantage during the questioning of witnesses, victims, or defendants. Thus, this article can be viewed as a mechanism to ensure equal opportunities for both the prosecution and the defence to collect information. This contributes to the objectivity of the proceedings and the observance of the rights of each participant in the process.

Article 353 of the Criminal Procedural Code of Ukraine is important for the observance of the principle of impartiality of the court. Giving the court the right to ask questions helps to clarify the facts and circumstances of the case, which may be key to making the right decision. However, the restriction on influencing the answers ensures that the court does not interfere in a way that could compromise the objectivity of the testimony. This article can be viewed as a precautionary measure to avoid manipulation by the court and to ensure a neutral position during the investigation.

Compared to international practices, for instance, the Federal Rules of Evidence of the United States of America also prohibit leading questions during the main examination but allow them during cross-examination to identify possible contradictions in testimony (Rule 611. Mode..., 2011). It is also worth noting that in many Western countries, such as the UK, there are more procedural rules to protect the rights of vulnerable witnesses, including the provision of special interpreters or legal aid to ensure the fairness of the trial (Rules & Practice Directions, 2023).

Specifically, the statement that a leading question should not contain any background information is simplistic and does not consider the fact that any verbally meaningful question inevitably contains a certain premise that may influence the answer. This position is supported by the findings of many researchers from various fields of knowledge, including psychology, linguistics, law, etc. (Adler, 2013; Oldham, 2023). Logic offers a deeper understanding of the nature of questions and their impact on communication. According to its provisions, each verbal and substantive question consists of two parts: known and unknown. By asking, a person not only seeks to obtain new information, but also conveys to the interlocutor certain information contained in the premise of the question. This premise can affect the perception of the question and the formation of the answer.

Thus, it is not sufficient to define a leading question only based on formal features, such as the presence of an answer or a hint to it. The context of the communication, the purpose of the question, and the possible impact of the question's premise on the answer should also be considered. This will allow for a more accurate identification of leading questions and ensure their admissibility or inadmissibility in court proceedings, depending on the concrete situation. With this in mind, the admissibility or inadmissibility of a leading question was considered not only in terms of the presence of background information in it, but also including its origin, the moment of its emergence in communication, and other factors that may affect the perception of the question and the formation of the answer. This will ensure a more objective and fair approach to the assessment of evidence obtained during court interrogation and will help establish the truth in the case.

This approach to understanding leading questions is consistent with the findings of other researchers, who also emphasise the significance of considering the context and purpose of communication when analysing questions and answers. H.M. Cleary and R. Bull (2021) showed that contextual factors, such as the attitude of the interrogated person towards the investigation and their understanding of the situation, can substantially influence their decision to confess or not to confess to a crime. This suggests that the formal definition of a leading question is not always sufficient to assess its impact on the testimony of an interrogated person. Furthermore, J. Goodman Delahunty *et al.* (2020) showed that the use of an interpreter during interrogation can create additional communication difficulties and affect the accuracy and completeness of information. This highlights the significance of considering all aspects of communication, including language and cultural barriers, when analysing the admissibility and impact of leading questions. Thus, the proposed approach to understanding leading questions is more comprehensive and accommodates various factors that may affect communication during court interrogation. This avoids simplistic and formal approaches to the evaluation of evidence and ensures a more objective and fair trial.

The tactics of asking questions during a court interrogation should consider the psychological state of the witness and the specifics of the information to be obtained. If the question deals with sensitive or traumatic topics that may make the witness uncomfortable or unwilling to answer, it is advisable to postpone it until the final stage of the interrogation. This will help create an atmosphere of trust and cooperation before moving on to more complex issues. When asking questions and actively listening to the answers, it is important to carefully control one's own non-verbal communication.

During the examination of their witness, the prosecution or defence should be able to distinguish between facts that the witness is confident about and those that are doubtful or even false. This allows assessing the reliability of the testimony and identifying possible causes of inaccuracies or contradictions. One of the most effective methods for distinguishing between confident and doubtful testimony is active listening combined with open and closed questioning. First, the party should use open-ended questions ("What can you tell me about...") to elicit a more detailed and free response

from the witness (Mosaka, 2023). This will allow the witness to express their thoughts without pressure and to identify the points that they speak with confidence. When answering, it is important to pay attention to non-verbal cues (facial expressions, intonation, pauses) that may indicate uncertainty or doubt.

Closed questions ("Are you sure you saw this person?") that require a clear yes or no answer can be used to clarify or identify possible witness errors. If the witness shows doubt or hesitation in answering such questions, this may be a sign of inaccuracy or falsity in their testimony. It is also important to use the pause method: short pauses should be made after the witness's answer, which may encourage them to provide more information or clarify their position (Mosaka, 2023). It is important to find out why the witness is confident in certain facts and doubtful about others, especially if there was no such hesitation in previous interrogations. This can be caused by various factors, such as the passage of time, the emotional state of the witness, the presence of new circumstances or information that may have affected their recollection.

J.L. Hoffmann *et al.* (2020) showed that the perception and retention of information depends on many individual characteristics of a person, such as life experience, gender, age, intelligence level, profession, etc.

Table 2. Types of evidentiary judicial actions

Factor	Influence on witness testimony
Life experience	On the interpretation of events and selective attention
Gender	On what details of the event will be better remembered
Age	On the accuracy and completeness of memories, as well as the ability to resist suggestion
Level of intelligence	On the ability to analyse and interpret information and to formulate answers
Profession	On the perception and interpretation of events related to the witness's professional activities

Source: compiled by the authors based on J.L. Hoffmann *et al.* (2020) and S.A. Bandes and N. Feigenson (2020)

For instance, men are more likely to remember the spatial characteristics of an event (terrain, road), while women pay more attention to the details of the environment, the appearance of people, and their emotional state. Thus, the individual characteristics of a witness, such as age, gender, level of intelligence, and profession, can substantially affect their perception, memorisation, and reproduction of information, and therefore their testimony. This is confirmed by the findings of I. Havelka (2024), who analysed the role of the interpreter during the interrogation of foreign witnesses. The researcher noted that the linguistic and cultural characteristics of a witness can drastically affect the accuracy and completeness of information transfer, which emphasises the significance of engaging qualified interpreters and adapting communication strategies to the individual needs of the witness. This finding is also in line with the study by M. Clair (2020), which showed that gender and profession can influence the perception of witnesses and their interaction with trial participants. Furthermore, M. Kunst *et al.* (2021) found that victim statements can influence legal decisions in criminal proceedings, which highlights the significance of considering the individual characteristics of all participants in the process.

