ISSN 2617-4162
E-ISSN 2617-4170
УДК 34;159.9;330

Соціально-правові студії

Науково-аналітичний журнал

Том 7, № 4

Львів
2024

Співзасновники:
Львівський державний університет внутрішніх справ,
ТОВ «Наукові журнали».

Рекомендовано до друку та розміщення
в електронних сервісах ЛьвДУВС Вченою радою
Львівського державного університету внутрішніх справ
(протокол № 11 від 23 грудня 2024 р.)

Ідентифікатор медіа в Реєстрі суб'єктів у сфері медіа R30-03382
Рішення Національної ради України
з питань телебачення і радіомовлення
від 14 березня 2024 року № 352

Журнал входить до переліку фахових видань України категорії «А»:
з юридичних наук за спеціальностями 081 – Право та 262 – Правоохоронна діяльність;
з економічних наук за спеціальностями 051 – Економіка,
072 – Фінанси, банківська справа та страхування, 073 – Менеджмент;
із соціальних та поведінкових наук за спеціальністю 053 – Психологія
(наказ Міністерства освіти і науки України № 1543 від 20.12.2023 р.)

Періодичність випуску: 4 рази на рік.

Журнал представлено в наукометричних базах даних, репозитаріях:
Scopus, DOAJ, Національна бібліотека України ім. Вернадського,
EBSCO, CLOCKSS Інституційний репозитарій Львівського державного університету внутрішніх справ,
ERIHPLUS, Worldcat, Zendy, UCSB Library, Dimensions, University of Oslo Library,
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OUCI (Open Ukrainian Citation Index), Scilit, CORE

Соціально-правові студії: науково-аналітичний журнал / гол. ред. О. Балинська. Львів: ЛьвДУВС, 2024.
Т. 7, № 4. 282 с.

Адреса редакції:
Львівський державний університет внутрішніх справ
79007, вул. Городоцька, 26, м. Львів, Україна
тел.: +380 (32) 233-20-80
E-mail: info@sls-journal.com.ua
https://sls-journal.com.ua/uk

ISSN 2617-4162
E-ISSN 2617-4170
UDC 34;159.9;330

Social & Legal Studios

The scientific and analytical journal

Volume 7, No. 4

Lviv
2024

Co-founders:
Lviv State University of Internal Affairs,
“Scientific Journals” LLC.

Recommended for printing and posted in the electronic services of LvSUIA
by the Academic Council of Lviv State University of Internal Affairs
(Minutes No. 11 of December 23, 2024)

Media identifier in the Register of Media Entities R30-03382
Decision of the National Council of Ukraine
on Television and Radio Broadcasting
of 14 March 2024 No. 352

The journal is included in the list of professional publications of Ukraine of category “A”:
legal sciences in the fields of 081 Law and 262 Law enforcement;
economic sciences in the fields of 051 Economics, 072 Finance Banking and Insurance,
073 Management; social and behavioral sciences in the field of 053 Psychology
(Order of the Ministry of Education and Science of Ukraine No. 1543 of 20.12.2023)

Frequency: 4 issues per year

The journal is presented at scientometric databases, repositories:
Scopus, DOAJ, Vernadsky National Library of Ukraine,
EBSCO, CLOCKSS Institutional repository of Lviv State University of Internal Affairs,
ERIHPLUS, Worldcat, Zendy, UCSB Library, Dimensions, University of Oslo Library,
University of Hull Library, SOLO, European University Institute, Leipzig University Library,
Cambridge University Library, Polska Bibliografia Naukowa,
OUCI (Open Ukrainian Citation Index), Scilit, CORE

Social & Legal Studios: The scientific and analytical journal / O. Balynska (EIC). Lviv: Lviv State University of Internal Affairs, 2024. Vol. 7, No. 4. 282 p.

Publishing Address:
Lviv State University of Internal Affairs
79007, 26 Horodotska Str., Lviv, Ukraine
tel.: +380 (32) 233-20-80
E-mail: info@sls-journal.com.ua
https://sls-journal.com.ua/en

Соціально-правові студії
Том 7, № 4
2024

Науково-аналітичний журнал
Засновано у 2018 р.
Періодичність випуску: чотири рази на рік

Редакційна колегія

Social & Legal Studios

Volume 7, No. 4
2024

The scientific and analytical journal
Year of establishment: 2018
Publication frequency: Four times a year

Editorial Board

ЗМІСТ

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UDC 340.142:341.231.14
Doi: 10.32518/sals4.2024.09

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Social & Legal Studios. 2024. Vol. 7, No. 4

The impact of the European Court of Human Rights judgements on the development and transformation of Ukrainian law

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Abstract. The relevance of this study lies in the fact that the European Court plays a considerable role in protecting the rights and freedoms of citizens, and the judgements delivered by the European Court of Human Rights (ECHR) reflect the interaction of Ukrainian jurisdiction with European human rights norms and standards, which is crucial in the context of strengthening democratic principles and the rule of law in Ukraine. The purpose of this study was to examine the impact of judgements of the International Court of Human Rights on the structure and content of Ukrainian legislation. The following methods were used in the study: historical, hermeneutical, statistical, and comparative analysis. The study showed the impact of the decisions of the international court that guarantees the observance of individual freedoms on the development and transformation of the Ukrainian legal space. The study analysed how Ukrainian courts react to the ECHR judgements. It was found that these decisions are often used as a basis for improving legislation and law enforcement practice in Ukraine. However, there are also cases of non-compliance with ECHR judgements, which indicates the need to further strengthen the mechanisms of influence of international law on internal legislation of the country. The study examined particular cases where the ECHR judgements helped to defend the rights of Ukrainian citizens before internal judicial authorities or state institutions, which demonstrates the important role of the European Court in guaranteeing the protection of human rights in Ukraine. These decisions not only point out problems and gaps in national legislation, but also contribute to improving law enforcement and protecting citizens' rights. The practical significance of this study lies in the fact that it will improve the practice of enforcement of the European Court's judgements in the country, and the analysis of such judgements may also serve as a basis for developing mechanisms for protecting the rights of citizens in the Ukrainian judicial process

Keywords: international standards; convention; law; precedent; international agreements; justice

Introduction

In the context of Ukraine's European integration process, one of the key tasks of state-building is to reform the institutions and institutional systems responsible for ensuring the rule of law and legitimacy in society. The academic interests of Ukrainian legal science are focused on the adaptation of national legislation to the norms and principles of the European Union (EU) legal order, as well as the transformations taking place in the enforcement proceedings system. The judgements of the European Court of Human Rights (ECHR) have an impact on the Ukrainian legal system, opening a new stage in the transformation of legislation in line with European standards. These standards set the legal context and serve as guidelines for improving national human rights mechanisms, which contributes to the comprehensive protection of citizens' rights and freedoms. Ukrainian jurisdictions face difficulties in interpreting and enforcing judgements of the ECHR, which requires harmonisation of legislation to meet European standards and requires significant efforts from legislative and law enforcement authorities.

J. Kapelańska-Pręgowska (2021) investigated the issue of balance in the ECHR. Based on the current case law in the ECHR, the researcher tries to predict the possible outcome of the applications recently filed with the ECHR by Polish women who were denied reproductive rights and to explore the relevant issue in national legislation. The researcher concludes that the ECHR factors in the development of universal standards and European consensus on reproductive rights to avoid criticism for activism and attempts to impose its own moral assessments. This is important for Polish law, especially in the area of abortion, where there are substantial differences in public opinion. This approach to the interpretation of international standards may influence the way the Polish justice system considers ECHR judgements and amends legislation to follow these standards.

In the context of the rule of law, the efficacy of legal protection in cases concerning freedom of expression was explored this theme by V. Milasiute (2022). The researcher concludes that the case law of the ECHR shows that the

Suggested Citation

Article's History: Received: 04.09.2024 Revised: 29.11.2024 Accepted: 23.12.2024

Spytska, L. (2024). The impact of the European Court of Human Rights judgements on the development and transformation of Ukrainian law. *Social & Legal Studios*, 7(4), 9-17-. doi: 10.32518/sals4.2024.09.

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use of freedom of expression to uphold the rule of law is strongly protected. ECHR refrains from adopting a theoretical position on the rule of law or legal protection. However, the theoretical arguments that support the need for judicial protection are consistent with the philosophy of the international court. The interpretation of the judgements of the international human rights court incorporated into the European Convention on Human Rights shows that the requirements of the rule of law affect the essential results of their interpretation (Yara *et al.*, 2023).

A. Shulga *et al.* (2023) analyse theoretical approaches to the interpretation of the term "system of legal order" and, considering the legal opinions expressed by the ECHR, present their own attempts to define the "system of legal order" and institutional factors that influence the development of the legal order of the EU countries. The researchers conclude that the European legal order is complex and is shaped by a variety of factors, including the geopolitical situation and cultural characteristics. Ukraine's growing European integration requires a study of the impact of the European legal system on the Ukrainian one, considering current needs and challenges.

The analysis of the impact of the judgments of the European Court of Human Rights on the construction of a system of supranational and internal human rights principles, as well as the challenges encountered in recognizing and ensuring the development of minimum standards in Europe, was conducted by O. Dufeniuk (2021). The study found that the ECHR faces challenges in the current environment, such as ambiguity and limited influence of interpretation of rules, which may affect the court's effectiveness and the adaptation of universal values to the national legal environment.

M.E. Vasylenko (2023) analyses the general principles of judicial activity defined in international treaties and their impact on the consideration of commercial cases by Ukrainian courts. The researcher concluded that the practical guidance derived from the ECHR judgements contributes to the coherence of national legal systems in commercial proceedings and the development of new principles of justice. To improve the judicial system, it is important to systematise the principle of fairness and ensure that cases are heard within a reasonable time. Special attention is paid to ensuring compliance with fair trial standards.

The analysis of the interaction between law enforcement agencies of Ukraine and the EU, along with highlighting the tasks Ukraine needs to address regarding human rights protection during European integration, was conducted by T.O. Kamenchuk (2023). The researcher concluded that it is crucial to implement quality control practices for cooperation between Ukraine and the EU in the field of law enforcement. This will help to identify shortcomings and miscalculations in cooperation in a timely manner, develop recommendations to improve its effectiveness and adhere to the schedule of events and procedures. It is important that both governmental and non-governmental organisations monitor cooperation to ensure the most reliable results (Akhmetova, 2023).

T. Datsiuk *et al.* (2022) investigated the problem of determining the need to reform and improve human rights instruments in the light of current challenges in Ukraine. The researchers believe that human rights are of universal importance and should be protected by all. Modern globalisation processes and new challenges require transformation and improvement of human rights protection mechanisms (Kitsak & Lylyk, 2023). The authors recommend further research to establish concrete mechanisms of protection, reform the human rights institution, factor in the current realities, and create international cooperation to prevent future mistakes. Some of the issues that have not been addressed in the cited studies include the lack of comparative analysis of the effectiveness of human rights mechanisms in different countries and problems related to human rights violations or abuses, as well as the lack of statistical information on the application of international practices.

The purpose of this study was to thoroughly examine and assess how the judgements delivered by the European Court in relation to human rights violations affect the judicial practice and law enforcement in Ukraine.

Materials and methods

The study of this topic using the historical approach made it possible to investigate how Ukrainian legislation and legal standards have changed as a result of the judgements of the ECHR in different historical periods. The study of historical data also helped to understand how Ukrainian society has interacted with European legal standards in the past and how this interaction has influenced the current state of the Ukrainian legal system. This approach has made it possible to identify concrete aspects of justice and human rights protection that have been transformed or improved through the historical implementation of European standards and practices.

The hermeneutical method allowed for a deep and comprehensive understanding of the issue under study and an assessment of the text of the court decision and its context. This approach considers not only the content of the court decision itself, but also its significance in the Ukrainian legal context, factoring in the influence of historical, cultural, and social factors. The relevant methodology made it possible to identify the nature of the impact of the EU Court's judgement on the structure and content of Ukrainian legislation and to reflect its consequences. Furthermore, it helped to understand how these decisions are perceived and interpreted by Ukrainian law enforcement and how they are applied in practice.

The study also used statistical methods that involved the application of quantitative methods of analysis to investigate the problem. This approach allowed collecting statistical data on the ECHR judgements and their impact on Ukrainian legislation and to process this data to identify patterns and trends. Statistical methods included considering the number of court decisions on human rights, dividing these decisions into categories of rights and freedoms, and assessing certain aspects of their impact on Ukrainian legislation. Such an approach helped to obtain objective data on the consequences of the ECHR judgements, ensure the rights of individuals in the Ukrainian judicial system, and draw reasonable conclusions about its transformation and development.

The method of comparative analysis not only compared Ukrainian legislation and case law with the ECHR member states, but also analysed various aspects of the human rights protection mechanism, including human rights procedures and practices. Comparative analysis helped to find similarities and differences in approaches to human rights protection in different countries and to identify the most effective methods and strategies that Ukraine can use to improve its legal system. Analysing the legal systems of other countries

helped to understand how Ukrainian legislation has been modernised and improved to better protect human rights according to the generally accepted international practices and the standards of the ECHR.

A number of legal acts were used in the study. The Constitution of Ukraine (1996) provided the general context and legal basis for the study of human rights in Ukraine, as it contains principles and standards that must be observed to protect the rights and freedoms of citizens. The Law of Ukraine No. 1906-IV "On International Treaties of Ukraine" (2004) defines the procedure for ratification of international treaties, including the Convention for the Protection of Human Rights and Fundamental Freedoms, and provides a context for understanding and applying Ukraine's international human rights obligations. In addition, the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) was used, as it helped to compare the standards of human rights protection in Ukraine with international standards. Furthermore, statistics from the official website of the ECHR were used. These data provided objective information on the number and nature of cases concerning Ukraine, and the judgements of the ECHR concerning Ukraine. These judgements reflect the practice and approaches of the European Court to the consideration of cases related to human rights in Ukraine (European Court of Human Rights, 2024a). They served as a source for analysing and assessing the state of human rights in the country and the impact of court decisions on the national legislative and law enforcement system.

Results

The European integration process is a way of approaching democratic standards, developing civil society, strengthening the rule of law and its principles, and making choices aimed at protecting the legal norms of the individual. After declaring its independence, Ukraine began to form a democratic, legal system based on human rights and freedoms and their protection. Modern Ukraine is in the process of integrating into the European legal space. Given the need to harmonise national legislation with international norms and legal principles, the analysis of European legislation and European legal theory is an important task. The development of the rule of law and civil society in Ukraine requires a review of the country's role in the international community. The strengthening of relations between states leads to increased interaction between their legal systems. In recent years, the number of international norms intended to be implemented and applied by the Community Member States has been growing. States that are members of international organisations are obliged to bring their legislation in line with international standards. Considering the legal system of Ukraine in the current environment, it should be recognised that it is in a transitional stage, which is determined by both internal factors and external influences. This change reflects the real changes in the country's life since independence. The evolution of national legal systems is complex and long-term and requires best international practices. Specifically, it is a legal regulation tool that is unknown in the Ukrainian legal field but is widely used in other countries.

Today, the ECHR is an accessible mechanism for guaranteeing human rights protection to citizens, including Ukraine. Since 11 September 1997, when the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) came into force for Ukraine, the ECHR has received numerous complaints from Ukrainian citizens, and Ukraine is among the three countries with the largest number of filings to the ECHR. The ECHR is currently considering 10.4 thousand complaints against Ukraine, which is 14% of the total number. The Russian Federation ranks first with 20.1 thousand cases, which is 27% of the total number of cases. The second place goes to complaints from Turkey – 16.7 thousand, which is 22.4% (European Court of Human Rights, 2024b).

The study of the activities of the highest judicial bodies allows observing a gradual increase in the influence of international legal standards on the Ukrainian judicial system. By ratifying the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and adopting the Law of Ukraine No. 3477-IV (2006), Ukraine recognised the jurisdiction of the ECHR. Notably, the enforcement of court decisions in Ukraine is a key element of ensuring the right to a fair trial, and improper enforcement is recognised by the ECHR as a violation of the standards of the international convention. Notably, one of the biggest difficulties in ensuring this right is the non-enforcement of court decisions (Law of Ukraine No. 1906-IV, 2004). The procedure for implementing the ECHR judgement is presented in figure 1.

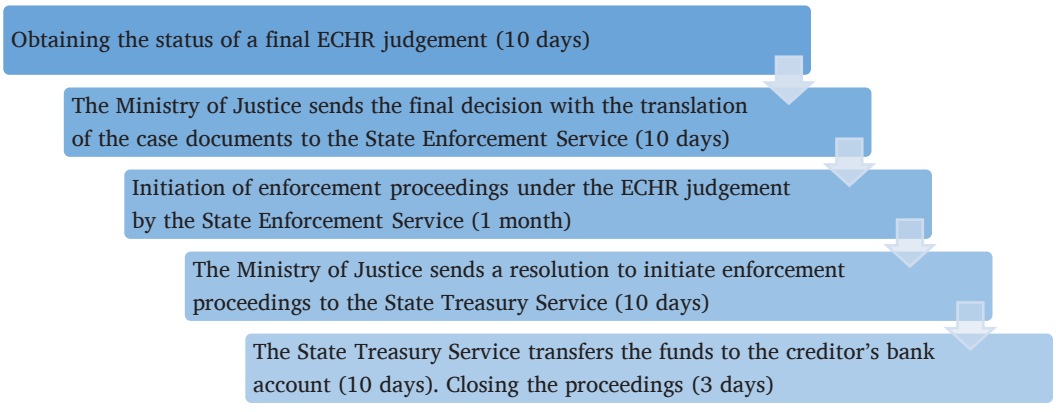

Figure 1. Procedure for enforcement of the ECHR judgement
Source: Enforcement of judgements of the European Court of Human Rights (2024)

The legal views of the ECHR on human rights are particularly important among the sources used by national courts and other national authorities in the exercise of their powers, as these are legal issues specific to the interpretation of the provisions of the Convention and the position of the court (Nalin, 2023). Examining the implementation of the ECHR's legal opinions in practice, e.g., the analysis of the Constitutional Court of Ukraine, it can be concluded that such legal opinions play an important role in the development of constitutional values and are of great legal importance. Notably, the Constitutional Court of Ukraine considers applications for the protection of various human rights and freedoms primarily following the generally recognised international standards.

Even though the judicial practices of district and appellate courts use the ECHR practices in their decisions, references to the ECHR case law are still rare. As a result, the ECHR case law is used to varying degrees in decision-making, slowing down the process of standardising human rights and freedoms. However, in rendering its judgement, it did not adapt the work of the first instance court to the correct and correct implementation of the legal perspective of the ECHR.

The above situation has not only substantially slowed down the European integration, but also substantially hampered the improvement of the Ukrainian legal system. The principal reason for this situation is the lack of clear methods for determining the legal impact of the ECHR's practice on national courts and the placement of its judgements in the system of sources of national law (Bobić, 2020). The academic community has different opinions on the mandatory application of the European Convention on Human Rights. The first opinion is that the experience of an international court guaranteeing the observance of individual freedoms is necessary for national courts, as it defines the basic legal protection of the individual, which is established and guaranteed by the ECHR. In explaining this approach, researchers and experts refer to the Vienna Convention on the Law of Treaties (1969), which prescribes that the text of an international treaty also includes the practice of its application and interpretation. Let us consider the amount of the invoice as agreed by the parties to the contract. However, this document focuses on the practice rather than their obligations.

Furthermore, the reference to Law of Ukraine No. 3477-IV (2006) is not sufficient to recognise the "binding nature" of the ECHR judgements. Pursuant to Article 17 of the Law, the Court considers the Convention and case law to be the fundamental documents establishing the rights and freedoms of an individual and factors in the Resolution of the Plenum of the Supreme Court of Ukraine "On Judicial Practice in Cases on Protection of Dignity and Honour of an Individual and Business Reputation of an Individual and Legal Entity" (2009) and Resolution of the Plenum of the Supreme Court of Ukraine "On Judgement in a Civil Case" (2009). However, these rulings only clarify the legal force of ECHR judgements as sources of law and do not answer the question of their role in the system of legal sources and the degree of legal force.

The alternative view reflects the opinion that the recognition of the compulsory jurisdiction of the ECHR does not necessarily mean that its case law is automatically binding. To substantiate this position, one can refer to the text of the Law of Ukraine "On the Judiciary and the Status of Judges" (2016), as well as to the relevant provisions of the procedural legislation of Ukraine. According to this legislative act, ECHR judgements recognising Ukrainian court decisions as violating the European Convention on Human Rights may serve as a basis for review of these court decisions by the Supreme Court of Ukraine. The ECHR judgement may only serve as an impetus for the Supreme Court of Ukraine to initiate relevant court proceedings but will not lead to the replacement or cancellation of the ECHR judgements that stay under consideration. The results obtained allow drawing interim conclusions about the attitude of national legislators towards the ECHR judgements. The Supreme Court of Ukraine considers the ECHR judgements as a basis for reviewing the relevant court decisions but does not consider the legal positions set out in the ECHR judgements to be unconditionally binding. On the contrary, the decisions adopted by the ECHR in the case against Ukraine are binding on the Ukrainian state, and Ukraine should find ways to avoid similar situations in the future.

As for the ECHR itself, it is worth noting that it refers to its practices as a precedent. From a legal standpoint, a precedent is a court decision made in a particular case that, although not binding, is mandatory for subsequent courts in analogous cases or serves as a model for interpreting the law (Fichera & Pollicino, 2019; Petersen & Patrick, 2022). This is confirmed by the fact that the ECHR usually follows its previous decisions when deciding cases but does not necessarily repeat its reasoning. Notably, the ECHR has repeatedly stated that it is not bound by previous decisions.

In terms of the status of judgements of an international court that guarantees the observance of individual freedoms in the system of legal sources of Ukraine, it should be emphasised that according to Article 9 Constitution of Ukraine (1996) and Article 19 Law of Ukraine No. 1906-IV (2004), the Verkhovna Rada of Ukraine, following Article 9 of the Constitution of Ukraine (1996), has adopted the judgements of the ECHR. The Verkhovna Rada of Ukraine has agreed to make it binding as part of internal legislation. Such international treaties shall be applied according to the procedures established by national law and shall take precedence over internal legislation if they prescribe different rules.

Thus, the legal force of ratified international treaties is higher than intrastate law, but lower than the Constitution of Ukraine. At the same time, according to the conclusions of the Advisory Committee of European Judges, national courts are obliged to apply European law following the European standards, especially the case law of the international court (Spano, 2021). In its turn, the ECHR's approach is based on previous practice and is not limited to the formation of the subject matter of particular precedents. When considering complaints against Ukraine, the European Court of Human Rights also referred to its practice in cases against other countries. This helps to increase the predictability of court decisions and provides legal certainty. To effectively protect fundamental human rights and freedoms and avoid future violations of the Convention, Ukrainian judges should factor in all the experience of the main courts on fundamental human rights, both in relation to Ukraine and in relation to other countries. It is important to ensure that Ukrainian judges have access to this approach to ensure its effective application.

In 2022, the ECHR considered 2,075 applications concerning Ukraine (European Court of Human Rights, 2024a). Of these, 1,703 were rejected or withdrawn. The Court delivered 144 judgements (on 372 filings), of which 141 were

found to have at least one violation of the European Convention on Human Rights (Table 1). In 2022, the implementation of many important judgements of the European Court of Justice also made certain achievements. The Committee of Ministers completed the supervision of the implementation of the group case of "Bochan v. Ukraine" (2015) (arising from this case). In connection with the problem of misinterpretation of the European Court's opinions, the Supreme Court of Ukraine proposed to create a legal mechanism that would allow applications for amendment of final decisions of national courts in civil and criminal cases, considering the determination of violations by the European Court. The Council of Ministers noted that Ukraine's ratification of the Istanbul Convention is an important development in the judgement in the case of "Levchuk v. Ukraine" (2020) on domestic violence. This is a major step in the fight against domestic and gender-based violence and was ratified by the Verkhovna Rada of Ukraine on 20 June 2022. The Istanbul Convention was adopted and entered into force on 1 November 2022 (Council of Europe Convention…, 2011).

Table 1. ECHR judgements on Ukraine from 2021 to 2023

Decision	2021	2022	2023 (January-July)
The decision on the appointment of the court was made	3703	1911	1028
Reported to the government	677	353	299
Accepted applications	2665	2075	972
Declared inadmissible or struck out (single judge)	1963	1612	796
Declared inadmissible or withdrawn (Committee)	161	89	50
Declared inadmissible or withdrawn (chamber)	2	2	0
Decisions ruled	539	372	126

Source: European Court of Human Rights (2024a)

Germany is a good example of compliance with its obligations under the European Convention on Human Rights because throughout its history it has rarely faced serious difficulties in implementing the decisions of the European Convention on Human Rights. In this context, it is worth noting two principal factors that contribute to the successful fulfilment of Germany's international obligations. The human rights and freedoms defined in the Constitution of the Federal Republic of Germany (1949) essentially correspond to the guarantees contained in the European Convention on Human Rights. These two legal documents establish analogous principles and standards for the protection of human rights and fundamental freedoms. The German constitution is similar to the European Convention and recognises and protects the right to life, personal integrity, freedom of expression, equality before the law, the right to a fair trial, freedom of religion, the right to education, and many other fundamental rights. Both legal instruments guarantee the rights essential to the dignity and justice of every human being. This demonstrates the importance and widespread recognition of these values at the German and international level (Walther, 2019). The text of this international document was already widely known in European countries when national legislation was being developed. Furthermore, the wording of the German Constitution is based on the text of the Convention, which means that the structure of the first part of the Constitution, which deals with fundamental rights, is remarkably similar to the provisions of the Convention.

Another important advantage of Germany in the European Court of Human Rights is the possibility to challenge the actions or inaction of the authorities through constitutional complaints. Anyone who believes that their fundamental rights under the constitution have been violated may apply to the Constitutional Court after exhausting all legal remedies following the usual procedures (Walther, 2019; Burchardt, 2020). Since the rights set out in the Constitution are consistent with the rights set out in the Covenant, citizens can use the same arguments when applying to the Constitutional Court as they do to the ECHR. The relevant agencies analysed the correctness of the decisions of the judges of the German Constitutional Court, and the conclusions of most cases were consistent with the conclusions of the Constitutional Court. However, there are cases when the views of the two courts differ. For instance, in cases where the European Court's judgements claimed that the Constitutional Court had violated the guarantee of the right to a fair trial within a reasonable time. For a long time, the German Constitutional Court has been considering many constitutional complaints for various reasons. However, the German constitution does not explicitly prescribe the right to consider constitutional complaints within a reasonable time, and due to the complexity of the German judicial system, courts tend to delay the resolution of cases to a certain extent (Küpper, 2011; Medvedeva *et al.*, 2020). In the pending case of "Sürmeli v. Germany" (2006), the European Court stated that Germany must properly organise its judicial system to effectively fulfil the requirements prescribed in Article 6 of the Convention. According to the European Court, even the Constitutional Court could not provide everything. The justice system is an example (Sieper, 2022). Notably, cases in which the fundamental court for fundamental human rights has identified delays in the research process are brought to the attention of the Constitutional Court itself, and this problem is reflected in practice with a view to reducing the timeframe for consideration of such cases.

The main rationale used by the judges of the German Constitutional Court to justify the possibility of partial non-execution of the judgement of the Court of Justice of the EU was based on a unique legal approach. They emphasise the existence of situations where fundamental rights may conflict with each other and where state measures are aimed at protecting the rights of third parties (Tomuschat, 2010). Rules protecting individual privacy distinguish between the rights of individuals and the principle of media freedom. The main argument mentioned by the Constitutional Court is based on the principles of German sovereignty: the purpose of the Constitution is to integrate the Federal Republic of Germany into the legal community of peaceful and free states, but at the same time not to break away from sovereignty. This is consolidated in this document.

The ECHR judgement on fundamental rights has had a significant impact on the German judicial system. As a member state of the EU, Germany is obliged to follow the decisions and norms of the Convention for the Protection of Human Rights and Fundamental Freedoms, which is an important part of its legal system. Firstly, ECHR judgements are directly binding in Germany. This means that German courts must factor in and apply the judgements of the European Court of Justice in their practice. This imposes a legal obligation on Germany to follow the standards and principles set by the European Court of Human Rights. Furthermore, the judgements of the European Court are also an important means of monitoring the compliance of the German authorities with international human rights standards. In cases where human rights are violated by the German authorities or legislation, the ECHR can act as a body that ensures the protection of rights and make decisions on damages or legislative changes that are binding on Germany. ECHR judgements can influence the legislative process in Germany (Ploszka, 2023; Skuban-Eiseler *et al.*, 2023). The German authorities may be forced to revise their laws or procedures to address the issues identified by the ECHR or to ensure compliance with European human rights standards (Podszun & Overhoff, 2023).

Thus, the judgements of the ECHR play a significant role in the development and protection of legal standards in Germany and promote the observance of human rights and fundamental freedoms in the country. Observing how the system of enforcement of judgements of the ECHR works in Germany can provide guidance on how to improve an analogous system in Ukraine. One of the key components of this improvement is the improvement of Ukrainian legislation, which currently lags behind the standards set out in the international agreement.

Discussion

The results of the study confirm the important legal impact of the International Court of Human Rights on Ukraine. These decisions become an integral part of the international law governing relations between the countries that are parties to the relevant convention. They oblige Ukrainian legislation and the judiciary to consider international human rights standards in their activities, which contributes to the improvement of legal protection of citizens and increase confidence in the judicial system.

M.R. Madsen *et al.* (2022) showed that in five European countries (Denmark, France, Poland, Spain, and the United Kingdom), there is a high sensitivity to decisions of international human rights courts that have overturned decisions of national courts. However, this effect is less pronounced in Denmark and the UK. The main conclusion of the researchers is that public rejection of decisions made by international courts does not necessarily depend solely on the distribution of power, but also on the very content of these decisions, which reflects the political preferences of society. The authors provide an in-depth analysis of the functions of human rights courts and their role in protecting vulnerable groups and unpopular minorities from possible majority domination. They emphasise that, at the same time, decisions that are not accepted by society can undermine the legitimacy of the court and cause doubts about its authority. This demonstrates the need for a balanced approach to human rights protection, considering public opinion. Furthermore, the researchers point out the importance of courts operating based on legal precedents and demonstrating independence from external influences. However, they acknowledge that courts may also respond to public sentiment to ensure greater legitimacy of their decisions, which may lead to compromises in the performance of their core functions. Although researchers consider other aspects of the problem, it is worth agreeing with them, as the study highlights the complexity of the relationship between international justice and society, as well as the need to maintain a balance between the protection of human rights and the consideration of public opinion and political realities. This is of great interest in academic discourse and may have a considerable impact on the development of international legal policy and practice.

The analysis of the European Convention on Human Rights system was conducted by S. Schmahl (2022), who noted it as one of the most stable, deeply rooted, and institutionally consolidated systems in the international sphere of human rights protection. The researcher briefly describes the history and evolution of the ECHR, and then analyses the key challenges the Court faces today. Specifically, the study examines the approach of the Federal Constitutional Court of Germany to the practice of judgements in the ECHR. This approach emphasises the fundamental importance of the openness of European human rights law, while it focuses on constitutional identity. The researcher concludes that when states delegate the interpretation of the Convention to an independent international body, they agree to limit their legal powers. However, they agree to do so only if the judicial interpretation of the ECHR stays consistent, clear, and plausible. The three principles – judicial restraint of the Court, the principle of subsidiarity, and the margin of appreciation – which are upheld by the Contracting States are crucial for the effective international protection of human rights (Pylypenko & Spahija, 2023). These principles are in line with the general and long-term recognition by participating States, as well as with the inherent needs of individuals to have their rights and freedoms protected from arbitrary state interference. The article also analyses the role of ECHR judgements in the constitutional field of Ukraine, focusing on the complexity of this role and considering ways to avoid possible conflicts between different legal bodies.