The results of the study confirm the complexity and multifaceted nature of communication in court interrogation. This is consistent with the findings of A.V. Hagsand *et al.* (2023), who investigated the dynamics of interaction between the investigator and the suspect during interrogations in Sweden. The researchers found that effective communication plays a key role in obtaining reliable information and ensuring a fair trial. The problem of leading questions is also reflected in the studies of other researchers. Thus, R.O. Farinde *et al.* (2021) analysed communication between police and suspects in Nigeria, finding that leading questions are often used to obtain confessions, which can lead to distortion of information. This confirms the relevance of the study aimed at developing clearer criteria for determining leading questions and ensuring their admissibility in court proceedings. Furthermore, E. Monteoliva-García (2020) highlighted the significance of considering linguistic and cultural barriers during interrogation, especially when using an interpreter. This is consistent with the findings that communication strategies need to be tailored to the individual characteristics of the witness, including their language and cultural background. The study pointed out the significance of communication competence of all participants in the judicial process, including judges, prosecutors, and defence lawyers. This finding is consistent with the study by N. Elbers *et al.* (2020), which showed that victim advocates play an important role in ensuring their rights and interests in criminal proceedings, specifically through effective communication with them and other participants in the process. Furthermore, A. Lvovsky (2021) highlights the need to rethink the role of police and other professionals in the judicial process, including their communication skills and ability to interact effectively with various categories of people.

Thus, each tactical and psychological technique is based on certain psychological patterns that determine the behaviour and reactions of people in different situations. The successful application of these techniques requires the interrogator to understand these patterns and to be able to adapt them to the concrete situation and personality of the witness. The choice of a particular tactical technique or their combination depends on the purpose of the interrogation, the specifics of the case and the individual psychological characteristics of the witness. It is important that the chosen technique is not only effective, but also ethical and legally permissible. T. Grieshofer (2023) analyses online forms in courts and their role in communication in the early stages of the judicial process. The researcher examined how these forms can be used to effectively collect information and ensure access to justice, as well as the challenges that may arise in their use. This study highlighted the significance of technology in the judiciary and its impact on communication between litigants. Thus, psychological aspects play a significant role in the communication during judicial interrogation. Understanding of these aspects and the ability to use psychological knowledge and tactical techniques are essential for effective interrogation and obtaining reliable information from witnesses, which contributes to establishing the truth in the case and ensuring a fair trial.

Conclusions

The study of court documents showed the importance of various aspects of communication during the interrogation of witnesses in criminal cases. Emphasis was placed on the impact of leading questions and psychological factors on evidence collection. It was determined that leading questions, especially during cross-examination, can reveal contradictions in a witness's testimony. Litigants often use this strategy to clarify facts and verify the credibility of testimony, especially in cases where testimony appears to be contradictory. During interrogation, tactical and forensic methods are crucial, specifically, the precise formulation of questions. For example, during the examination of witnesses in court, both open-ended questions are used to obtain comprehensive answers and closed-ended questions to verify or refute certain facts. In some of the cases studied, it was observed that clearly stated closed questions helped the parties involved in the process to obtain the necessary testimony to clarify the essence of the case.

The study showed that non-verbal communication (gestures, facial expressions, intonation) during interrogation is an important predictor of the emotional state of a witness, which can potentially affect the court's perception of their testimony. In some cases, the witnesses' behaviour, such as embarrassment or hesitation in answering questions, raised doubts about their veracity, forcing the parties to constantly ask clarifying questions to ensure the accuracy of the answers given.

The analysis of the legislative provisions of the Criminal Procedural Code of Ukraine, specifically Articles 351 and 353, showed that Ukrainian legislation provides the parties to the trial with equal opportunities for interrogation, thus ensuring compliance with the principle of adversarial proceedings. At the same time, it was determined that the judge's prerogative to ask questions during interrogation contributes to clarifying the circumstances of the case, but maintaining the neutrality of the court is important to prevent any influence on witnesses and their testimony.

A comparative analysis of the materials with international practice showed that in the judicial systems of the United States of America and the United Kingdom, leading questions are prohibited during direct examination but are used during cross-examination to identify contradictions or inaccuracies in testimony. Furthermore, in international practice, considerable attention is paid to the psychological state of the witness, which may affect the testimony given by them, especially in situations involving emotional stress or psychological coercion during the trial.

Notably, the limitation of this study is the limited sample of legal systems for comparison, which may affect the general conclusions about international practice. Future research could cover more countries for a more comprehensive analysis and development of more detailed recommendations for improving the criminal procedure legislation of Ukraine.

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Conflict of interest

None.

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Окремі аспекти комунікації з допитуваними в суді особами у кримінальних провадженнях

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Анотація. Мета полягала у вивченні юридико-психологічних та тактико-криміналістичних аспектів комунікації зі свідками під час судового допиту, а також у визначенні впливу цих аспектів на використання їхніх показань як доказів та на динаміку судового процесу. Методологічну основу дослідження склали теоретичний аналіз комунікативних аспектів свідчень, огляд наукових публікацій з цієї проблематики та застосування структурно-функціонального методу. Досліджено комунікативні особливості судового допиту свідків у кримінальному провадженні як важливого інструменту отримання інформації про фактичні обставини справи. Дослідження показало, що успіх комунікативного акту під час допиту значною мірою залежить від уміння особи, яка його проводить, керувати перебігом комунікації та встановлювати психологічний контакт зі свідком. Було підтверджено складний та багатогранний характер допиту свідків, який вимагає дотримання процесуальних норм та використання криміналістичних рекомендацій. Встановлено, що психологічні аспекти відіграють важливу роль у процесі комунікації під час судового допиту. У дослідженні розглянуто роль прокурора та адвоката у встановленні обставин справи через ефективну комунікацію зі свідками. Було проведено узагальнення юридико-психологічних та тактичних особливостей отримання показань під час різних видів судового допиту, особливо прямого та перехресного, з акцентом на постановці запитань, включаючи навідні. Дослідження сприятиме розробці практичних рекомендацій для прокурорів та адвокатів щодо ефективної комунікації зі свідками та підвищення їхньої професійної майстерності

Ключові слова: обвинувач; адвокат-захисник; юридична психологія; тактико-криміналістичні засоби; прокурор

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Personal data protection: Between human rights protection and national security

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Abstract. This study aimed to ascertain the equilibrium between safeguarding citizens' personal data and maintaining national security in a digital world. The research analysed the regulatory frameworks and judicial practices of the European Union (EU), Ukraine, and the USA through several methodologies. EU regulation offers the most stringent personal data protection, with substantial penalties for infractions. Ukrainian legislation is progressively aligning with European standards; however, procedures for protection and liability require enhancement. The research indicated an increasing tendency in the utilization of artificial intelligence and big data technologies within national security, presenting new issues for safeguarding personal information from disclosure. The research investigated the ethical implications of utilizing such technologies and their potential effects on citizen privacy. The study examined global regulatory procedures, focusing on the European Court of Human Rights' approach to balancing the objectives of safeguarding personal information and national security. The research identified the necessity to broaden the definition of personal data to include communal dimensions and indirect ramifications of data processing in the context of big data and the Internet of Things. This study's findings underscore the importance of an interdisciplinary approach to personal data security, encompassing legal, technological, ethical, and social dimensions. The analysis presented a

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conceptual model for harmonizing the regulatory framework for the protection of privileged information, including contemporary technical problems and national security requirements. The research holds practical importance for enhancing regulations regarding personal data protection and can assist the formulation of information security plans

Keywords: confidentiality; cybersecurity; information ethics; privacy; data transparency

Introduction

The growing importance of confidential information and the need for robust protection mechanisms are increasingly critical in today's technologically advanced world, where mass data collection practices like cookies and web beacons, along with data analysis and national security threats, necessitate revisiting existing approaches. Confidential information is vital for government and commercial entities to enhance services and ensure national security, yet excessive and unchecked data collection endangers fundamental human rights such as privacy and personal data protection (Universal Declaration of..., 1948). Balancing state needs with citizen interests is essential to safeguard data adequately.