J. Haglund and R.M. Welch (2020) analyse the interaction of internal political and social actors in the context of reactions to negative judicial proceedings in the ECHR. The researchers point out that to ensure effective protection of human rights, district courts must go beyond simply reviewing individual cases of violations and work to ensure that such violations do not occur in the future. This requires the executive branch to actively intervene in the adoption, management, monitoring, and enforcement of human rights policies, despite possible obstacles. The study also concludes that the country's judicial system and legal environment should work on reforming society to create conditions that will reduce the number of offences. This requires not only a response to existing violations, but also the active involvement of the executive branch in shaping and supporting policies aimed at protecting human rights. However, various obstacles may arise, such as political, economic, and socio-cultural factors. Therefore, to achieve successful results, specific strategies and implementation mechanisms need to be developed.

The analysis of European Court of Human Rights cases concerning the restriction of human rights during the

COVID-19 pandemic was conducted by S. Jovičić (2021). The researcher argues that in these cases, governments have used emergencies in bad faith to restrict human rights and obstruct the work of human rights defenders. The researcher emphasises the need for a strict interpretation of human rights restrictions during emergencies and warns of the importance of preserving fundamental rights in times of crisis, namely during the COVID-19 pandemic. The researcher also calls for a continuous assessment of the situation and the measures taken to prevent human rights violations, which must be guaranteed in both normal and emergency periods. This opinion is significant because it emphasises the importance of strict adherence to human rights, especially during emergencies such as the COVID-19 pandemic. This demonstrates the need for constant monitoring of governments' actions in times of crisis to avoid human rights restrictions becoming instruments of political pressure or repression. The importance of international human rights court decisions lies in the establishment of precedents and standards that define the limits of permissible restrictions on human rights in emergency circumstances (Kubarieva, 2023). These decisions help to prevent abuse of rights by states and contribute to the stability and progressive development of the legal system. They serve as a guide for national courts and law enforcement officials in resolving analogous cases and encourage governments to follow international human rights standards.

L.R. Helfer (2021) also holds a similar opinion. The researcher argues that many governments have responded to the COVID-19 pandemic by declaring a state of emergency and imposing restrictions on personal freedoms guaranteed by international law. However, more states have taken extraordinary measures than have officially withdrawn from human rights conventions. The pandemic has highlighted problems in the way states use derogations from human rights: measures that were previously considered temporary have become standard, and some of them are still in place after the immediate threat has passed. The problem is that states do not always adhere to the terminality of restrictions. Often, emergency measures become permanent, violating human rights even when there is no urgent need. The terms of the restrictions are often not clearly defined, which creates opportunities for abuse and manifestations of authoritarianism (Tengilimoğlu & Pentassuglia, 2023). It is worth agreeing with the researcher's opinion, even though the researcher has considered different aspects of the problem. Court decisions that define human rights standards and principles can be used to assess the legality and validity of measures taken in a state of emergency. The judgements of the European Court can serve as a benchmark for assessing whether measures taken by governments follow international human rights standards (Khablo & Svoboda, 2024). This may encourage states to improve their legal mechanisms and legislation to ensure compliance with international human rights norms and standards, even in extraordinary circumstances. Thus, the legal influence of the international court of fundamental human rights on the development and transformation of law is manifested in ensuring the protection of human rights in emergency situations, which underlines the urgency of reforms and the constant need to always follow international human rights standards.

Conclusions

The ECHR judgements are not only an important legal document, but also a powerful tool that has a considerable impact on legislation and court practice in Ukraine. These decisions not only serve as a source of law, but also stimulate changes in legislation and court practice to ensure compliance with international human rights standards. The impact of ECHR judgements is manifested in several ways. They set precedents that reflect the basic principles and standards of human rights that all parties to international agreements must respect. Ukraine, as a signatory to the Convention, has an obligation to take these precedents into account in its legislation and judicial practice. Furthermore, ECHR judgements are binding on Ukrainian courts and other authorities within the framework of their international obligations to the Council of Europe. Failure to follow these decisions can lead to sanctions, such as financial penalties and a deterioration in the country's international status.

Despite certain achievements of Ukraine in the implementation of international court decisions, there are serious human rights issues that need to be addressed immediately. For the further development of the human rights protection system in Ukraine, it is necessary to strengthen the mechanisms for monitoring the enforcement of court decisions and ensure broad access to justice. One of the main problems concerns the inefficiency of the system of enforcement of international justice decisions in Ukraine. Court decisions are often ignored or delayed, which undermines trust in the judicial system and limits the ability of citizens to protect their rights. To ensure the effective implementation of the ECHR judgements, an effective control mechanism should be established to guarantee prompt and full implementation of the ECHR judgements. Therefore, for the further development of the human rights protection system in Ukraine, it is important to strengthen the mechanisms for monitoring the enforcement of court decisions and ensure broad access to justice for all citizens of the country.

Based on the conducted study, several promising areas for further research can be identified: analysis of the mechanisms for monitoring and enforcement of court decisions, identification of factors affecting their effectiveness, and development of ways to improve these mechanisms.

Acknowledgements

None.

Conflict of interest

The author of this study declares no conflict of interest.

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Вплив рішень Європейського суду з прав людини на формування та трансформацію українського права

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Анотація. Актуальність дослідження полягає у тому, що Страсбурзький суд відіграє значну роль у захисті прав та свобод громадян, а рішення ухвалені Європейським судом з прав людини (ЄСПЛ), відображають взаємодію української юрисдикції з європейськими нормами і стандартами прав людини, що є надзвичайно важливим у контексті зміцнення демократичних принципів та правової держави в Україні. Метою дослідження було вивчення впливу судових рішень міжнародного суду з прав людини на структуру та зміст українського законодавства. Під час дослідження були використані наступні методи: історичний, герменевтичний, статистичний методи та метод порівняльного аналізу. У результатах дослідження наведено вплив рішень міжнародного суду, який гарантує дотримання індивідуальних свобод, на формування та трансформацію українського правового простору. Було проаналізовано, як українські суди реагують на рішення Страсбурзького суду. Виявлено, що нерідко, ці рішення використовуються як підстава для вдосконалення законодавства та практики правозастосування в Україні. Проте, існують і випадки недотримання рішень ЄСПЛ, що свідчить про необхідність подальшого зміцнення механізмів впливу міжнародного права на внутрішнє законодавство країни. Досліджено конкретні випадки, коли рішення ЄСПЛ допомогли у відстоюванні прав українських громадян перед внутрішніми судовими органами або державними установами, що свідчить про важливу роль Європейського суду у гарантуванні захисту прав людини в Україні. Ці рішення не лише вказують на проблеми та прогалини в національному законодавстві, але й сприяють удосконаленню правозастосування та захисту прав громадян. Практичне значення дослідження полягає у тому, що воно дозволить удосконалити практику правозастосування рішень Європейського суду в країні, а також, аналіз таких рішень може стати основою для розробки механізмів захисту прав громадян в українському судовому процесі

Ключові слова: міжнародні стандарти; конвенція; закон; прецедент; міжнародні угоди; юстиція

UDC 347.63
Doi: 10.32518/sals4.2024.18

Соціально-правові студії. 2024. Т. 7, № 4
Social & Legal Studios. 2024. Vol. 7, No. 4

Approach of Albanian legislation to minors in conflict with the law in a comparative perspective

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Abstract. The purpose of this study was to identify the specifics of Albania's legislative approach to minors in conflict with the law in comparison with other countries to identify unique and common features. For this, the study examined and compared the general provisions of the Albanian legislation on minors in conflict with the law with the legislation of Italy, France, Germany, and the United States. It was found that Albania, like many European countries, seeks to preserve a humanistic approach to the juvenile justice system, focusing on social rehabilitation and avoidance of imprisonment wherever possible. However, in contrast to the developed juvenile justice systems in France, Germany, and Italy, the Albanian system is still undergoing reform and improvement to meet EU standards. Compared to the United States, where juvenile criminal justice is often more severe, European approaches, including Albania's, favour rehabilitation and probationary measures. The age of criminal responsibility varies substantially across the countries under study. In Albania, it is close to the age thresholds in France, Germany, and Italy. In the United States, the approach to the age of responsibility varies from state to state. In Albania, as in other European countries, special procedures have been developed for the trial of cases involving minors. Germany and France have detailed regulations on the operation of juvenile courts. In the United States, by contrast, not all states have separate juvenile courts, while minors can be tried in adult courts for especially grave crimes. In European countries (France, Germany, Italy) and partly in Albania, legislation stipulates the active involvement of the family and community in the rehabilitation process. In the United States, family and community involvement is less structured at the legislative level, which can complicate the rehabilitation process

Keywords: criminal legislation; child rights; justice system; juvenile justice; children's rights protection; court processes

Introduction

The consideration of the rights of children and minors in the justice system is a key aspect of international law. Exploring Albanian legislation in a comparative context helps to assess the extent to which international standards, such as the UN Convention on the Rights of the Child (1989), are being met and how effective the country's legislation is in the socialisation of minors. It is essential to understand how Albanian legislation approaches contribute to the correction of juvenile offenders and reduce recidivism. Comparison with other countries allows identifying possible ways to improve the system. Albania is a country on a path to reform its justice system in line with European standards. Comparison with other countries that have already adapted modern approaches to juvenile justice can identify gaps in the local system and provide practical recommendations for legislative changes. The study of legislative approaches to juveniles in other countries is vital for the development of legal science, as it offers insight into trends and best practices in juvenile justice. This can be useful for law students, practitioners, and legislators working in the field of juvenile

Suggested Citation **Article's History**: Received: 25.08.2024 Revised: 22.11.2024 Accepted: 23.12.2024

Fekolli, S., Çela, E., & Kalemaj, E. (2024). Approach of Albanian legislation to minors in conflict with the law in a comparative perspective. *Social & Legal Studios*, 7(4), 18-27. doi: 10.32518/sals4.2024.18.

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justice. Overall, the comparison of Albanian legislation with other legal systems allows for a better understanding of the specific approaches to working with minors in conflict with the law, which will contribute to the development of more effective and humane juvenile justice in Albania and beyond.

According to D.M. Marković and I. Spaić (2022), Albania has a minimum age of criminal responsibility of 14 years. This means that persons under the age of 14 cannot be held criminally liable for any offence. Albanian legislation on minors in conflict with the law, according to the findings of R. Bezić (2021), is focused on rehabilitation, social integration, and minimisation of punishment. Compared to many other countries, Albania tries to approach such cases in line with international best practices, such as the UN Convention on the Rights of the Child and the European Standards of Juvenile Justice. E. Kerka (2024) noted that the Albanian legislation on minors in conflict with the law is developed in line with international standards. The basis of this legislation is the Criminal Code of the Republic of Albania, as well as special regulations that define the specific features of the treatment of juvenile offenders. The juvenile justice system in Albania focuses on the rights of the child, their rehabilitation and reintegration into society.

Having conducted research on this topic, A.L. Pennington (2019) noted that instead of imprisonment, alternative measures of punishment, such as probation, community service, participation in rehabilitation and educational programmes, are more often imposed on minors. According to the findings of S. Case and K. Haines (2021), this is in line with international standards, which consider imprisonment to be a measure of last resort. This practice is in line with international standards, according to which imprisonment for the youth is the last resort. Alternative measures contribute to reducing recidivism rates, as they consider the specifics of adolescence and are aimed at correcting behaviour rather than merely punishing. This approach has a greater rehabilitative effect than detention in juvenile institutions, where exposure to a disruptive environment can only exacerbate the problem.

The Albanian probation service, according to O. Ristova (2022), plays a significant role in the re-socialisation of juvenile offenders by supporting them in their integration into society. Mediation, which allows for the involvement of victims in case resolution, also helps to reduce recidivism. According to B.K. Kim *et al.* (2021), minors have access to educational and vocational programmes within probation and penitentiary facilities. Probation measures for minors in conflict with the law are aimed at rehabilitation, resocialisation, and prevention of recidivism (Spytska, 2023a). The overarching goal of these measures is to help juvenile offenders return to normal life, avoiding harsh custodial sentences that could adversely affect their future. This is a crucial aspect, as educational support and skills training help the youth to adapt more successfully after completion of their sentence.

Albania faces several key challenges in juvenile justice and support for minors in conflict with the law. One of the greatest is the limited access to specialised institutions for minors. According to E. Peppo (2023), Albania has a limited number of institutions specialising in working with juveniles, which limits the possibilities for effective intervention and rehabilitation. This shortage of facilities complicates the placement of offenders in a safe environment where they can receive adequate support and supervision, especially in large cities and rural areas where the number of places is even smaller.

Therefore, considering the above, the purpose of this study was to investigate the specific features of Albania's legislative approach to juveniles in conflict with the law, compare this approach with analogous approaches in other countries and determine how effectively Albanian legislation ensures the rights and rehabilitation of juvenile offenders. Objectives: to investigate the key laws and regulations of Albania related to minors in conflict with the law, to assess the specifics of the application of these laws (procedures for arrest, pre-trial detention, trial, punishment, and rehabilitation), to compare the approaches of France, Italy, Germany, the United States, and Albania to identify differences and commonalities, as well as the effectiveness of approaches to rehabilitating minors.

Materials and methods

The study analysed the theoretical aspects of the legal status of minors and the basic principles of legal regulation in the field of minors. The study analysed trials in juvenile cases in Albania, the USA, France, Italy, and Germany, and identified their features. Alternative methods of resolving conflicts involving minors were identified. The key international standards in the field of juvenile rights protection and the practice of applying juvenile legislation were examined. The study also analysed the principal factors influencing juvenile delinquency.

Within the framework of the study, the practical experience of France, the United States, Italy, and Germany was examined. The legal framework for the protection of minors in the above countries was analysed, and the age at which minors can be held criminally liable for crimes was determined. The study analysed the system of rights and obligations of minors in France, the USA, Italy, and Germany. The primary purpose of juvenile proceedings was identified. The study also determined which institutions are authorised to conduct juvenile proceedings and what criminal law actions are available to the court. Special attention was paid to the decisions of the United States Supreme Court. The concept and essence of the "model court" in the United States were analysed.

Using the method of analysis, the study examined and compared the legislative acts regulating the issues of minors in conflict with the law in Albania, as well as in other countries for comparative analysis. Specifically, the following legal acts were reviewed: the Criminal Procedure Code of the Republic of Albania (1995), Criminal Code of the Republic of Albania (1995), Directive of the European Parliament and of the Council No. 2016/800 "On Procedural Guarantees for Children Who are Suspects or Accused in Criminal Proceedings" (2016), International Convention on the Rights of the Child (1989), Law of the French Republic No. 45-174 "On Delinquent Children" (1945), Penal Code of the French Republic (1992), Decree of President of Italy No. 488/88 "The Juvenile Justice in Italy" (2015), Criminal Code of Germany (1998), Juvenile Courts Act of Germany (1974). Apart from the regulations, the study examined the legal position of the Supreme Court of the United States, which dramatically influenced the protection of minors in conflict with the law, specifically in the Case No. 104 "Kent v. United States" (1966) and Case No. 116 "In re Gault" (1967). The study also analysed the statistics of crimes committed by minors aged 12 to 17 in the United States from 1980 to 2021.

Results

The study of criminal liability of adolescents suggests that minors are a category of offenders subject to criminal liability. As a group, they stand out for their specific features due to their age, level of physical and mental development, conditions of the environment, and special place in society, which means that a special criminal law approach to their behaviour and the exercise of the right to criminal law protection is required. This includes the protection of fundamental social relations that are violated by criminal offences, as well as the recognition and observance of the rights of minors in a manner that ensures their best interests, development, and proper application of the principles contained in the fundamental law. The criminal law protection of adolescents is one of the greatest achievements of humanity and states, and the guarantee of criminal justice to fulfil a public duty on a universal basis for all children and adolescents is an indisputable factor in the social contract. Legal regulation of the situation of minors begins with the determination of the age of criminal responsibility.

Juvenile delinquency is caused by factors that influence the behaviour of young people in various social, economic, and psychological contexts (Table 1). The level of juvenile delinquency depends on a combination of social, economic, psychological, and institutional factors. To reduce crime, it is important to implement comprehensive measures, including social support for families, prevention and rehabilitation programmes, as well as educational initiatives that will help integrate adolescents into society and help them avoid criminal behaviour.

Table 1. Causes of juvenile delinquency

Type	Factors
Socioeconomic factors	1. Poverty and low standard of living. 2. Unemployment and limited opportunities. 3. Low level of education.
Family factors	1. Troubled families. 2. Conflicts in the family. 3. Absence of parental control.
School factors	1. Bullying and aggression at school. 2. Low school performance. 3. Absence of support from teachers.
Psychological and personal factors	1. Emotional disorders. 2. Impulsivity and aggressiveness. 3. Psychological disorders and emotional issues.
Influence of environment and social connections	1. Peer pressure. 2. Living in crime-prone areas. 3. Negative influence of mass culture and the media.
Drugs and alcohol	1. Psychoactive substance use. 2. Early access to drugs and alcohol.
Lack of social support programmes	1. Lack of preventive programmes. 2. Absence of rehabilitation programs for juvenile offenders.
Legal and institutional factors	1. Inefficiency of the law enforcement system. 2. Absence of a differentiated approach.

Source: A. Aazami *et al.* (2023)

The criminal legislation of Albania establishes a set of general principles to be applied throughout juvenile proceedings, where the focus is on protecting the best interests of the minor, regardless of their position in the proceedings. Currently, Albania does not have a special court with the exclusive competence to resolve criminal law disputes of minors in conflict with the law, while criminal cases with juvenile defendants are currently heard in special courts. According to the Criminal Procedure Code of the Republic of Albania (1995), court hearings when the defendant is a minor, or even if the minor is the victim, are closed (Redlich *et al.*, 2022). However, an interesting point, apart from the trial and its elements, is the delivery of the judgement by the court and its execution in the penal institutions. The Albanian court considers the circumstances of the case, the personal characteristics of the accused, and the possibility of reforming the minor when passing judgement on juveniles (Kerka, 2024). The purpose of the court decision is to ensure fair treatment and at the same time create conditions for rehabilitation. There are special penal institutions for juveniles who received a sentence of imprisonment, which are oriented towards their needs (Resnik *et al.*, 2020). Specifically, these institutions are the Kukës Centre for Minors, the Tirana Centre for Rehabilitation and Adaptation of Minors. The Albanian penitentiary system provides adapted conditions of detention for juveniles, where they have access to education, vocational training, and psychological care.

It should be emphasised that in any case, a minor in conflict with the law may apply for alternative measures to deprivation of liberty, as the latter is considered the ultimate measure that can be applied only in extreme cases (Liefaard, 2019). According to the Criminal Code of the Republic of Albania (1995), restriction of liberty for minors is applied mainly in cases of grave or violent crimes: intentional murder, grievous bodily harm, rape, or other grave sexual offences, crimes related to human or drug trafficking, and terrorist acts. The very purpose of convicting a minor is aimed at re-socialising the minor, rehabilitating them in penal institutions, reintegrating them after the conclusion of their sentence, and preventing them from becoming a repeat offender and committing similar or the same criminal acts in the future. Throughout the entire process of sentencing a minor to imprisonment, the key guarantee offered to them is psychological care, guidance, and supervision by specialists in this

field. Notably, for minors, as a special category, the legal provisions for deprivation of liberty differ from those for adults.

However, both the Criminal Code and other supplementary acts have some shortcomings in terms of legal provisions. None of the legislative acts of the Republic of Albania contains legal provisions regulating the relations of the media regarding the dissemination of information and their obligation to keep confidential data of minors in conflict with the law (Milutinović *et al.*, 2023).

Apart from the above-mentioned shortcomings in the harmonisation of national legislation, the situation also seems problematic in the case of the "*in dubio pro reo*" principle, which is emphasised by international legal documents, namely Directive of the European Parliament and of the Council No. 2016/800 "On Procedural Guarantees for Children Who are Suspects or Accused in Criminal Proceedings" (2016). According to this principle, the Directive stipulates that "the exercise by a person under investigation or accused, a minor in conflict with the law, of the right to remain silent or not to testify may not be used against them or as evidence that they have committed a criminal act". According to the Directive, respect for the principle of presumption of innocence requires states to oblige them not to provide evidence of guilt without a final court decision confirming this fact, to encourage the media not to violate the presumption of innocence without a final form of court decision, and to impose sanctions in case of violation of these standards.

Although there is no general legislation on minors in conflict with the law in France, the various ministries representing young people, such as the Ministry of Justice, the Ministry of National Education or the Ministry of Youth, have created separate regulations. Furthermore, in 1989, France ratified the International Convention on the Rights of the Child (1989), which guarantees the rights of all children and creates a protective legal framework for them. The French authorities have long been concerned about juvenile justice, which is why Law of the French Republic No. 45-174 "On Delinquent Children" (1945) was adopted, aimed at abandoning repressive measures and replacing them with educational ones. The legal framework for the protection of minors was created in 1945 with the adoption of numerous resolutions, decrees, and laws relating to the protection of children and adolescents. This Decree brought about some substantial changes, including a reduction in age-related liability and a change in the 18-year age of majority. For children under 13, the Penal Code of the French Republic (1992) establishes a presumption of legal incapacity: "Minors under the age of thirteen shall be presumed to be incapable of discerning whether they are committing a criminal offence or not". Furthermore, France legislatively changed the criminal procedure for juvenile offenders.

Depending on the circumstances, French young people have different rights and obligations. They come from civil law after they reach the age of majority or from the rights of the child when they are still minors (Leenknecht *et al.*, 2020). Young French people have very few rights. They generally have few direct rights of their own and mostly have social rights (family benefits, social security membership, tax benefits, etc.). To ensure that a minor or convicted minor can best exercise their other rights and take part in activities that are primarily educational and aimed at reintegrating the minor into society, consideration is given to keeping their status and offences to a minimum.

According to French legislation, as in many other countries, minors must be tried in specialised institutions rather than in ordinary criminal courts. One of these institutions is the so-called children's judge, who hears cases involving minors and imposes sanctions on them (De Maximy, 2021). The juvenile court, which has three professional magistrates and a people's jury, is the place where crimes committed exclusively by minors between the ages of 16 and 18 are tried according to a unique process that applies exclusively to minors. The court has the following categories of criminal law actions available to minors: educational measures in the form of preventing contact with the victim can be applied to minors who have reached the age of 10, and educational measures can be applied regardless of the age of the child. Proceedings for minors are usually held in private to protect the child's privacy and avoid public stigma.

Italy adopted new laws relating to the juvenile justice system in 1988. Decree of President of Italy No. 488/88 "The Juvenile Justice in Italy" (2015) calls on judges and lawyers and other representatives of the law to keep minors from any criminal penalties whenever possible, recognising that admission to the juvenile justice system is harmful to their natural development. According to the law, the juvenile justice process should be adapted to the needs of the individual and their level of education. Interventions should not negatively affect the personality of the minor, while helping them to adapt to normal social life.

This youth-centred approach is put into practice by providing judges with a variety of sentencing measures that can be tailored to the needs of each young individual. Remedies in this context include house arrest, probation, parole, special conditions, and judicial pardon. The judge can use these tools to call the young person to victim/offender mediation, community service, an individual educational project, applying for a job, or other necessary measures. Deprivation of liberty has effectively become a last resort since the adoption of this legal provision.

According to research, in 2014, around 1,000 young people were imprisoned in Italy, compared to 7,500 in 1988. Only 20% of the young people brought to trial were found guilty and sentenced by judges (Flayols *et al.*, 2019). Alternative sanctions focus on social resources, family, stable housing, and opportunities for education or employment. The absence of these social services and alternative options complicates the fulfilment of foreign-born adolescents, most of whom are unaccompanied, and increases the probability that they will be imprisoned. The data currently available shows that foreign youth are disproportionately imprisoned in the Italian juvenile justice system (Goldson *et al.*, 2020). Although they make up 40% of minors in detention, immigrants make up 20% of youth in the system. The Italian juvenile justice system should continue to prioritise the educational, developmental, and social needs of young people. However, this should apply to all young people, regardless of their background.

The German system places great emphasis on restorative practices and mediation, diversion, minimal intervention, and sanctions from the educational community. Deprivation of liberty is a measure of last resort. Minors under the age of criminal responsibility are subject to civil law. However, depending on their development, they may also be subject to criminal legislation. The conditions for this are determined by the relevant legal provisions, particularly the Criminal

Code of Germany (1998). While the general Criminal Code does not specifically address minors, certain provisions consider the age of the offender. The articles on liability stipulate those persons over the age of 14 can be held criminally liable, but with due regard to the approaches defined in the Juvenile Courts Act of Germany (1974). This Act is the principal law that defines the legal framework for the judicial proceedings against juvenile offenders. The Juvenile Courts Act of Germany (1974) is designed to accommodate the age-specific characteristics of young people, their psychological immaturity, and their re-socialisation needs. The law stipulates the possibility of alternative punishment, such as social and educational measures, supervised probation, mandatory participation in rehabilitation programmes, and mitigation of sentences such as restriction of liberty or short-term imprisonment in exceptional cases.

In the Federal Republic of Germany, hearings in criminal cases involving minors may only be held in juvenile courts. According to the Juvenile Courts Act of Germany (1974), during the hearings, the juvenile court must consider each juvenile case in a particularly confidential manner, trying to help with non-criminal support for the unhappy life of the young defendant. The court cannot perform this task jointly with the prosecutor's office. Considering this situation, there are provisions for administrative proceedings to be initiated by a higher judicial authority or on the initiative of the juvenile prosecutor in the public interest. This is particularly applicable in cases of repeated offences, where the young person was guilty of other habitual offences at a particularly young age, and where the severity of the punishment is expected to contribute to useful reform and crime prevention. According to the Juvenile Courts Act of Germany, the primary goal of juvenile proceedings is to reform minors. The rules are aimed at education rather than punishment. They allow for the use of warning or punishment as a measure of early criminal justice prevention. As a group prevention measure, education is used by influencing the individual. Its purpose is to ensure that the punishment does not have a particularly harmful effect on the minor. Community punishments include work therapy, special therapeutic care, or protection through placement in a foster care or educational institution (Zotaj *et al.*, 2024).

The German youth system is rehabilitative in nature, based on the Neustrelitz prison model (Banks, 2020). Since it is challenging to sentence a young person to prison in Germany due to legal provisions, people are sent to Neustrelitz. Unlike American prisons, their youth have access to a variety of vocational programmes, including agriculture, metalworking, woodworking, and culinary training. In Germany, on the other hand, these programmes have recently gained popularity due to federal penalty measures.

The juvenile justice system has experienced profound transformations through judicial intervention, particularly by the United States Supreme Court. Recognizing the distinct nature of youth criminal proceedings, the Court has consistently distinguished them from adult legal processes. In a pivotal Case No. 104 "Kent v. United States" (1966), the Supreme Court addressed critical procedural concerns regarding juvenile detention and prosecution. During this landmark case, law enforcement detained a young individual for an extended period without prompt judicial review, raising significant constitutional questions about due process. The Court ultimately determined that the prolonged detention without a formal hearing violated the minor's fundamental legal rights. This decision established crucial protections for juveniles facing potential criminal charges by mandating judicial hearings before adult prosecution, ensuring the right to legal representation, and requiring comprehensive review of prosecutorial decisions to transfer cases from juvenile to adult courts. These judicial guidelines ensure that prosecutorial actions involving minors undergo rigorous scrutiny, acknowledging the unique legal and developmental considerations specific to young defendants. The ruling underscored the importance of protecting constitutional rights while maintaining a balanced approach to juvenile justice.

Both the procedural rules and sentencing systems in the US juvenile justice system differ considerably from those for adults. Juvenile courts operate based on the core values of the Model Juvenile Court Act, which created a mixed court with the functions of a family court, civil court, and criminal court. Notably, the Model Court in the United States is not the name of a concrete law, but rather an initiative or concept within the framework of judicial reforms aimed at creating exemplary, effective court practices (Fogarty *et al.*, 2020). Some states (Georgia, Texas, Wisconsin) limit access to juvenile courts to those under 18 or 17, but states have broad discretion to determine the age of majority for various purposes of young people's rights and responsibilities.

The most significant procedural difference between a juvenile court and an adult court is their foundation: due process. Juvenile courts are generally subject to the conventional system of due process as established by the U.S. Supreme Court. The two principal rights protected are the right to notice and the right to counsel. These rights were shaped and consolidated by the Case No. 116 "In re Gault" (1967). The waiver of counsel in juvenile cases is widely permitted, which has led to criticism that minors may lose essential liberty rights without any independent advice or representation, leading to personal distress.

Children and their environment need to be aware of the law, the rights and obligations that derive from it, the concept of criminal liability, and the consequences and gravity of serious anti-social behaviour. The core purpose of educational activities is to shape children's moral beliefs by providing them with examples of everyday behaviour that could lead to a crime (Simović & Šikman, 2023). The partners in this goal are the family, school, teachers, and all-important figures – institutional and otherwise, including the media. Communication is always an open channel for informing the population about the rights and guarantees that young people should have and their responsibilities arising from their age. Different forms of communication should be used to inform different ages. Methods of information transfer and training, including interactive games, should be developed on an ongoing basis. Public control over the observance of the rights of minors and their guarantees should also be exercised by organisations whose task is to protect the youth. Therewith, it is necessary to provide various financial, legal, social, psychological, and other support to young people in need, as it is the responsibility of society to take care of the future of juvenile offenders. Its mission is not to return evil onto those who have done wrong, but rather to prevent it from becoming an inborn trait. However, in the interests of the normal development of minors in harmony with society, the legal norm can and should from time-to-time resort to coercion.

In recent years, the United States has been implementing programmes aimed at rehabilitating juveniles rather than just punishing them. For example, Restorative Justice Programs promote the involvement of adolescents in society after offences, which reduces the risk of recidivism. The United States has implemented many programmes to support families with children in crisis, which provide psychological care and support for the socialisation of most-at-risk adolescents. These include the CAPTA and Family First Prevention Services Act programmes. Comprehensive measures, including juvenile justice reforms, investment in education, prevention programmes, and access to social services, have been shown to reduce juvenile crime (Fig. 1). Countries with low levels of juvenile delinquency typically have well-developed social programmes and invest more in preventing problems in childhood, as exemplified by the United States and other countries.