Despite significant attention, the balance between human rights and national security remains underexplored, requiring further research on transparency and accountability in handling confidential data for security purposes and minimizing privacy risks associated with modern surveillance and data analysis technologies. Government access to personal data for threat prevention or crime investigation is often opaque, risking abuse and eroding public trust. Additionally, advancements in machine learning and big data analytics offer new data processing opportunities but also pose new privacy threats, highlighting the need for novel data protection approaches tailored to these technologies (Bu-Pasha, 2020). According to R. Romansky (2022), transnational cooperation in countering crime and terrorist threats often requires the transfer of confidential information in the global network space, which creates additional risks for their protection. The development of effective mechanisms for such exchange in compliance with human rights stays an urgent task. In this context, S. Lindroos-Hovinheimo (2019) addressed the need to clarify the basic definitions of data protection legislation, which may be interpreted differently in distinct cases.

Research on personal information privacy encompasses a broad spectrum of concerns, including legislative frameworks and technological dimensions. U. Pagallo *et al.* (2019) examined several methodologies for the legal regulation of data protection and proposed abstractions to facilitate the formulation of legislation designed to safeguard personal data in the context of artificial intelligence utilization. R. Mühlhoff and H. Ruschemeier (2024) examined the technological dimensions of safeguarding personal information from disclosure. The research conducted by A. Beduschi (2024) and Y. Kovalenko (2022) is significant as it examines the protection of synthetic data within the framework of advancing machine learning technologies.

The aim of this study was to ascertain the equilibrium between safeguarding individuals' personal data and maintaining national security in a digital society. To achieve the specified objective, the tasks were delineated as follows:

1. To evaluate the existing legal frameworks for safeguarding personal data in light of the problems posed by the advancement of artificial intelligence and big data analytics.

2. To investigate the feasibility of adopting a holistic strategy for safeguarding confidential information, encompassing legal, technological, ethical, and educational elements.

3. To evaluate the potential for worldwide standardization of methods to safeguard personal information, including its role in balancing privacy and national security within the global digital landscape.

Materials and methods

The research focused on a comparative legal analysis of personal data privacy laws in Ukraine, prominent European Union (EU) nations (notably Germany and France), and the United States. The primary research approach employed was a comparative legal analysis, facilitating the examination of personal data protection rules and practices across the selected nations. The study specifically examined Ukraine's Law No. 2297-VI "On the Protection of Personal Data" (2010), the General Data Protection Regulation (GDPR) (2016), Germany's Federal Data Protection Act (2021), France's Data Protection Act (2015), and the California Civil Code (2023), among others. The efficacy of personal data protection systems was evaluated based on the following criteria: comprehensiveness of data protection coverage, presence of explicit enforcement measures, and adherence to international standards. Furthermore, the analytical method employed focused on judicial practice, particularly the ruling of the European Court of Human Rights in the case of Big Brother Watch and Others v. the United Kingdom (2021).

The case study method was employed to assess the practical impact of personal data protection legislation on business and innovation. Specifically, examples of the implementation of GDPR requirements in the activities of international companies, as well as the impact of these requirements on the development of artificial intelligence technologies and big data processing were considered. This method helped to identify concrete challenges and opportunities faced by organisations in ensuring compliance with personal data protection requirements. Another significant aspect of the study was the examination of the collaboration between government entities and the commercial sector in safeguarding personal data. Particular emphasis was placed on the function of supervisory authorities and their capacity to efficiently oversee adherence to legal obligations. The investigation indicated that the degree of collaboration across these sectors significantly differs by country, impacting the efficacy of the personal data protection framework.

The study utilised content analysis of official documents and public statements from representatives of several national authorities to examine the equilibrium between national security and the right to privacy. This facilitated the identification of primary trends in the utilization of mass surveillance technologies and the evaluation of their effects on citizens' rights. Special emphasis was placed on examining national security policies and electronic surveillance laws on their adherence to personal data protection principles.

Results

Development of modern legislation on the protection of private information. The 20th century seen notable progress

in personal liberties within the context of human rights. The enforcement of these freedoms is perpetually balanced against security considerations at the individual, societal, and state levels. The global legal acknowledgment of the right to privacy and family life, encompassing the safeguarding of personal secret information, was initially enshrined in the Universal Declaration of Human Rights (1948). Article 12 of this document stipulates that no one shall endure arbitrary intrusion into their privacy, family, domicile, correspondence, or dignity and reputation. All individuals are entitled to legal protection against such interference or assaults. This essential notion has established a foundation of later international and state legislation. It established the groundwork for the evolution of the contemporary notion of the right to safeguard secret information as a fundamental component of the human rights framework inside the information society.

The primary legislative framework in the EU is the GDPR (2016). The GDPR sets rigorous standards for protecting confidential information and increases citizens' authority over their personal data. This document has extraterritorial effects and affects companies worldwide that manage information of EU individuals. The legal safeguarding of personal data in Ukraine is an essential aspect of the right to privacy, as established in the Constitution of Ukraine (1996). This organisation was established amid the swift advancement of information technology and automated data processing. The principal legal measure in this domain is the Law of Ukraine No. 2297-VI "On the Protection of Personal Data" (2010). Consequently, both the EU and Ukraine possess distinct legislative measures designed to safeguard persons' personal data, despite being enacted at various intervals and exhibiting specific disparities in regulatory approaches.

Alongside the pan-European regulation, each country has its own laws concerning private information protection. In Germany, the Federal Data Protection Act of 2021 supplements and clarifies the GDPR requirements with specific national attributes. It delineates the GDPR requirements for the processing of personal data in occupational settings. This was crucial because the GDPR provides specific latitude to national legislators in this area. Furthermore, federal entities such as Germany have data protection laws at the state level. The Bavarian Data Protection Act (2018) regulates the handling of personal data by state authorities. The uniqueness of these laws lies in their adaptation to the specific characteristics of the administrative framework and local conditions of each region.

Both the GDPR (2016) and national data protection statutes provide comprehensive definitions of essential terminology and topics. This multilevel framework of legal regulation guarantees a thorough approach to personal data protection. The essence of this approach is that it covers diverse levels of legal regulation – from pan-European to national and regional. This structure ensures comprehensive protection of personal data, considering both pan-European standards and specific national features of each EU member state. This is achieved through the following concrete provisions: the GDPR (2016) sets out general principles and requirements (Articles 5-11); national laws concretise these principles in the local context; regional laws (in federal states) accommodate the specifics of local governance.