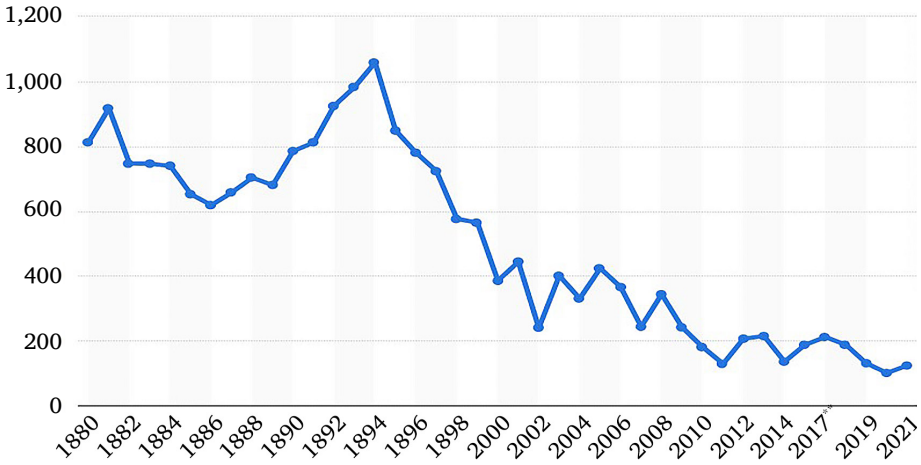

Figure 1. Number of grave crimes committed by minors aged 12 to 17 years in the US from 1980 to 2021
Source: Statista (2024)

Reducing the level of juvenile delinquency in the world is a complex process influenced by social, economic, educational, and legal factors. In recent years, many countries have experienced a positive trend towards a decrease in juvenile delinquency, which is explained by a variety of approaches to preventing and supporting children and youth.

Expanding access to quality education and developing programmes that foster critical thinking, moral values, and social skills in children help them make positive choices. Families with a stable social and economic situation are less likely to be involved in criminal activities (Massenkoff & Rose, 2024). Family support programmes, including crisis intervention, psychological care, and counselling for parents, strengthen family ties. Instead of conventional punishment for minors, restorative justice programmes focus on conflict resolution and repair of harm. This approach promotes awareness of the consequences of one's actions and reduces the risk of repeated offences. Many countries are abandoning long prison sentences for juveniles. Instead, they use methods such as community service, compulsory education, participation in therapeutic programmes, etc. Increasing the availability of psychological help and support for minors reduces the level of aggression, depression, and anxiety, which can be the causes of criminal behaviour (Dmytrenko, 2023). Providing children with the opportunity to take part in sports, creative activities, and educational programmes reduces the risk that they will resort to the criminal world due to lack of activities or support. Many countries are investing in creating centres where adolescents can receive support, find mentors, and take part in various development and employment programmes. The reduction in juvenile delinquency rates is the result of an integration of multiple approaches, ranging from family support and investment in education to juvenile system reform. The most successful strategies combine crime prevention with rehabilitation, developmental support, and integration into society, which helps to create a safe environment for children and youth.

Discussion

The criminal liability of minors has specific features that account for age, psychological development, and the need for rehabilitation instead of punishment. Minors differ from adults in terms of mental development, emotional maturity, and ability to assess the consequences of their actions. Therefore, criminal law prescribes a special, more lenient approach to the liability of minors. In most countries, there are special laws and regulations that separate the criminal liability procedure for minors from that for adults to protect the rights of children and create conditions for their rehabilitation.

According to T. Crofts (2023), European countries currently lack uniform legislation on the age of criminal responsibility for minors. While liability typically arises between fourteen and sixteen years, this remains an exception. Most European nations, including Albania, set sixteen as the lower limit of criminal liability for minors or gradually reduce this threshold. England emerges as a distinct exception, establishing both the minimum age of criminal liability and court appearance at ten years. In examining this issue, T. Crofts (2023) notes that criminal liability for grave crimes like murder and rape can commence at age 14, enabling prosecution of minors for serious offenses.

At the same time, according to F. Hikmah and A. Yanto (2023), researchers are increasingly raising the issue of lowering the age of criminal responsibility. For example, A.H. Wong (2024) argues that by lowering the age of criminal responsibility, adolescents will be more aware of the consequences of their actions and responsibility for grave crimes. This may reduce the number of offences, as fear of

punishment will be a deterrent. Modern adolescents often reach physiological and social development earlier than in the past. Therefore, they can better understand their actions and their consequences, and therefore take responsibility for them. However, the UN Convention on the Rights of the Child (1989) recommends that the age of criminal responsibility should not be lower than 12 years. Many countries adhere to this norm, and lowering the age may contradict international recommendations that focus on child protection and rehabilitation rather than punishment. It is also worth noting the opposite opinion of A.H. Wong (2024): Juvenile offenders who enter the criminal justice system are at a higher risk of reoffending. Harsh punishment at an early age can exacerbate the negative impact on the child and increase the chance that they will return to the criminal path.

Adolescent criminal behaviour is the result of a complex interplay between socio-economic conditions, family factors, social pressure, psychological development, and cultural influences (Spytska, 2023b). Understanding these causes helps society to develop more effective juvenile crime prevention programmes aimed at correcting behaviour and socialisation. It is worthwhile to focus on the study by R.K. Mwangangi (2019), who argues that unfavourable socio-economic conditions are a significant factor that pushes adolescents to commit offences. Adolescents from poor families or high-crime neighbourhoods often perceive offending as a way to improve their financial situation or to emulate behaviours common in their environment. According to research, this can include property, drug, or violence-related crimes, especially if adolescents feel they lack access to education and other social resources. This is true, as the family is the first social institution where children learn basic behavioural norms and moral values. A. Mazzone and M. Camodeca (2019) showed that children from families where parents actively support moral and ethical principles are less likely to commit offences. Positive examples in the family help to build respect for the law and a sense of responsibility for one's personal actions.

The experience of developed foreign countries can be used to address the current problems of juveniles in conflict with the law, including juveniles who have committed grave and especially grave crimes. According to S. Eriksen *et al.* (2021), this experience has demonstrated the effectiveness of participatory processes aimed at minimising the number of juvenile deprivations of liberty. The focus is on measures aimed at exemption from liability, including the application of preventive, therapeutic, social, and other types of influence on minors who have committed offences, and the protection of the legitimate interests of minors without legal representation. Albania is actively working to bring its legislation on juvenile liability in line with international standards, including the UN Convention on the Rights of the Child (1989). Specifically, changes in criminal law have placed emphasis on rehabilitation and social integration of juvenile offenders instead of punishment. Detention for children is a measure of last resort and should be used for the shortest possible period, and legal and psychological aid is guaranteed for children who are offenders or victims of crime.

Some researchers oppose criminal liability for minors. For example, L. Polglase and I. Lambie (2024) argued that imprisonment and harsh punishments can lead to a juvenile becoming even more entrenched in the criminal environment. Contact with adult offenders and incarceration can exacerbate the situation by creating a negative social impact. J. Liang and T. Peng (2023) supported the opinion of psychologists and sociologists that adolescents have not yet fully developed the emotional and psychological qualities that allow them to make informed decisions. The adolescent brain develops until the age of 25, and therefore their behaviour is often determined by impulsivity and peer pressure. While the conclusions of the researchers should be accepted, it is worth remembering that criminal liability of minors helps to protect society, because if a minor commits a crime, they must be held accountable, just like adults. This provides justice for victims and can deter such behaviour in the future. Criminalisation can act as a deterrent. If adolescents are aware of the consequences of their actions, this can reduce juvenile delinquency (Apakhayev *et al.*, 2024). Some researchers believe that accountability, even if it comes with lighter penalties, teaches adolescents the value of rules. Therefore, it is worth paying attention to the findings of Y. Pan (2023), who noted that many experts suggest replacing conventional punishment for adolescents with restorative justice, which aims to reconcile with victims and correct their behaviour. This approach shows better results in reducing recidivism and contributes to the re-socialisation of adolescents.

Consequently, most countries are adopting a humane approach aimed at rehabilitation rather than punitive methods that can hinder the socialisation of adolescents. Measures such as probation, community service, and rehabilitation programmes allow adolescents to understand the consequences of their actions and adapt to the norms of behaviour in society (Yusupova, 2022). Legislation often stipulates more lenient penalties for minors, including the prohibition of life imprisonment and reduced maximum sentences. This is in line with the UN Convention on the Rights of the Child (1989), which calls for a special approach to children, including those who have committed offences. The involvement of psychologists and social workers is an integral part that helps to accommodate the psychological state of the adolescent and guides them on the right path. It also facilitates rehabilitation and reduces the probability of repeated offences. These features reflect the desire of the international community and individual countries to promote the social reintegration of juvenile offenders, supporting their rights and dignity, and to reduce juvenile delinquency through humane treatment and preventive measures.

Conclusions

The Albanian criminal legislation on minors provides the latter with maximum protection, recognising the possibility of alternatives to detention, or even the possibility of avoiding it as an institution. Guaranteeing the fundamental rights and needs of minors is at the heart of this system. What needs more work is the IEVP for minors and the possibilities of reorganising these bodies to meet the concrete needs of minors as closely as possible.

The Italian legislation that controls the juvenile justice system appears to be functioning effectively, according to the latest available data. However, a closer look at the data reveals an intriguing contradiction: the system performs poorly for young people from other countries, but well for Italian youth. The main principle of Decree of President of Italy No. 488/88 is the reintegration of minors into the community; however, based on the provisions of the

legislation, it appears that foreign youth – whether immigrant or not – rarely take part in the support procedures when they have fallen behind. France, on the other hand, has seemingly learned over several decades of experience what measures alleviate the minor's situation and help in their reintegration and what measures should not be taken. In this context, avoidance, as one of the institutions recognised by French juvenile criminal legislation, as well as Albanian, appears to be one of the most practical choices that the prosecution makes in these cases. Germany is one of those European countries that can undoubtedly be called a pioneer in juvenile justice. There is not only a set of acts regulating the situation of juvenile offenders, witnesses, or victims, but also how the latter will be reintegrated by developing individual programmes for the concrete needs of each juvenile.

The long-established juvenile justice system in the United States has undergone a considerable transformation in recent years. American courts are beginning to adjudicate more minors as adults than ever before, moving from a model of rehabilitative goals to a much more punitive approach. One of the benefits of this change is that minors now have access to constitutional rights that were previously reserved for adults in the criminal justice system. The disadvantage of this trend is that many young people are being processed through a system that is not suited to this function; it is a system that prioritises punitive justice over youth development and the prospect for reintegration. However, a positive development is the added safeguards provided to minors in the witness protection programme.

One important area for future research could include a comparative analysis of the effectiveness of probation programmes for juvenile offenders in Albania and other countries. This would allow exploring the role of probation in the rehabilitation and reintegration of minors into society.

Acknowledgements

None.

Conflict of interest

None.

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Підхід албанського законодавства до неповнолітніх у конфлікті з законом у порівняльній перспективі

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Анотація. Метою цього дослідження було визначення особливостей законодавчого підходу Албанії до неповнолітніх, які перебувають у конфлікті із законом, у порівнянні з іншими країнами для виявлення унікальних та спільних рис. Для цього було розглянуто та порівняно загальні положення албанського законодавства щодо неповнолітніх, які перебувають у конфлікті із законом, із законодавством Італії, Франції, Німеччини та США. Було виявлено, що Албанія, як і багато європейських країн, прагне зберегти гуманістичний підхід до системи ювенальної юстиції, зосереджуючись на соціальній реабілітації та уникненні тюремного ув'язнення, де це можливо. Однак, на відміну від розвинених систем ювенальної юстиції у Франції, Німеччині та Італії, албанська система все ще перебуває на стадії реформування та вдосконалення, щоб відповідати стандартам ЄС. На відміну від США, де ювенальна кримінальна юстиція часто є більш суворою, європейські підходи, в тому числі і в Албанії, надають перевагу реабілітаційним та пробаційним заходам. Вік настання кримінальної відповідальності в досліджуваних країнах суттєво відрізняється. В Албанії він близький до вікових порогів у Франції, Німеччині та Італії. У Сполучених Штатах підхід до віку відповідальності варіюється від штату до штату. В Албанії, як і в інших європейських країнах, розроблені спеціальні процедури для судового розгляду справ за участю неповнолітніх. У Німеччині та Франції існують детальні правила функціонування судів для неповнолітніх. У США, навпаки, не всі штати мають окремі суди для неповнолітніх, а за особливо тяжкі злочини неповнолітніх можуть судити в судах для дорослих. У європейських країнах (Франція, Німеччина, Італія) та частково в Албанії законодавство передбачає активне залучення сім'ї та громади до процесу реабілітації. У США залучення сім'ї та громади менш структуроване на законодавчому рівні, що може ускладнювати процес реабілітації

Ключові слова: кримінальне законодавство; права дитини; система правосуддя; ювенальна юстиція; захист прав дитини; судові процеси

UDC 343.352
Doi: 10.32518/sals4.2024.28

Соціально-правові студії. 2024. Т. 7, № 4
Social & Legal Studios. 2024. Vol. 7, No. 4

Corruption prevention as a public administration improvement factor

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Abstract. Corruption remains a major challenge to good governance in countries. It reduces a country's economic development potential and the well-being of its citizens, which is why authorities are constantly looking for new ways to combat it. Therefore, it is necessary to assess the existing methods of fighting corruption and analyse the experience of other countries in this area. The research aimed to analyse the experience of Singapore, Finland, Denmark, South Korea, and Kazakhstan in the context of combating corruption and to formulate recommendations on their basis for the Republic of Kazakhstan. In the study, comparative law and legal modelling methods were utilised to analyse the differences in anti-corruption legislation and enforcement between Kazakhstan and other countries. The differences that exist in these states were described, as well as the reasons for achieving certain results in the fight against corruption, despite many common approaches (tightening legislation, digitalisation of government processes, development of ethical and cultural interactions in the country). Subsequently, an assessment was made of the opportunities for Kazakhstan to apply the methods actively used in Singapore, Finland, Denmark, and South Korea to its specific development. It was pointed out that it is worthwhile to implement extensive anti-corruption measures in all possible areas of the country, and that the policies applied by the authorities should be comprehensive. It will be useful for improving public policies to counteract unscrupulous behaviour on the part of public officials

Keywords: economic development; governance; public policies; efficiency of enterprises; investor confidence

Suggested Citation

Article's History: Received: 10.09.2024 Revised: 24.11.2024 Accepted: 23.12.2024

Aitzhanova, B., Oralbayeva, Zh., Zhanibekov, A., Suatay, S., & Apakhayev, N. (2024). Corruption prevention as a public administration improvement factor. *Social & Legal Studios*, 7(4), 28-37. doi: 10.32518/sals4.2024.28.

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Introduction

Countering corruption is one of the key factors in improving good governance (Luna-Pla & Nicolas-Carlock, 2020). It includes several measures related to creating an environment in which it would be impossible or extremely difficult to form any action involving the misuse of public money or abuse of power. The reason for this is the variety of negative effects that corruption brings with it. The most obvious among them is the decline in the general level of the economic well-being of citizens, which arises from the fact that funds allocated from the budget to social areas are not used for their intended purpose. Moreover, qualified personnel in such conditions tend to go abroad, which reduces the efficiency of enterprises as well as the scientific and technological potential. However, there are other effects as well. For example, there is a deterioration of sentiment among the local population and a decline in trust among citizens. There is a decline in trust among citizens in state institutions, authorities, and the governance system as a whole. This can lead to a sense of hopelessness and apathy among the population, as well as a decrease in citizen participation in political life and public affairs (Mugellini *et al.*, 2021). In addition, it distorts the market conditions in the country, as individual businesses can profit from illegal contracts with government officials rather than from competitive advantages. Corruption also causes capital outflows from the country as it reduces investor confidence (Shahini, 2024). The quality of social programmes related to education or health is also deteriorating, which negatively affects human capital (Androniceanu *et al.*, 2022). It is worth noting that there are many negative effects of corruption, but not all of them, as in fact, their number is enormous. That is why it is necessary to consider and find measures to counteract unscrupulous behaviour by civil servants in different countries. The study is relevant for Kazakhstan in 2024 due to serious socio-economic challenges that require effective anti-corruption measures, including improving legislation and increasing transparency of public procurement. In the context of global economic instability, it is important to restore public trust in state institutions, taking into account new challenges in the fight against corruption and studying the successful practices of other countries, such as Singapore and Denmark.

As part of the research, it was important to assess the general features of Kazakhstan's modern development. This is how opportunities and problems in the country have been studied by O. Demenko (2021). The scientist considers the social features of the country's functioning, as well as the factors that affect its economic changes (diversification of the economy, development of high-tech industries, etc.). The paper by N. Alfirević *et al.* (2024) review anti-corruption research in Southeast Europe and compare it with global and regional literature. The authors emphasize the importance of an interdisciplinary approach to understanding corruption that encompasses social, economic, and political factors. They note that corruption in the region is often rooted in historical contexts and cultural traditions, which makes it difficult to implement effective anti-corruption measures. The study by D. Němec *et al.* (2021) focuses on the relationship between corruption, taxation, and the shadow economy. They point out that high levels of corruption lead to lower tax revenues and foster the development of the informal economy, which in turn undermines economic stability. The authors emphasize the need to reform the tax system and increase the transparency of financial flows to combat these negative phenomena.

In the study by R. Pomfret (2022) analyses the interaction between the European Union and Central Asia, in particular in the context of economic development and trade. The author emphasizes that international cooperation can play an important role in supporting anti-corruption initiatives in the region, as transparency and accountability in financial matters are critical to attracting foreign investment. The study indicates that corruption in Central Asia is a complex socio-economic phenomenon that requires a comprehensive approach to overcome. The author emphasizes that in order to successfully fight corruption, it is necessary to focus on improving institutions, increasing transparency in governance, and involving the international community in the implementation of anti-corruption strategies.

A similar study on the new goals of economic and social development of the country is carried out by A. Figus and D.N. Shaikin (2019). The scientists described the impact of Kazakhstan's new economic strategy on the future development of the country. Works aimed at studying corruption in the country and methods of combating it also played an important role. Thus, S. Akhmetzhanov and S. Orazgaliyev (2021) studied corruption in Kazakhstan in terms of trade unions, pointing to the reduced capacity to protect workers, i.e., to fulfil their immediate obligations. Z. Khamitov *et al.* (2022) examine the problem of unfair public procurement in the country, and the complicity of officials and suppliers in corrupt practices in this area of activity. Y. Kalyuzhnova and M. Belitski (2019), in turn, assessed the impact of corruption on the activities of local content companies, looking at the specifics in terms of regions of Kazakhstan. It is worth noting, however, that in the current scientific literature, there are quite a few works aimed at studying this phenomenon in the Republic of Kazakhstan, which once again indicates the relevance of the research.

The objective of the research is to analyse the anti-corruption experiences of Singapore, Finland, Denmark, South Korea, and Kazakhstan, and to develop recommendations for the Republic of Kazakhstan based on this analysis. The objectives of the study were as follows: to evaluate the effectiveness of the anti-corruption strategies implemented in the selected countries, focusing on their impact on governance and economic development; to identify the key factors contributing to successful anti-corruption measures and assess their applicability to the context of Kazakhstan.

Materials and methods

Some components of the Kazakh legal framework were used, namely the Law of the Republic of Kazakhstan "On Combating Corruption" (2015). The study also analysed the Law of the Republic of Kazakhstan No. 106-VIII "On Public Procurement" (2024), adopted in July 2024. The law aimed to increase transparency in public procurement and prevent corruption by providing clear tender procedures and control over the use of public funds. Its provisions are aimed at minimizing corrupt practices through open tender processes and accountability of officials. Data provided by some international organisations, such as Transparency International (2023), was used. Information from selected websites that provide statistical data on economic development, such as Macrotrends (Singapore GDP 1960-2023, 2023), was also useful.

The study used only official legislative acts of four countries to analyse anti-corruption practices: Singapore, Finland, Denmark and South Korea. The main legal acts that were analysed include the Prevention of Corruption Act (1960), which is the main legislative act in this country regulating the fight against corruption. It was adopted in June 1960 and establishes criminal sanctions for corruption offenses. In Finland, the Criminal Code of Finland (1889) was used for the study, which contains provisions on bribery and abuse of power. The Code was adopted in 1889, but was substantially updated in 2011 to take into account modern challenges in the fight against corruption.

The analysis of the Danish legislation was based on the Criminal Code of Denmark (2009), which established the legal framework for punishing corruption offenses in the country. The Code was updated in June 2009 and its provisions were adapted to international standards in the field of corruption prevention. For South Korea, the Act of South Korea "On the Prevention of Corruption and the Establishment and Management of the Anti-Corruption and Civil Rights Commission" (2019) was used. This act was adopted in December 2019 and establishes a system of anti-corruption management and mechanisms for public oversight of government activities. These legislative acts provided the basis for a comparative analysis of anti-corruption practices and determining the effectiveness of legal mechanisms used to fight corruption in these countries.

There is not enough data in the public domain about how corrupt countries are, or whether they are combating corruption. The only available index that can give an overall picture of the state of a country's fight against corruption is the CPI (Corruption Perceptions Index). CPI is based on assessments and surveys of experts and business leaders on the level of corruption in the public sector in different countries. The CPI methodology uses data from several independent sources, such as business surveys and expert opinion analysis, to create a composite index that reflects the perception of corruption in a country. Other data that could help measure corruption occurrences is the number of corruption-related complaints or the number of criminal cases where public officials have exaggerated their public duties. Various official resources were used to analyse statistics on corruption-related criminal offenses. Data for Kazakhstan were taken from the General Prosecutor's Office of the Republic of Kazakhstan (n.d.). For information on other countries, such as Finland, the official resource of the Ministry of Justice of Finland (n.d.) was used. Global-level analytical data was obtained from the website of Transparency International, 2023), and for Singapore, from the Corrupt Practices Investigation Bureau (n.d.). Each of these sources provided up-to-date information on the status of corruption offenses and anti-corruption measures in the respective countries. Such information is often not publicly available, highlighting the need for international organisations or countries to provide more data on the fight against corruption. The countries analysed together with Kazakhstan in terms of their approach to combating the phenomenon were Finland, Denmark, Singapore and South Korea. The first two are from Europe, which has a very developed anti-corruption system. Singapore and South Korea are both fast-developing countries that also have specific, sometimes peculiar, methods of fighting corruption. This was the reason for choosing them for the study.

Comparative law was used to analyse the differences in legislation and enforcement between Kazakhstan, Singapore, Finland, Denmark and South Korea. In particular, this method helped to assess the effectiveness of measures such as transparency in public procurement in Kazakhstan compared to stricter regulations in Singapore, where there is strict liability for corruption offenses. This allowed us to understand why certain countries demonstrate lower levels of corruption due to specific legal norms. The legal modelling method was used to create proposals for improving Kazakhstan's anti-corruption legislation. Based on the analysis of successful practices of other countries, possible ways of adapting anti-corruption laws to the Kazakh legal system were modelled, in particular in terms of ensuring greater control over financial flows in the public sector.

Results

To assess the effectiveness of a country's anti-corruption measures, the CPI, which is based on many indicators, including surveys of businesses, as to the level of corruption in the country, will be used. The data for the five selected countries can be seen in table 1. Kazakhstan lags far behind most of the countries that have been compared, including Singapore, Finland and Denmark, which are consistently at the top of global anti-corruption rankings. For example, in 2022, Kazakhstan had a score of 36 on the Corruption Perceptions Index (CPI), while Singapore and Denmark scored 83 and 90 respectively (Transparency International, 2022). This suggests that Kazakhstan still has work to do to improve its position in the fight against corruption. Kazakhstan shows positive trends in the growth of the index, but it is not always ahead of its neighbours in terms of growth rates. For example, over the past few years, Kazakhstan has managed to increase its CPI from 30 to 36, while neighbouring countries such as Uzbekistan have also shown growth, but from a lower base. This shows that although Kazakhstan has positive dynamics, it is not the undisputed leader in terms of growth in the region (OECD, 2022).

Table 1. CPI data for selected countries from 2012 to 2023

Countries	Kazakhstan	Singapore	Denmark	Finland	South Korea	Uzbekistan	Kyrgyzstan	Ukraine
2012	28	87	90	90	56	30	27	26
2013	26	86	91	89	55	29	25	25
2014	29	84	92	89	55	33	29	27
2015	28	85	91	90	56	32	30	27
2016	29	84	90	89	53	30	31	29
2017	31	84	88	85	54	34	30	30
2018	31	85	88	85	57	36	31	32
2019	34	85	87	86	59	36	32	30

Table 1, Continued

Countries	Kazakhstan	Singapore	Denmark	Finland	South Korea	Uzbekistan	Kyrgyzstan	Ukraine
2020	38	85	88	85	61	39	33	31
2021	37	85	88	88	62	42	35	32
2022	36	83	90	87	63	40	36	33
2023	37	84	91	88	64	43	38	34
Changes per category	8	-4	0	-3	7	13	11	8
Changes, %	28.6	-4.6	0	-3.3	4.5	43.3	40.7	30.8
Average growth rate, %	2.9	-0.4	0.5	-0.3	3.2	5.4	4.2	3.1

Source: Transparency International (2023)

Kazakhstan's progress in the fight against corruption can be explained by a number of factors, including active reforms of anti-corruption legislation, the creation of new institutions to control corrupt practices, and the growing attention of international organizations to this problem. For example, the introduction of new technologies in the public procurement process and programs to raise public awareness of corrupt practices have become important steps towards improving the situation (World Bank, 2023). Kazakhstan's significant 4-point jump between 2019 and 2020 can be attributed to several key factors. Firstly, the introduction of new anti-corruption laws that increased liability for corruption crimes. Secondly, the intensification of the work of anti-corruption bodies, which led to an increase in the level of investigations. Thirdly, the growth of public awareness and involvement of the population in the fight against corruption through various educational programs. Finally, active international cooperation and support from organizations such as Transparency International have also played an important role in this progress (United Nations Development Program, 2022). Finland's 4-point decline in 2017 can be attributed to several factors. First, there were scandals involving political figures that reduced public confidence in institutions. Secondly, the growing international attention to corruption in the security and foreign policy spheres revealed some structural vulnerabilities in the system. There has also been criticism of insufficient control over party and campaign financing, which may have emphasised the need for improved anti-corruption measures (OECD, 2017; Yle News, 2018).

It is worth separately considering the specifics of combating the misuse of power by civil servants in these countries. Singapore has a very successful history of fighting corruption that started in 1960 with the rule of Lee Kuan Yew (Moldogaziev & Liu, 2021). The principles that were adopted then are still relevant today. Thus, the modern anti-corruption system in Singapore consists of the following variables: high salaries for civil servants (which makes them less likely to be bribed), a system of severe punishment for corrupt acts (imprisonment, fines, confiscation of property and even the death penalty), independence of the corruption agency, transparency in public procurement, increased control over political party finances, and education and public awareness of the problems that corruption can cause.

Singapore's modern anti-corruption system is based on comprehensive legislation that contains key provisions to ensure an effective fight against corruption. One of the most important acts is the Prevention of Corruption Act (1960), which establishes severe penalties for corruption offenses, including imprisonment, fines and even confiscation of property. This law also defines the corrupt acts that are subject to criminal prosecution and provides the legal basis for anti-corruption bodies such as the Corrupt Practices Investigation Bureau (n.d.). The Prevention of Corruption Act (1988) ensures the independence of the bureau, which is critical for its effective work. The Bureau is authorised to conduct investigations and collect evidence in corruption cases, as well as to cooperate with other law enforcement agencies. This ensures transparency in the investigation of corruption cases and increases public confidence in the legal system.

Singapore has also taken steps to increase transparency in public procurement through the Government Procurement Act (1997), which requires an open and competitive process for contracting. This law helps to prevent abusive and corrupt practices in the procurement process by ensuring that information is clear and accessible to the public. Thus, ensuring transparency in the finances of political parties and election campaigns has also become an important part of the anti-corruption strategy, which helps to strengthen public confidence in state institutions.

Singapore has been emphasizing the importance of education and raising public awareness about corruption. Training programs and information campaigns conducted by government agencies are aimed at creating an understanding of the negative consequences of corruption and ways to prevent it. This approach contributes to strengthening moral norms in society and encourages active participation of citizens in the fight against corruption (Transparency International, 2023). These elements indicate that Singapore's anti-corruption system is one of the most effective in the world, thanks to a comprehensive approach that combines strict legislation, independent anti-corruption agencies, transparency in finance, and active public education.

The most characteristic feature of this system is the brutality with which Lee Kuan Yew opposed the phenomenon, even when the events of misconduct by government officials were directly related to his family members or friends. The model built in Singapore is therefore often referred to as the "zero-tolerance system". As figure 1 shows, Singapore's GDP has increased 567 times in the last 60 years, which is substantial. At the same time, Kazakhstan, a fast-growing transition country, has not managed to show a similar result despite all prospects: between 1990 and 2021, Singapore's GDP increased 11-fold, while Kazakhstan's increased 7.3-fold. This indirectly demonstrates the

effectiveness of the country's anti-corruption policies. The Pearson correlation coefficient between the CPI and GDP for Singapore from 2012 to 2020 is approximately -0.43. This indicates a moderate negative correlation, suggesting that as Singapore's CPI (reflecting perceptions of lower corruption) remained relatively stable, its GDP continued to increase, but not in direct proportion. Thus, while Singapore's economic growth is significant, it does not necessarily correlate strongly with changes in its CPI during this period. This finding suggests that other factors may also contribute to Singapore's economic performance beyond anti-corruption measures alone.

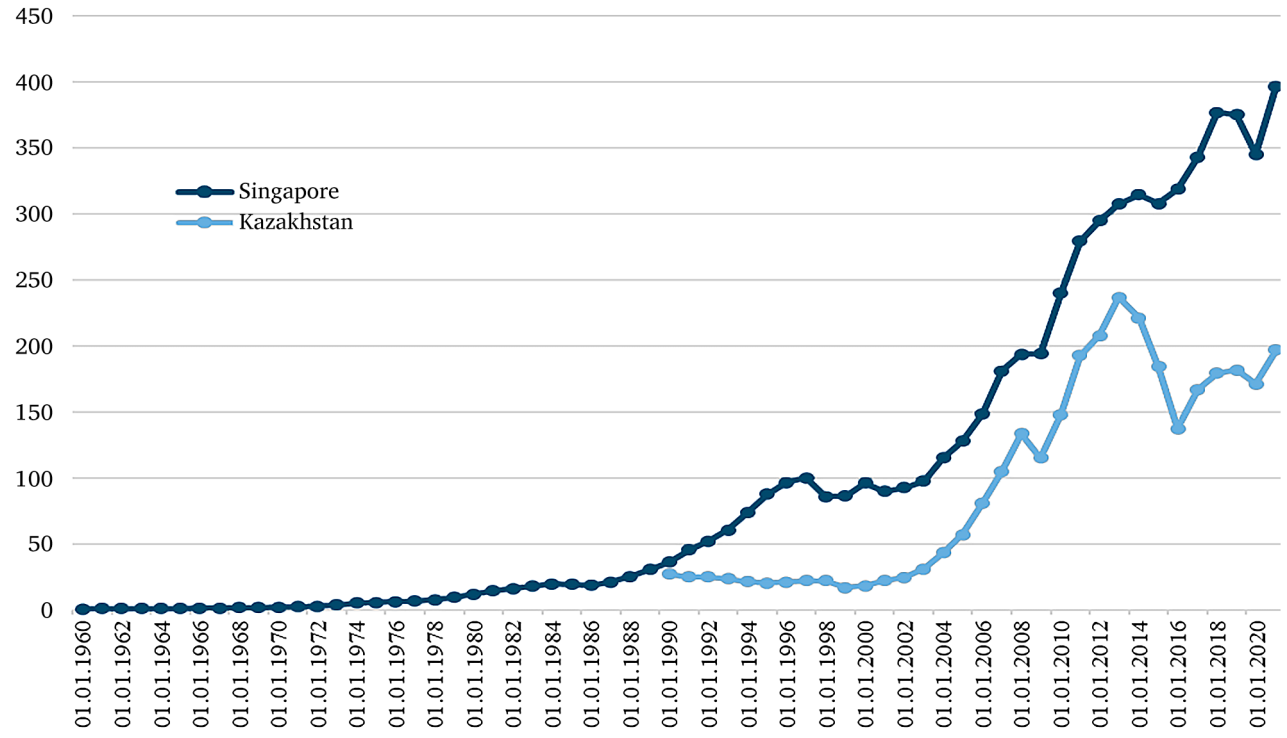

Figure 1. GDP figures for Singapore and Kazakhstan from 1960 to 2020, billion dollars
Source: Singapore GDP 1960-2023 (2023)

In 2022, about 2,500 cases of corruption-related offenses were registered in Kazakhstan, which is significantly higher than in other countries studied. For example, Finland recorded only about 50 cases, and Denmark had about 40 such offenses (Report: Finland ranks second, 2023). These figures confirm that these countries have effective anti-corruption measures and transparent public administration systems (Transparency International, 2023). In Singapore, which is known for its tough anti-corruption policy, the number of cases was even lower – less than 30, according to the Corrupt Practices Investigation Bureau (n.d.). In South Korea, where there is an active fight against corruption, about 300 cases were recorded. These statistics indicate that in countries with well-developed anti-corruption mechanisms, such as Singapore and Finland, the level of corruption remains minimal due to a strict legal framework and oversight. At the same time, in Kazakhstan, the high level of reported offenses reflects the need to further improve the anti-corruption system and strengthen control measures (General Prosecutor's Office..., n.d.).