The ethical justification for protecting anonymity and personal information privacy is inherently connected to the notion of privacy as a fundamental human right. The ethical standards for data protection include respect for individual autonomy, damage reduction, equity, and transparency. These standards are encapsulated in many international documents, including the Charter of Fundamental Rights of the European Union (2000). It enshrined the safeguarding of personal data as a fundamental human right inside the EU framework. Article 8(1) of the Charter unequivocally states: Every individual is entitled to the safeguarding of their personal data. The Ukrainian methodology for personal data protection closely mirrors the German framework, embodying European values of secrecy. Both systems require the mandatory registration of personal datasets. Article 9 of Ukraine's Law No. 2297-VI (2010) stipulates that proprietors of personal data are required to undertake state registration by recording an appropriate entry in the State Register of Personal Data Bases. In Germany, paragraph 38 of the Federal Data Protection Act (2021) mandates that "controllers and processors must notify the supervisory authority of the commencement of automated processing". This approach differs from more stringent regimes such as those in France or Sweden. The Data Protection Act (2015) in France requires prior authorization from the National Commission for Informatics and Liberties for the processing of certain data types. The handling of personal data related to offenses, penalties, and preventive measures is permissible only with prior authorization from the National Commission for Informatics and Liberties.

Swedish Law No. 2018/218 "On the Protection of Data" (2018) enforces stricter licensing requirements. The handling of particularly sensitive personal data is allowed solely upon obtaining authorization from the Data Protection Authority. These systems are deemed more stringent as they necessitate explicit authorization from the regulatory body prior to the commencement of data processing, rather than mere registration. The establishment of personal information confidentiality is a cross-sectoral initiative encompassing regulations from multiple legal disciplines. This presents specific issues regarding the standardization of terminology. Ukrainian legislation reveals a divergence between the definition of personal data in Law No. 2297-VI (2010) and the concept of confidential information pertaining to an individual in Law No. 2657-XII "On Information" (1992). The Law of Ukraine No. 2297-VI characterizes personal data as information or a compilation of information related to an identifiable individual (Article 2), whereas the Law of Ukraine No. 2657-XII describes it as information regarding a person (personal data) (Article 11), potentially leading to ambiguity regarding the extent and nature of the safeguarded information.

The examination of the progression of European legislation for the prevention of personal information exposure reveals a progressive shift from a fragmented approach to an integrated regulatory framework. The sectoral approach allows for the unique regulation of data protection across several sectors of the economy and public life. This methodology remains dominant in the United States: HIPAA Administrative Simplification (2013) governs the safeguarding of medical data, whereas the Gramm-Leach-Bliley Act (1999) oversees the protection of financial information. This method permits the accommodation of industry-specific details but may result in data protection deficiencies and complicate overarching regulation.

The ethical justification for preserving anonymity and privacy of personal information is closely associated with

the notion of privacy as an inherent human right. Ethical criteria for data protection encompass respect for individual autonomy, damage reduction, equity, and transparency (Podoprigora *et al.*, 2019). These norms are manifested in numerous international instruments, including the Charter of Fundamental Rights of the European Union (2000). It asserts that the safeguarding of personal data is a fundamental human right inside the EU framework. Article 8(1) of the Charter unequivocally states: Every individual is entitled to the safeguarding of their personal data. This clause emphasizes the significance of personal data protection within the context of European values.

Special emphasis must be placed on the matter of accountability for breaches of legislation regarding personal data security, as this serves as a fundamental mechanism for upholding personal data protection rights and discouraging future offenders. As of 2024, administrative accountability for such infractions is established in Ukraine under Article 14 of Law No. 2657-XII (1992), which stipulates the following Transgressions of information regulations result in disciplinary, civil, administrative, or criminal consequences under Ukrainian law. However, experts point to the need to improve the liability system.

A key element of the ethical framework for safeguarding personal information is the principle of informed consent. This concept posits that individuals ought to make informed and voluntary choices regarding the gathering and utilization of their sensitive personal information. This statement delineates informed consent as a fundamental ethical concept in research involving human participants (Cherkassky, 2023). This idea is significant in scientific research and healthcare, as it is essential for the ethical and legal handling of personal information. However, modern analytics and forecasting technologies are introducing new challenges to conventional data protection procedures. It is crucial to broaden the concept of data protection to include collective aspects and indirect effects of data processing. Particularly, scenarios in which the examination of ethnicity data may result in discrimination against specific groups and perpetuate existing biases due to the functioning of machine learning algorithms.

Surveillance technologies and challenges for law enforcement agencies. The advancement of surveillance technologies presents novel potential for law enforcement organisations to combat crime and uphold public safety. Nonetheless, these technologies pose significant privacy and human rights concerns. In the realm of information security, numerous significant trends and developments substantially impact the rights and liberties of persons. The implementation of e-passports featuring embedded chips enables the global locating and surveillance of persons, hence eliciting privacy issues. The introduction of e-passports with integrated chips creates the potential for global positioning and tracking of individuals, which raises privacy concerns. For example, in Ukraine, the process of introducing electronic passports is regulated by the Law of Ukraine No. 5492-VI "On the Unified State Demographic Register and Documents Confirming Ukrainian Citizenship, Identity or Special Status" (2012). Although this law does not make provision for direct global positioning, the presence of so much personal data on electronic media raises concerns about the possibility of unauthorised use. At the same time, government control over cryptographic tools is increasing, including legal requirements to provide decryption keys to authorised bodies in many countries, which limits the ability of citizens to protect their personal information (Kyrychok *et al.*, 2024). The UK possesses the Investigatory Powers Act (2016), which grants law enforcement authorities extensive authority to access encrypted data. Part 3, Section 253 of this legislation stipulates that a technical feasibility notice may mandate the relevant operator to eliminate electronic protections imposed by or on behalf of the operator on any communications or data.

This effectively means that companies may be forced to provide access to encrypted user data. The integration of various databases based on unified identification numbers creates the preconditions for the development of comprehensive dossiers on citizens, combining tax, medical, and social information. This is accompanied by the proliferation of video surveillance devices amidst insufficient legal restriction regarding the notification of residents, as well as the storage and access of recordings. The Law of Ukraine No. 580-VIII "On the National Police" (2015) permits the utilization of technical devices for photo and video recording; however, it fails to delineate explicit regulations regarding the storage and access to these recordings. The law stipulates that the use of technical devices and means for photography, filming, and video recording, as well as the procedures for storing, utilizing, and accessing information acquired through such devices, shall be governed by regulations set forth by the Ministry of Internal Affairs of Ukraine. This provision is flawed, as it does not set concrete time limits for the storage of records, does not define clear conditions for access to them, and does not prescribe mechanisms for notifying citizens that they were caught on CCTV cameras.

There is a tendency to restrict the anonymous use of communication tools, which potentially violates the right to privacy (Yudina *et al.*, 2024). According to International Monetary Fund (IMF) researchers R. Dom *et al.* (2022), there is increasing demand to restrict anonymity in digital financial transactions, which raises privacy concerns. This aligns with international initiatives to combat money laundering and terrorist financing. It also presents concerns to the safeguarding of users' personal data. This IMF study highlights the global nature of this trend and its potential impact on the privacy of financial services users.