Denmark also demonstrates a high level of effectiveness in combating corruption (Pomfret, 2022). There is also a high level of accountability for misconduct on the part of civil servants, although it is lower than in Singapore. The country also has a "zero-tolerance approach to corruption" which can be seen in some social processes. When applying for a job, a citizen must sign a special anti-corruption contract to refuse to give or take bribes. If the contract is violated, the employee is dismissed, and a separate note appears on the employee's character sheet indicating corrupt practices. In addition, the country uses the latest technology to ensure transparency in public procurement and to reduce bureaucracy as much as possible (Transparency International, 2023). A key feature of the local approach is an emphasis on cultural and ethical factors. In other words, the country comprehensively implements policies related to the development of morality and honour of officials, the formation of a quality legal culture and a negative attitude towards corruption. The difference with the Singapore approach where ethical standards were not paid so much attention is immediately noticeable. The country's anti-corruption focus is also on the private sector, with both civil servants and corporations being monitored to make any attempts at corruption even less likely (Kyrychok *et al.*, 2024). All of the country's policies are designed to attract more investment, use public funds efficiently and improve the country's overall image on the world stage, all of which have a positive impact on economic development (Government Procurement Act, 1997).

Finland is also one of the countries that have been quite effective in combating corruption (Groop, 2021). The reason for this was a scandal in the 1990s among members of the government, which led to the criminal prosecution of several high-ranking officials and party leaders (Gillian, 2024). Since then, the Finnish government has introduced several

anti-corruption measures, which have been effective enough to give the country a top ranking in the Corruption Perceptions Index (Transparency International, 2023). Regarding the measures taken by the country, it has a high level of transparency (i.e., laws that require public authorities and businesses to publish information about their activities and budget expenditure), a high level of independence of justice, and a strong code of ethics among its citizens and public officials. The authorities also regularly carry out activities to raise awareness of the harm caused by corruption and use the latest technology to detect malpractice among officials, e.g., the electronic trading system of public procurement. The main peculiarity in this area in Finland, however, is that there is no anti-corruption law in Finland, nor is there a government authority to control corruption (Report: Finland ranks second, 2023). Therefore, for example, bribery is regarded as part of a criminal offence and is regulated at all levels of legislation and control systems. The judiciary and law enforcement authorities oversee the implementation of anti-corruption measures; the Chancellor of Justice and the Parliamentary Ombudsman play an important role in this process (Criminal Code of Finland, 1889).

Finland has lost several points in the CPI in recent years due to a number of factors related to political finance management and general transparency in public institutions. One of the main reasons was a scandal related to the lack of transparency in political party funding, which led to increased criticism from both the media and international organizations. In particular, the issue of financing election campaigns and political parties was insufficiently regulated, which caused concern among the public and international experts. Another reason was the concern about abuses in public procurement and high-level decisions, which, although not widespread, had a negative impact on the perception of transparency and integrity in public institutions. International attention to such issues has complicated Finland's image as a low-corruption country, which has been reflected in the CPI (Report: Finland ranks second, 2023).

South Korea is different from the countries analysed above. It is not among the top ten countries in terms of fighting corruption, but it has shown good results in combating corruption A. Androniceanu *et al.* (2022). The history of combating this phenomenon began in the 1960s when the country was experiencing rapid economic development, but at the same time was experiencing high levels of corruption. Its impact was particularly strong in the 1970s and 1980s when the country was under a de facto authoritarian regime: corruption was then widespread in all spheres of life, including government, business, and education. Following the establishment of anti-corruption agencies and several laws, the situation has started to improve (Supreme Justice, 2023). In 2024, the authorities are also trying to ensure the openness of state processes, and independence of justice and to form a civic attitude among citizens regarding the harms of corruption. In particular, the Online Procedures Enhancement for Civil Applications (OPEN) system is in place, where citizens can submit complaints if they observe problems with a particular official (Tracking the work of…, 2024) The practice of minimising government regulation in certain processes is also interesting, if possible. In other words, policies are in place to limit the interaction of government officials with businesses or any other economic activity. A significant problem for the country in terms of combating corruption is widespread "nepotism": historically, businessmen have recruited friends and relatives to key positions. This is why, in such major Korean companies as Korean Airlines, Hanjin, Lotte and others, almost all top positions are occupied by people close to the management. And while this is also common in European and American companies, in South Korea the trend is much more widespread (Gillian, 2024).

Lastly, it is worth considering the peculiarities of the functioning of the anti-corruption system in the Republic of Kazakhstan. The history of combating corruption began in the 1990s, after the collapse of the Union of Soviet Socialist Republics and the withdrawal of countries from the union and the beginning of the formation of an anti-corruption strategy. This process began in 1998 after the adoption of the Law of the Republic of Kazakhstan "On the Fight Against Corruption" (1998), which is no longer in force now of writing the research, and the current Law is the Law of the Republic of Kazakhstan "On Combating Corruption" (2015). There have also been reforms in the judicial system, separate bodies have been opened to deal with corruption and old laws have been hardened.

However, the existing legislation is still relatively lenient compared to other countries in terms of combating corruption. The legislation also has problems in the implementation of its functions and needs to be improved. The fight against corruption is a key condition for ensuring transparency and accountability in any country, and this issue is particularly relevant for transition economies such as Kazakhstan. In order to assess the effectiveness of anti-corruption measures, it is important to compare the legislative approaches and law enforcement practices in Kazakhstan with countries that have achieved significant success in this area, such as Denmark and Singapore. This comparison will help to understand what mechanisms and approaches can be successfully implemented in the Kazakh legal system.

Kazakhstan has a well-developed anti-corruption legislation covering various forms of corruption offenses, such as bribery, abuse of power and money laundering. However, the system is often criticized for incomplete implementation and lack of effectiveness. In Denmark and Singapore, the laws clearly define all major forms of corruption, and their enforcement is rigorous and transparent. Singapore, for example, has the Prevention of Corruption Act, which covers all corruption offenses and provides for severe penalties. The Anti-Corruption Agency is responsible for fighting corruption, but is often criticized for political influence. In Denmark, the fight against corruption is entrusted to specialized bodies that operate independently of political structures. In Singapore, the Corrupt Practices Investigation Bureau (CPIB) has full independence from the government and strong investigative powers, making it one of the most effective anti-corruption bodies in the world.

Kazakhstan provides for fines, prison terms, and bans on holding certain positions. However, practice often shows that these sanctions are applied selectively. In Denmark, penalties include imprisonment and large fines, and they apply to both individuals and legal entities. In Singapore, the sanctions are even more severe: both individuals and companies are prosecuted, with the possibility of confiscation of property and long prison terms. Kazakhstan has a system of public income declarations of officials and tender control, but the problem is the actual implementation of these mechanisms. In Denmark and Singapore, access to information

on public contracts is open, which contributes to increased transparency in public procurement and minimizes the risk of corruption (Karamyshev, 2019). Singapore has implemented the OPEN system to monitor public procurement, allowing citizens to track the processes.

Kazakhstan is a party to the UN Convention against Corruption, which reflects the country's commitment to the international fight against corruption, but the level of cooperation with international organizations remains limited. This limits the possibility of implementing international best practices and ensuring more effective control over transnational corruption. At the same time, Denmark and Singapore have not only signed a number of international agreements, but also actively cooperate with organizations such as Transparency International, which allows them to have a high level of trust and effectiveness in anti-corruption activities.

It is also important to note that the level of law enforcement practice in Kazakhstan remains problematic, as the number of investigations of corruption cases and their prosecution is relatively low. This indicates the weakness of local anti-corruption bodies, which often face political influence and limited resources. In contrast, in Denmark and Singapore, the majority of investigated corruption cases result in convictions, which is an indicator of high law enforcement effectiveness. The success of these countries in the fight against corruption lies in the independence of anti-corruption bodies, strict legislation and effective international cooperation, which creates the preconditions for prompt and fair punishment of perpetrators (Kostiuk & Iryna, 2024).

This study analysed the effectiveness of anti-corruption measures in several countries, including Kazakhstan, Denmark, Singapore, and additionally considered data on Finland, South Korea and other countries. The CPI data show that Kazakhstan lags far behind countries such as Singapore and Denmark, where the fight against corruption is extremely effective. However, the country is showing some progress thanks to reforms and international support. The significant jump in Kazakhstan's score between 2019 and 2020 is due to the introduction of new laws and the activation of anti-corruption bodies. Denmark and Singapore stand out not only for their strict legislation, but also for the high level of transparency and independence of their anti-corruption bodies, which ensures the high efficiency of their systems.

Discussion

Kazakhstan's anti-corruption legislation has undergone significant changes in recent years, but the issue of its compliance with international standards remains relevant. For a deeper understanding of the legal challenges and shortcomings in the fight against corruption, it is worth paying attention to works analysing both theoretical and practical aspects of this legislation. The role of e-governance in government processes is assessed by T. Alam *et al.* (2023). They point out that transparency and accountability play an important role in reducing corruption. Researchers have shown that the use of e-governance has significantly increased the effectiveness of providing information to citizens in countries where such technology has been used, thereby reducing the potential for corruption. This demonstrates that electronic technologies should be used by all countries to combat the abuse of power by public officials (Yudina *et al.*, 2024). It is worth noting that in the Republic of Kazakhstan, e-technologies are also widespread among government bodies and agencies. One example of the use of electronic technologies is the E.gov portal, where citizens can obtain information about public services, submit applications, and receive various documents right from home. A similar mechanism has been implemented in the judicial system and is called "e-justice", which allows judges to work with electronic documents and communicate with participants in the process via the Internet (Supreme Justice, 2023). This significantly increases the quality of the country's judicial system. The role of digitisation of public services is also explored in their study by A. Androniceanu *et al.* (2022). They carry out their study within the framework of the European Union. The researchers conclude that digitisation of the administration is one of the most effective ways of reducing corruption in the public sector. This reaffirms the fact that digitisation of the links between the different lanes of the public sector is an important part of the modern functioning of national economies.

D. Nemec *et al.* (2022) also assessed the impact that corruption can have during the transition to the fourth industrial revolution. Researchers noted that during this period, this phenomenon may become an obstacle to progress, especially in terms of a slowdown in capital formation in the formal economy. This, in turn, will lead to insufficient investment and investment in the technology industry, which may lead to underdevelopment. Therefore, the state must secure a non-corrupt public administration environment to reduce the size of the shadow economy (Ketners & Tsiatkovska, 2024). The relationship between the level of corruption and the efficiency of the local and central government has been studied by T.T. Moldogaziev and C. Liu (2021). They noted that there is a negative correlation between perceived levels of corruption in society and assessments of organisational performance (the study was based on 12 transition countries in Europe and Asia). This suggests that such activity on the part of public authorities about the unfair use of their powers leads to a decrease in the efficiency of their functioning.

How different types of public sector reforms affected the level of corruption in their research was assessed by G. Mugellini *et al.* (2021). Their study found that national policies focusing on control and deterrence of corruption (i.e., increasing the likelihood of detection and increasing the sanctions for those offenders) reduce corrupt behaviour while creating positive incentives for not using corrupt measures helps to reinforce such behaviour. Scholars have also noted that moral leverage can also play a role in reducing corruption, suggesting a role in educating society about the harms of this phenomenon. However, these activities have a longer-term effect, and the use of controls and deterrents is better for a quicker effect.

Thus, a state policy of fighting corruption is essential for the economic development of the country and the well-being of its citizens. Although the methods used to combat this phenomenon are quite similar in different countries, they still have some differences and emphases (on strict laws and repressive measures, as in Singapore, or development of culture and ethics among the society and civil servants, as in Denmark and Finland). The effectiveness of any approach depends to a large extent on the mentality of the local population and the historical development of the area. This explains the fact that some approaches may be completely useless in different regions. Therefore, the state authorities of the Republic of Kazakhstan should shape their

anti-corruption policy by evaluating not only the successes or failures of other countries but also taking local peculiarities into account. In modern conditions, it is worth paying special attention to the application of the newest technologies for state structures, digitalisation, and automation of internal processes. This not only makes it possible to fight corruption effectively and without regard to human factors but also leads to positive results rather quickly.

Conclusions

This article analyses the effectiveness of anti-corruption measures in several countries, such as Kazakhstan, Denmark, Finland, Singapore, and South Korea, to assess their achievements in fighting corruption. The main subject of the study was to determine the level of corruption in Kazakhstan in comparison with other countries through the Corruption Perceptions Index and other indicators. The author has achieved the goal of the study by providing a clear analysis of the reasons why Kazakhstan is lagging behind such countries as Singapore and Denmark in the fight against corruption. The results of the study showed that Kazakhstan, despite the positive dynamic changes in the CPI index, still has significant problems with the effectiveness of anti-corruption activities and their implementation in practice. While Singapore and Denmark demonstrate high levels of transparency and accountability, Kazakhstan is only beginning to reform its system and strengthen control over corruption crimes.

The study reveals that Kazakhstan made considerable strides in its anti-corruption efforts between 2019 and 2020, largely due to the adoption of more robust legal frameworks and the increased activity of anti-corruption agencies. This improvement, demonstrated by the significant rise in the Corruption Perceptions Index, can be attributed to new laws that heightened accountability for corruption-related offenses and enhanced the operational capacity of anti-corruption bodies. Despite these positive developments, the study also identifies persistent issues that hinder Kazakhstan's continued progress. The success of Denmark and Singapore in combating corruption is rooted in their strict legal frameworks, covering various forms of corruption such as bribery and abuse of power. Both countries' anti-corruption agencies operate independently from political influence, ensuring impartial investigations and accountability. This independence is crucial to their effective enforcement of anti-corruption measures. To advance Kazakhstan's progress in the fight against corruption, future research should focus on several critical areas. It is necessary to conduct a deeper analysis of corruption prevention mechanisms, such as the transparency of public officials' income and assets declarations. Research should explore how to improve the consistency and thoroughness of these declarations, as well as how to enhance public access to such information.

Future studies should delve into the international dimension of anti-corruption efforts, particularly how Kazakhstan can enhance its cooperation with global organizations such as the United Nations and Transparency International. Strengthening international partnerships could improve the country's capacity to address transnational corruption and adopt best practices from leading countries in this field. Lastly, research on building public awareness and civic engagement in anti-corruption initiatives would provide valuable insights into how grassroots movements and educational campaigns can contribute to reducing corruption at all levels of society. These areas of inquiry will help to further refine Kazakhstan's anti-corruption strategies and ensure that future reforms are both comprehensive and sustainable.