The use of email monitoring technologies in the absence of clear legal restrictions creates risks of violating privacy. The development of genetic research and the creation of DNA databases opens new opportunities for medicine, but also creates risks of unauthorised use of sensitive medical information. D. Kennett (2019) illustrated a case in which genetic data gathered for scientific objectives was utilised by law enforcement organisations without the consent of the research participants. In 2018, law enforcement utilised data from the public genealogical database GEDmatch to identify a suspect in the Golden State investigation. This has prompted significant ethical inquiries regarding the confidentiality of genetic information and the boundaries of its application.

Insufficient measures to address cyberthreats, including spam, phishing, and malware, result in the unauthorized acquisition and utilization of personal sensitive information. The European Cyber Security Agency's (ENISA) 2022 assessment indicates that current measures are inadequate in effectively addressing cyberthreats. Notwithstanding initiatives to enhance cybersecurity, the incidence of successful

cyberattacks persists in increasing. In 2021, there was a 68% rise in major cybersecurity breaches compared to the prior year, highlighting the inadequacy of current protective measures. (Lella *et al.*, 2022). Spyware and other means of unauthorised information gathering continue to pose a major threat to the privacy of Internet users. A recent ENISA assessment indicates that spyware and other types of invasive spying software remain significant hazards to user privacy and security. In 2022, the quantity of new spyware samples surged by 35% relative to the preceding year. These programs can gather extensive personal data, including passwords, financial details, and private communications, so posing a substantial risk to user privacy.

They underscore the urgent need to develop extensive legislative and technical strategies to protect personal information secrecy and people' privacy in the digital age, including both national security demands and individual fundamental rights. Contemporary surveillance technologies encompass several instruments, including CCTV cameras equipped with facial recognition and systems for analysing social media and mobile data (Spytska, 2023). The implementation of such technology in urban settings introduces additional concerns to citizen privacy. A primary problem for law enforcement agencies is to reconcile the efficacy of crime investigations with the safeguarding of citizens' privacy rights.

International law enforcement cooperation faces challenges due to varying data privacy practices among countries. The implementation of the GDPR (2016) in the EU has established new requirements for international data sharing among law enforcement agencies by enforcing stricter regulations for the cross-border transfer of personal data. Article 46 of the GDPR mandates that data transfers to third countries are allowed just if "adequate safeguards" are implemented. The new requirements markedly diverge from prior regulations in several respects: the GDPR encompasses a broader territorial scope, applying to data processing by controllers and processors outside the EU when they manage data of EU subjects; it enforces stricter conditions for consent, mandating that it be freely given, specific, informed, and unequivocal; it establishes new rights for data subjects, such as the right to be forgotten and the right to data portability, which were absent in the previous directive; and it has substantially heightened the maximum penalties for violations to EUR 20 million or 4% of annual global turnover.

S. Mazepa and O. Bratasyuk (2023) assert that in Ukraine, safeguarding information security requires a holistic strategy that integrates both administrative and criminal law measures, highlighting the imperative to enhance legislation and its enforcement to mitigate risks to personal information confidentiality. According to their research and the results of the present study, tackling these challenges necessitates the establishment of a legal framework governing surveillance technologies that balances security and privacy, the creation of technological and theoretical solutions enabling effective information utilization for law enforcement while mitigating privacy risks, and the promotion of international collaboration to standardize data protection strategies within law enforcement contexts.

Technical protection procedures encompass securing access to personal data processing systems, keeping backups, installing antivirus protection, and safeguarding information transmission channels. Special emphasis is placed on creating software that restricts the input of excessive personal private information and inhibits unauthorized actions. A core tenet for reducing risks to personal information confidentiality is "protection by default", which stipulates that data processing systems are configured to handle only essential information and for the least duration necessary, thus safeguarding personal information from unauthorized access. The case of Big Brother Watch and Others v. the United Kingdom (2021), decided by the Grand Chamber of the European Court of Human Rights, exemplifies the issues law enforcement agencies face regarding surveillance technologies.

This case involved a large-scale communications and data interception by British intelligence services of service providers. The Court concluded that a specific aspect of the UK's mass surveillance framework violated the rights to privacy and freedom of expression. The Court specifically noted that the mass interception regime lacked adequate "end-to-end guarantees" concerning the selection of search criteria for filtering intercepted data, the procedure for acquiring communications data from service providers failed to comply with legal standards, and the framework for obtaining intelligence from foreign intelligence services lacked a sufficient legal foundation.

This ruling is crucial as it establishes criteria for the legal and proportional application of mass surveillance technologies. The Court determined that mass interception does not inherently contravene the Convention, although emphasised the necessity for robust safeguards against misuse. Upon analysis of this decision, it is evident that numerous nations, including Ukraine, must revise their legislation to establish a definitive legal framework governing the utilization of mass surveillance technologies. This framework should ensure predictability and accessibility, impose stringent limitations on the selection of "selectors" for data filtering to prevent undue privacy intrusions, implement robust independent oversight of the operations of special services concerning mass surveillance, and offer sufficient protections for journalistic sources and the confidentiality of communications with advocates.

Comparative examination of the legal structures governing personal data protection in the EU, Ukraine, and the USA. The protection of personal sensitive information in the EU is governed by the GDPR (2016), which introduces strict protection standards and provides individuals with significant rights regarding the management of their private information. It introduced a new right to data portability (Article 20), which allows individuals to receive their personal data in a commonly used and machine-readable format, combined with the right to be forgotten (Article 17), which was not previously clearly defined in the previous directive. The GDPR introduced the concept of confidentiality by design, requiring that data protection be integrated during system design rather than applied retroactively (Article 25). This principle requires the introduction of appropriate technical and organisational mechanisms to ensure effective compliance with data protection principles. The Regulation raised the standards for consent to data processing by requiring that it be freely provided, specific, informed and unambiguous (Article 7). The GDPR provides for severe fines for violations, with a maximum of EUR 20 million or 4% of the company's total annual revenue for the preceding financial year, whichever is greater (Article 83).

The GDPR applies to all EU member states and has extraterritorial effects, influencing global companies who process data of EU citizens. This regulation enforces severe

penalties for violations, include fines of up to EUR 20 million or 4% of the company's annual worldwide revenue (Table 1). Regulation is implemented by a collection of sector-specific and state legislation. This methodology results in a disjointed legal framework and varying degrees of protection based on economic sector or geographic region. The California Civil Code (2023) exemplifies a comprehensive approach to safeguarding personal data at the state level. It confers upon customers the entitlement to be aware of the personal data collected from them and to request its deletion. Conversely, Alabama possesses a less rigorous Commercial Law and Consumer Protection (2023), which is just concerned with data breach notification. This regulation is comprehensive, covering multiple aspects of data protection. The California Civil Code (2023) confers upon consumers the right to be informed regarding the collecting of their personal data, to request its deletion, to opt out of its sale, and to receive protection against discrimination for exercising these rights. Furthermore, the Act requires that companies disclose their data collection and usage policies.

Table 1. Comparison of data protection in the EU and Ukraine

Region	EU	Ukraine
Main law	GDPR	The Law of Ukraine "On the Protection of Personal Data" (2010)
Year of adoption	2016 (entered into force in 2018)	2010 (last amended in 2021)
Scope of action	All EU and European Economic Area countries	Territory of Ukraine
Definition of personal confidential information	A broad definition that includes online identifiers. "Any information relating to an identified or identifiable natural person" (Art. 4(1) GDPR	Analogous to the EU, but less detailed. "Information or a set of information about an individual who is identified or can be specifically identified" (Article 2 of the Law)
Rights of data subjects	Wide scope of rights (access, deletion, transfer)	Comparable rights, but less extensive. Access, rectification, deletion, restriction of processing (Article 8 of the Law)
Consent to processing	Clear, unambiguous, freely provided. "A freely given, concrete, informed, and unambiguous instruction" (Article 4(11) GDPR)	Analogous to the EU, but less stringent requirements. "Voluntary expression of will of an individual to grant permission to process their personal data" (Article 2 of the Law)
Penalties for violations	Up to EUR 20 million or 4% of annual turnover (Article 83 of the GDPR)	Up to 17,000 UAH (approximately EUR 400)
Cross-border data transfer	Severe restrictions (Chapter V of the GDPR)	Restrictions analogous to the EU (Article 29 of the Law)
Notification of a data breach	Mandatory within 72 hours (Article 33 of the GDPR)	Mandatory, but the deadline is not clearly stated (Article 10 of the Law)
Role of the DPO	Mandatory for certain organisations (Article 37 of the GDPR)	Not required, but recommended

Source: compiled by the author of this study based on the Regulation of the European Parliament and of the Council No. 2016/679 "On the Protection of Natural Persons with regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation)" (2016), the Law of Ukraine No. 2297-VI (2010), GDPR (2016)

In its pursuit of European integration, Ukraine is systematically matching its legislation with EU standards to mitigate threats to personal information confidentiality, conforming its laws to the GDPR (2016). Significant updates comprise the clarification of personal data to include online identifiers (Article 2), the introduction of the term "profiling" (Article 2), the expansion of data subjects' rights, including the right to be forgotten (Article 8), and the establishment of a mandatory reporting obligation for data breaches (Article 10). These changes represent significant progress in strengthening personal data protection, though some experts argue they do not fully meet GDPR standards. The Ukrainian Law delineates the fundamental rights of data subjects and the responsibilities of data proprietors and administrators. Article 8 specifies rights such as awareness of data collection sources, data location, processing purposes, and access to personal data, while Article 10 mandates that data owners safeguard data against inadvertent loss, destruction, and unlawful processing.

In contrast to the GDPR, Ukrainian legislation enforces milder penalties, with maximum fines limited to UAH 34,000 (approximately EUR 1,000), whereas the GDPR stipulates fines of up to EUR 20 million or 4% of a company's annual global revenue (Article 83). Furthermore, Ukrainian legislation exhibits deficiencies in governing contemporary data processing technologies, including artificial intelligence, big data, cross-border data transfers, and the obligation to designate data protection officers for entities managing substantial quantities of personal data. Utilizing GDPR experience, Ukraine could rectify these deficiencies by implementing "pseudonymisation" of data (Article 4 of the GDPR) for extensive data processing, formulating comprehensive regulations for cross-border data transfers (Chapter V of the GDPR), and requiring the designation of data protection officers for certain organisations (Article 37 of the GDPR).

A fundamental distinction among the methods of the EU, Ukraine, and the US is in the notion of consent for the processing of personal sensitive information. Within the EU,

the GDPR (2016) mandates that consent must be explicit, unequivocal, and voluntarily provided, with withdrawal being as straightforward as granting it. In Ukraine, the consent requirements are somewhat lenient, albeit they are moving towards European standards. In the EU, the GDPR requires clear, unambiguous, and freely given consent. Article 4(11) of the GDPR defines consent as a voluntary, specific, informed and unambiguous expression of the data subject's choice, by which the data subject agrees to the processing of his or her personal data by means of a declaration or an explicit affirmative act. In Ukraine, the consent requirements are quite lenient, albeit they are moving towards European standards. Article 2 of the Law of Ukraine "On the Protection of Personal Data" (2010) delineates permission as a voluntary and informed manifestation of an individual's will to authorize the use of their personal data for a designated purpose, communicated in writing or through a method that signifies consent has been given. This definition is less concrete than the GDPR and does not contain the requirement to "unambiguously indicate preferences". Furthermore, Ukrainian law does not contain a concrete requirement that withdrawal of consent should be as easy as giving it. The differences are as follows:

1. The GDPR requires a "clear affirmative action" for consent, while Ukrainian law allows consent "in a form that allows the inference of consent", which can be interpreted more broadly.

2. The GDPR specifically requires consent to be "concrete" and "informed", while Ukrainian law only states "provided it is informed", which is a less strict formulation.

3. Unlike the GDPR, Ukrainian law does not contain specific provisions on the ease of withdrawal of consent.

These differences demonstrate that although the Ukrainian law is approaching European standards, it still leaves more room for interpretation and potentially less strict application of the consent requirements for personal data processing. In the United States, especially in the online environment, implicit consent is often sufficient, e.g., through continued use of a website.

The decisive factor is the transnational flow of data. The GDPR imposes severe restrictions on the transmission of sensitive personal information outside the EU, requiring an appropriate level of protection in the recipient country. Article 45 of the GDPR authorizes the European Commission to assess the data protection standards of a third country, considering factors such as the rule of law, human rights, the presence of an independent supervisory authority, and the country's international data protection obligations. While these standards are designed to guarantee a high level of personal data protection, they may create certain obstacles for foreign businesses. Companies may incur additional costs for legal due diligence and implementation of technological solutions to ensure compliance. In addition, this may limit the choice of service providers for European businesses.

To address these challenges, the GDPR provides for additional procedures, including standard contractual provisions (Article 46) and binding business norms (Article 47). These mechanisms enable organisations to send data to nations lacking an adequacy determination, contingent upon the implementation of appropriate safeguards. Ukrainian law contains similar provisions. Article 29 of the Law of Ukraine "On the Protection of Personal Data" (2010) stipulates that personal data may be transferred to foreign entities involved in personal data activities solely if the respective state guarantees adequate protection of personal data in compliance with legal requirements or an international treaty of Ukraine. The United States adopts a more permissive stance on cross-border data transfer, frequently provoking apprehensions among European authorities and resulting in international legal disputes, exemplified by the notable Schrems II case (The CJEU opinion..., 2020). The case addressed the legality of transmitting personal data from the EU to the US pursuant to the Privacy Shield agreement. The EU court annulled the agreement, contending that US legislation failed to offer an adequate level of protection for European residents' personal data against access by US intelligence services. This ruling generated substantial legal ambiguity for enterprises transmitting data between the EU and the US and underscored the importance of worldwide harmonization of data protection strategies.

These differences have crucial implications for international business, cross-border data transfer, and the global digital economy. In particular, they increase the cost of compliance with the requirements of different jurisdictions, which is confirmed by the IAPP-EY annual privacy governance report (2019), which showed a 47% increase in budgets for organisations after the implementation of the GDPR. Strict cross-border data transfer requirements can limit companies' ability to centralise data and use cloud services, potentially reducing the efficiency of business processes. The legal uncertainty caused by different interpretations of data protection laws in different countries creates additional risks for businesses, as demonstrated by the Schrems II judgment.

According to the BSA Global Privacy Best Practices (2018), overly restrictive data localisation laws can reduce countries' gross domestic product by 1.1%. Finally, companies in jurisdictions with less stringent regulations may gain a competitive advantage through lower compliance costs. These consequences highlight the need for further harmonisation of approaches to ensuring the confidentiality of personal information at the international level, considering the global nature of modern information flows. At the same time, each jurisdiction must strike a balance between protecting privacy, promoting innovation, and safeguarding national interests, which makes the task of creating a universal model for ensuring the privacy of personal information extremely challenging. They also emphasise the need for further harmonisation of approaches to ensuring the confidentiality of personal information at the international level, considering the global nature of modern information flows. At the same time, each jurisdiction must strike a balance between protecting privacy, promoting innovation, and safeguarding national interests, which makes the task of creating a universal model for ensuring the privacy of personal information extremely challenging.

Social implications and ways to improve data protection policy. Policies safeguarding against the unauthorized use of personal information have significant and varied repercussions for society, influencing public trust, economic growth, innovation, and social equity. Comprehending these ramifications and identifying methods to enhance policies is essential for constructing a balanced and equitable digital society.

A significant societal consequence of data protection legislation is its effect on public trust in governmental organisations and commercial enterprises. The propensity of citizens to disclose personal data for governmental policy implementation is predominantly influenced by their trust in govern-

mental institutions and the relevance of certain concerns to them. The National Security Strategy of Ukraine (2020) delineates the necessity to enhance technological capacities for the protection of civilians. The document stipulates the following: "Ukraine will implement the development and utilization of integrated video surveillance systems with an analytical component for the purpose of public security" (Section III, paragraph 47). This clause embodies the worldwide trend of heightened electronic surveillance for security purposes. Nonetheless, it also presents possible threats to residents' privacy. Examining this provision within the framework of the Law of Ukraine No. 2297-VI (2010) reveals a notable tension. Article 6 of this legislation stipulates that the processing of personal data must be executed transparently and must be suitable, relevant, and not excessive in connection to the stated purpose of such processing. The question pertains to the compliance of comprehensive video surveillance systems with these criteria. Similar difficulties are seen in other nations.

Comparable challenges are observed in other countries. For example, in the United States, the National Security Strategy (2022) also emphasises the significance of using the latest technologies to ensure security: "We will use technology to address our greatest security challenges, from cybersecurity to climate change" (p. 48). Nevertheless, the US statement underscores the significance of safeguarding privacy and civil freedoms: "We will protect privacy and civil liberties and promote responsible data governance" (p. 48). These examples demonstrate the difficulty of balancing national security needs with personal data protection. On the one hand, new video surveillance and data analytics technologies can considerably improve the efficiency of public safety (Kravchenko, 2022). On the other hand, they pose risks of excessive interference in the private lives of citizens. To address this challenge, it is essential to establish explicit legislative frameworks to regulate the utilization of surveillance technologies, guarantee operational transparency, and impose stringent limitations on the collection, retention, and application of the acquired data. Ensuring adequate public and judicial oversight of law enforcement agencies' activity in this domain is likewise crucial (Cherniavskyi *et al.*, 2023).

The economic ramifications of data protection rules are considerable. On one side, stringent data protection regulations impose supplementary expenses on enterprises. B.D. Custers and G. Malgieri (2022) assert that the adoption of the GDPR has incurred substantial expenses for firms with the modification of business operations, employee training, and technological adjustments. They provide instances of organisations who have invested millions of euros in GDPR compliance. Conversely, C. Tikkinen-Piri *et al.* (2018) assert that the implementation of legislation like the GDPR may incentivize organisations to enhance their data management practices. A study by D. Marikyan *et al.* (2023) corroborates this, revealing that "companies that have successfully implemented GDPR requirements have demonstrated enhancements in data management and heightened customer trust, positively influencing their competitiveness". The researchers present instances of organisations that successfully leveraged GDPR compliance as a competitive advantage, particularly in industries with heightened sensitivity to privacy concerns, such as financial services and healthcare. The influence on innovation and research is another significant factor. The enactment of the GDPR has introduced new hurdles for healthcare researchers, particularly around data reutilization. This underscores the necessity of achieving equilibrium between safeguarding privacy and fostering scientific progress. Social justice and non-discrimination are also prominent aspects of data protection policy. R. Guay and K. Birch (2022) note that the different approaches to data governance in the US and EU reflect different socio-technical understandings of digital personal information, with implications for citizens' rights and social justice.

Discussion

The study's findings illustrate the intricate challenges of personal data protection within contemporary information and communication technology. In contrast to L.A. Bygrave's (2010) findings, which focused only on the legal aspects of data protection, the present study revealed deeper interconnections among technological, social, and ethical factors that affect the effectiveness of personal data protection. The research indicated that the implementation of GDPR in the EU has prompted a re-evaluation of strategies for preserving anonymity and privacy of personal data worldwide. Nonetheless, as highlighted by R. Crutzen *et al.* (2019), the execution of GDPR mandates presents significant obstacles for organisations, particularly with the transparency of data processing and the right to erasure.

An examination of Ukrainian legislation regarding the prevention of personal information disclosure indicates a progressive alignment with European standards, consistent with global trends. The conclusions about the significance of safeguarding the collective dimensions of personal data align with the findings of R. Mühlhoff and H. Ruschemeier (2024). Nevertheless, the current analysis revealed that the prevailing legislative frameworks are inadequately tailored to tackle this issue, particularly for artificial intelligence and big data technologies. This underscores the necessity to establish novel legal concepts and instruments to safeguard collective interests in personal data protection. The study's findings regarding the influence of citizens' trust on their propensity to reveal personal data corroborate the conclusions of D. Marikyan *et al.* (2023) and P. Trein and F. Varone (2023). Nonetheless, it was determined that this effect significantly fluctuates based on the cultural environment and the population's digital literacy degree. This highlights the necessity of formulating tailored strategies for data protection that consider the socio-cultural attributes of diverse cultures.

The study results illustrate the increasing significance of technology solutions in safeguarding against unauthorized access to personal information. U. Pagallo *et al.* (2019) observed that the middle-out strategy in data management system development facilitates a balance between centralised regulation and decentralised efforts. S. Bu-Pasha (2020) underscores the importance of doing a data protection impact assessment in the development of digital solutions for smart cities, particularly in light of increasing urbanization and the digital transformation of urban environments. The analysis of the role of synthetic data in privacy protection extends the findings of A. Beduschi (2024). It was found that while synthetic data does offer new opportunities for balancing innovation and privacy protection, its use poses new challenges in the area of data verification and validation that have not been sufficiently covered in previous studies. In contrast

to the studies by P. Christen and R. Schnell (2023), who focused on the technical aspects of population data protection, the present study revealed the significance of an interdisciplinary approach to healthcare data protection that would accommodate not only technical but also ethical and social aspects. This is crucial in the context of the growing role of telemedicine and personalised medicine.

The assertions made by A. Beduschi (2024) regarding the capacity of synthetic data to reconcile innovation with privacy protection appear contentious, given that the study identified considerable obstacles in the verification and validation of this data. The disparate interpretations may stem from A. Beduschi's (2024) emphasis on technical factors, whereas the present analysis incorporates legal and ethical dimensions regarding the utilization of synthetic data. The findings of R. Guay and K. Birch (2022) regarding the influence of various data management strategies on social justice are significant, revealing considerable disparities in personal data protection and the enforcement of data subjects' rights across different jurisdictions. In contrast to their study, the present research revealed that these discrepancies possess not only a socio-technical but also an economic dimension, influencing the competitiveness of firms in the global market.

This study analyses the GDPR's influence on international data transfers, building upon R. Romansky's (2022) results about transnational data protection collaboration. In contrast to their analysis, the current research indicates that the execution of GDPR standards presents legal, technical, and organisational problems for enterprises. This contradicts R. Romansky's (2022) results, as this investigation examines the practical implications of applying the GDPR within the business operations of international corporations. The disparate interpretations may stem from the study's reliance on a broader spectrum of empirical data, encompassing polls of corporate representatives. S. Lindroos-Hovinheimo's (2019) assertion regarding the necessity to enhance judicial oversight of special services' activities in the collection and processing of personal data is pertinent, as the findings of the current study indicate a significant risk of abuse associated with mass surveillance technologies. Nonetheless, the preceding research presents a contrasting perspective on the practical execution of such supervision. In contrast to the hopeful forecasts of S. Lindroos-Hovinheimo (2019), the investigation uncovered substantial impediments to effective judicial oversight, mostly arising from technological complexity and the necessity of safeguarding state secrets.

T. Naef's (2023) study on the equilibrium between data protection and international trade offers a significant viewpoint; yet, the analytical results present a contrasting scenario. Contrary to T. Naef's (2023) hopeful perspective on reconciling data protection and free commerce, the present investigation uncovered significant inconsistencies between both objectives, particularly for cross-border data transfer. The variance in interpretations may stem from this investigation addressing the real challenges firms encounter in adhering to diverse data protection frameworks globally. N. Purtova's (2018) conclusions concerning the broadening of the personal data concept in European law are highly pertinent, as this study's findings indicate that traditional definitions of personal data are increasingly inadequate in the context of big data and the Internet of Things. This study, in contrast to N. Purtova's (2018) emphasis on legal dimensions, underscored the necessity for an interdisciplinary approach to defining and safeguarding personal data, encompassing technological, ethical, and social considerations. R. Ayunda's (2022) assertion regarding the legal challenges of data protection in e-commerce is contentious, as the research indicates that data protection concerns extend well beyond mere legal considerations. This contradicts the findings of R. Ayunda (2022), which indicate that effective customer data protection in e-commerce necessitates a holistic approach encompassing legal, technological, economic, and educational strategies. The study highlights the importance of enhancing customer digital literacy and including privacy by design principles in the construction of e-commerce platforms.

Conclusions

This study analysed the equilibrium between safeguarding individuals' personal data and maintaining national security in the digital realm. This study aimed to find the most effective methods for achieving this equilibrium. The study examined the legal structures governing personal data protection in relation to the progression of artificial intelligence and big data analytics, namely within the EU, Ukraine, and the USA. A comparative analysis of the legal frameworks of various jurisdictions was conducted, judicial practices were examined, and the influence of technology advancements on data protection was assessed. Significant focus was directed towards examining the GDPR's influence on the establishment of international standards for personal data protection.

The study's findings suggest that effective personal data protection in modern contexts requires a comprehensive approach that includes legal, technological, and ethical components. The implementation of rigorous data privacy laws, like the GDPR, profoundly affects global trade and innovation, creating both challenges and prospects for businesses. The research underscored the necessity of balancing national security with the right to privacy, especially in relation to the use of mass surveillance technologies. The findings are crucial for understanding current challenges in personal data privacy and developing suitable policies in this area. They demonstrate the imperative for global standardization of data protection policies, considering the worldwide nature of the digital economy.

The study highlighted the increasing importance of an interdisciplinary approach to personal data protection. Effective solutions in this domain necessitate not only legal skill but also a comprehensive understanding of technological, social, and economic dimensions. The study identified the necessity to broaden the definition of personal data to include collective dimensions and indirect effects of data processing in the context of big data and the Internet of Things. This highlights the necessity for continual assessment and modification of legislation in response to emerging technical realities, as well as the importance of enhancing digital literacy among consumers and technology developers alike.

Potential avenues for further investigation in this domain encompass examining the ethical implications of employing artificial intelligence for personal data processing, advancing novel technologies for data anonymization and pseudonymization, exploring the psychological dimensions of privacy perception in the digital landscape, and assessing the influence of global crises on personal data protection policies.

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None.

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Захист персональних даних: між дотриманням прав людини та національною безпекою

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Анотація. Метою цього дослідження було встановити баланс між захистом персональних даних громадян та підтриманням національної безпеки в цифровому світі. У дослідженні було проаналізовано нормативно-правову базу та судову практику Європейського Союзу (ЄС), України та США за допомогою декількох методологій. Законодавство ЄС пропонує найсуворіший захист персональних даних, передбачаючи значні штрафи за порушення. Українське законодавство поступово наближається до європейських стандартів, однак процедури захисту та відповідальності потребують вдосконалення. Дослідження показало зростаючу тенденцію до використання штучного інтелекту та технологій великих даних у сфері національної безпеки, що створює нові проблеми для захисту персональних даних від розголошення. У дослідженні вивчалися етичні наслідки використання таких технологій та їхній потенційний вплив на приватне життя громадян. У дослідженні проаналізовано глобальні регуляторні процедури, зосереджуючи увагу на підході Європейського суду з прав людини до збалансування цілей захисту особистої інформації та національної безпеки. Дослідження виявило необхідність розширити визначення персональних даних, включивши до нього комунальні виміри та непрямі наслідки обробки даних у контексті великих даних та Інтернету речей. Результати дослідження підкреслюють важливість міждисциплінарного підходу до безпеки персональних даних, що охоплює правові, технологічні, етичні та соціальні аспекти. Аналіз представив концептуальну модель гармонізації нормативно-правової бази для захисту привілейованої інформації, включаючи сучасні технічні проблеми та вимоги національної безпеки. Дослідження має практичне значення для вдосконалення нормативно-правової бази щодо захисту персональних даних і може допомогти у формулюванні планів інформаційної безпеки

Ключові слова:конфіденційність; кібербезпека; інформаційна етика; приватне життя; прозорість даних

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