Acknowledgements

None.

Conflict of interest

None.

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Запобігання корупції як фактор удосконалення державного управління

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Анотація. Корупція залишається основною проблемою для належного врядування в країнах. Вона знижує потенціал економічного розвитку країни та добробут її громадян, тому влада постійно шукає нові шляхи боротьби з нею. Тому необхідно оцінити існуючі методи боротьби з корупцією та проаналізувати досвід інших країн у цій сфері. Метою дослідження було проаналізувати досвід Сінгапуру, Фінляндії, Данії, Південної Кореї та Казахстану в контексті боротьби з корупцією та формулювання на його основі рекомендацій для Республіки Казахстан. У дослідженні були використані методи порівняльного права та правового моделювання для аналізу відмінностей в антикорупційному законодавстві та правозастосуванні між Казахстаном та іншими країнами. Були описані відмінності, які існують у цих державах, а також причини досягнення певних результатів у боротьбі з корупцією, незважаючи на багато спільних підходів (посилення законодавства, діджиталізація державних процесів, розвиток етичних і культурних взаємодій у країні). Поза тим, було дано оцінку можливостям Казахстану застосувати методи, які активно використовуються в Сінгапурі, Фінляндії, Данії та Південній Кореї, для свого специфічного розвитку. Було зазначено, що державі варто впроваджувати широкі антикорупційні заходи в усіх можливих сферах країни, а політика, яку застосовує влада, повинна бути комплексною. Дослідження буде корисним для вдосконалення державної політики, спрямованої на протидію недобросовісній поведінці з боку державних службовців

Ключові слова: економічний розвиток; врядування; державна політика; ефективність підприємств; довіра інвесторів

UDC 347.78
Doi: 10.32518/sals4.2024.38

Соціально-правові студії. 2024. Т. 7, № 4
Social & Legal Studios. 2024. Vol. 7, No. 4

Social work with domestic violence against women in rural areas

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Abstract. The relevance of this study is to analyse of domestic violence against women in rural regions, which can enhance the creation of improved support and protection systems for victims. This study aimed to examine social work and the obstacles encountered by social workers in supporting women from rural regions of the Republic of Kazakhstan who have suffered domestic violence. The study employed comparative and analytical methods to examine quantitative indicators and trends of domestic violence against women in rural areas. Primary data was obtained via a survey. As a result, domestic violence against women in rural areas of Kazakhstan was found to be a widespread problem. Official statistics show that approximately one in 165 women experience domestic violence, but this data does not account for unreported cases due to cultural and moral barriers. The study confirmed the increased vulnerability of rural women and highlighted additional challenges such as cultural aspects, geographical remoteness, lack of crisis centres, and inadequate funding for social services. Important barriers include limited awareness of resources, fear of stigmatization, and distrust of services. Traditions and religion in Kazakh society can perpetuate violence and limit access to assistance. The analysis of the legislative framework, in particular the Law of the Republic of Kazakhstan "On Prevention of Domestic Violence", showed that despite the existence of comprehensive measures, their implementation is hampered by various factors. The study concludes with recommendations for improving social services in rural areas and emphasises the practical significance of this research

Keywords: abuse; victim protection; support measures; non-urban areas; crisis centres

Introduction

Modern society is developing in accordance with the sustainable development goals set by the United Nations (UN) General Assembly back in 2015. One such goal, Goal 5, is "Achieve gender equality and empower all women and girls" (United Nations, 2015). As part of this global development goal for the world by 2030, paragraph 5.2 reads as follows: "Eradicate all forms of violence against all women and girls in the public and private spheres, including human trafficking, sexual and other forms of exploitation" (United Nations, 2015). Despite such goals, violence still takes place in society in its various manifestations against women, having a negative impact not only on the victims, but on society as a whole. Also, domestic violence against women is a public health and human rights violation that is widespread throughout the world (World Health Organization, 2021). This topic remains relevant because domestic violence against women has negative physical, emotional, psychological consequences (Youngson *et al.*, 2021). As the World Health Organization (WHO) points out, domestic violence occurs in all countries and in all sectors of society (World Health Organization, 2021).

According to statistics in Kazakhstan, 0.6% of all women in Kazakhstan experienced domestic violence in 2021 (Agency for Strategic planning…, 2022a). It should be noted that over the period 2007-2022, the growth rate of domestic violence against women in Kazakhstan increased by 75.44%. That is, this trend is not decreasing and is probably higher, since not all cases are recorded by statistics. Analysing the problems of domestic violence, researchers G.M. Kassa and A.A. Abajobir (2020) found a fairly common latency in

Suggested Citation **Article's History:** Received: 27.08.2024 Revised: 28.11.2024 Accepted: 23.12.2024

Sapirova, M., & Abenova, K. (2024). Social work with domestic violence against women in rural areas. *Social & Legal Studios*, 7(4), 38-47. doi: 10.32518/sals4.2024.38.

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relation to these situations. According to C.M. Homan *et al.* (2020) only 18% of women who experienced domestic violence reported to the police and only 3% to a medical or social worker. The reason for this is gender inequality in Kazakh society. As of 2021, the Gender Inequality Index is the highest (0.442) compared to 2010-2023, hindering women's political, economic participation, and access to finance and health care (Agency for Strategic planning…, 2023). Sh. Aytenova *et al.* (2022), assessing the cost of the state to combating domestic violence in Kazakhstan, stated that the availability of crisis centres is only 15%, which is why victims from rural areas have no access to them. S.A. Musabekova and K.E. Mkhitaryan (2022), while examining forensic statistics in Central Kazakhstan, found that one third of domestic violence against women occurred in rural areas.

R. Chandra *et al.* (2023) emphasize that Intimate Partner Violence (IPV) is a significant public health concern globally, with about 35% of women in South Asia experiencing physical or sexual violence from an intimate partner. In India specifically, 32% of ever-married women reported experiencing physical, sexual, or emotional violence by their husbands in their lifetime. The researchers highlight the importance of understanding the characteristics of perpetrators to address IPV effectively. They note that IPV in India is deeply rooted in patriarchal cultural norms and a conservative social structure, reflecting unequal power dynamics between men and women in marital relationships.

Y. Tian (2023) emphasizes that despite legal progress, such as China's 2015 Anti-Domestic Violence Law, deeply ingrained gender-related cultural norms and values continue to shape attitudes and behaviours, particularly in rural areas. It highlights the importance of considering cultural factors, particularly those related to patriarchal structures and traditional gender roles, when studying domestic violence in rural areas. The findings suggest that addressing domestic violence requires not only legal measures but also efforts to change deeply rooted cultural norms and improve women's economic independence.

The study of this issue in rural areas of Kazakhstan is of particular interest, since rural areas may have their own specific characteristics and challenges. There is a limited amount of research on social work with domestic violence in rural areas of Kazakhstan. The development of a study on this topic will fill the gaps in scientific knowledge and offer new practical recommendations for social workers. That is the relevance of this study. The purpose of this article was to study social work with domestic violence against women in rural areas of Kazakhstan. To achieve the goal, it is necessary to complete the following tasks: conducting a literature review on social work and domestic violence, with a focus on research conducted in the context of rural Kazakhstan; analysis of statistical data in order to identify the main characteristics and consequences of violence; conducting a survey among social workers to obtain data on the problem of domestic violence in rural areas and evaluate the effectiveness of existing social work approaches.

Materials and methods

The first phase of the study consisted of a questionnaire survey. This method was chosen due to its ability to process a significant amount of information, as well as its relatively low cost and time required for implementation. The survey was conducted among social workers of the Republic of Kazakhstan in an offline format. When conducting the survey, the main principles – reliability and confidentiality of information – were observed, which were ensured by the formulation of questions in the questionnaire and the organization of the survey itself.

The survey was conducted based on a self-developed questionnaire in two stages: in November-December 2023 in crisis centres of Akmola, Aktobe, and Karaganda regions, and in January-March 2024 in the following regions: Almaty, Atyrau, West Kazakhstan, Zhambyl, Kostanay, Kyzylorda, Mangystau, South Kazakhstan, Pavlodar, North Kazakhstan, Turkestan, and East Kazakhstan. The survey involved 212 social workers from each crisis centre. The authors informed the participants about the anonymous and voluntary participation, and the participants provided their consent. The study followed the recommendations set out in ICC/ESOMAR International Code on Market, Opinion and Social Research and Data Analytics (2016).

Through analysis, a systematic sample of respondents was created with its subsequent study. According to the sample, the age of the respondents was 18-55 years. The study was also monitored, during which the fact of the interview, the completeness, and reliability of the information received by the interviewer from the respondents were checked. The following research tools were used: an interview form (questionnaire), a route sheet, and a site map for each respondent. The questionnaire used closed, semi-closed, and open types of questions to identify aspects of interest within the framework of the topic under study, namely:

1. "Are women in rural areas more likely to seek help for violence than women in urban areas?".

2. "What challenges and barriers do women from rural areas most often face when seeking help in cases of domestic violence?".

3. "What types of support and assistance are most appropriate from social workers for women suffering from domestic violence in rural areas?".

4. "What are the specific challenges and barriers social workers face in helping women in remote rural areas?".

5. "What innovative approaches or models of work exist to improve social care for women suffering from domestic violence in rural areas?".

Initially, studies already conducted by Kazakh and foreign scientists were studied to identify gaps and further find answers to questions of interest. This applies to both theoretical foundations and empirical studies, as well as their results, including WHO and UN reports. An important stage of the research was the analysis of the legislative framework regarding the implementation and organization of social work, as well as court cases related to domestic violence. The method of legal analysis was used for a detailed study and interpretation of legislative acts, court decisions, and other legal documents related to domestic violence and the protection of women's rights. In particular, this method was applied for a deeper analysis of the new Law of the Republic of Kazakhstan No. 72-VIII (2024), as well as other relevant legislative acts. The method of comparative legal analysis was applied to compare the legal norms and practices of Kazakhstan regarding domestic violence with international standards and legislation of other countries. This allowed for the identification of potential gaps in Kazakhstani legislation and the proposal of possible ways for its improvement.

For a general analysis and understanding of the global nature of the problem under consideration, official statistical data were analysed, namely indicators of the number of violence against women in urban and rural areas of Kazakhstan (Agency for Strategic planning…, 2022b). Also, indicators of the Agency for Strategic planning and reforms of the Republic of Kazakhstan Bureau of National statistics (2022a; 2023) were analysed, namely the dynamics of the number of domestic violence against women in Kazakhstan for the period 2000-2022 and the number of crisis centres and shelters for the period 2002-2022. At the final stage of the study, materials representing the results of the survey were analysed, including anonymised answers to the questions of the questionnaire received from the participants in the study.

Results

Definition of the categorical concept of "violence", its types and features. Violence against women is a violation of several basic human rights, including the right to health and physical integrity (Strand *et al.*, 2021). It also constitutes a form of gender discrimination, as recognised in the Convention's General Recommendation on the Elimination of All Forms of Discrimination against Women (CEDAW). Kazakhstan is a signatory to CEDAW, among other international human rights treaties. International human rights law requires states to be diligent in preventing, protecting and prosecuting violations of human rights. Failure to do so constitutes further violations of human rights, including the right to access to justice and the right to an effective remedy, and is also a violation of the prohibition of discrimination on the basis of sex. The Republic of Kazakhstan has undertaken to combat violence against women by introducing a number of legislative and policy documents. The Law of the Republic of Kazakhstan "Concerning Prevention of Domestic Violence" (2009) provides comprehensive measures to prevent physical, psychological, sexual or economic violence against women and guarantees special social services for victims of violence. This law established a framework for addressing domestic violence, including measures for prevention, protection of victims, and accountability for perpetrators. However, despite these efforts and the existence of crisis centres and shelters in Kazakhstan for victims of violence, statistical data indicates that cruel treatment of women persists in Kazakhstani society (Agency for Strategic Planning…, 2022b).

Examples of violence include various forms: domestic abuse and neglect, incest, sexual abuse, bullying and other forms of violence, corporal punishment, psychological aggression, and many others. This list is not exhaustive. In Law of the Republic of Kazakhstan "Concerning Prevention of Domestic Violence" (2009) states that domestic violence is a deliberate unlawful act (action or inaction) of one person in the sphere of family and domestic relations in relation to another (others), causing or containing a threat of causing physical and (or) mental suffering. Firstly, it should be pointed out that there is no clear definition in law which of the forms of danger to women or abuse has the greatest impact on their lives. But it can be determined that all of the above forms of violence can be attributed to one of its types: sexual, physical, psychological and economic violence, which, taken together in the form of attacks and coercion in a family environment directed at a partner, constitutes domestic violence (Spytska, 2023). Recognizing the need for further action, the government has introduced new legislation to strengthen protections for women and children.

The Law of the Republic of Kazakhstan dated April 15, 2024, No. 72-VIII "On Amendments and Supplements to Certain Legislative Acts of the Republic of Kazakhstan on Issues of Ensuring Women's Rights and Children's Safety" (2024) represents a significant step forward in combating domestic violence. This new law expands the definition of domestic violence to include economic violence, strengthens penalties for perpetrators, introduces new protective measures such as restraining orders, and improves the system of support for victims. It also emphasizes the importance of early intervention and prevention strategies. The implementation of this new law is expected to enhance the legal framework for protecting women from domestic violence and provide more comprehensive support to victims, particularly in rural areas where access to services has been historically limited. This law introduces significant changes in the legal regulation of domestic violence issues and protection of women's rights, in particular:

1) expands the definition of domestic violence, including economic violence;

2) strengthens responsibility for domestic violence;

3) introduces new mechanisms for protecting victims of domestic violence, including restraining orders;

4) improves the system of assistance to victims of violence.

Although any of the forms occurs separately, variants of combined cases of violence are possible. In this study, due to the availability of complete statistical information on physical violence, only this type of domestic violence is considered. Hereinafter, physical violence against a woman in this study refers to physical violence committed by a partner in the family, suggesting its various manifestations: from light spanking to such a form of physical violence as a result of which a woman can be injured or death occurs. Also, the following manifestations can be attributed to the obvious consequences of physical violence: bruises, bruises, injuries, fractures, sprains, dislocations, cuts, punctures, scars, black eyes (World Health Organization, 2022). That is, the intentional infliction of harm to health by the use of physical force and the infliction of physical pain (Law of the Republic of Kazakhstan No. 214-IV, 2009). Depending on the object, there are independent, interpersonal and collective violence (Fig. 1).

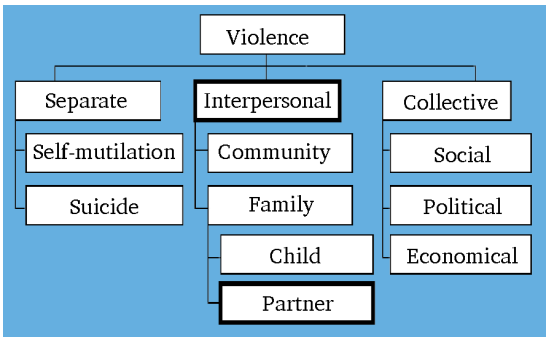

Figure 1. Typology of violence
Source: World Health Organization (2022)

The studied type of violence is a subspecies of interpersonal violence in the family between two partners. Kazakhstan's legal framework has evolved to acknowledge the seriousness

and intricacy of domestic violence. Despite substantial advancements via legislative actions, the ongoing prevalence of domestic violence highlights the necessity for sustained efforts in execution, education, and societal transformation. The enactment of the new law signifies a hopeful advancement in the prevention and response to domestic violence; however, its efficacy will hinge on rigorous implementation and a comprehensive strategy that tackles the underlying causes of violence against women in Kazakhstani society.

Analysis of statistical data related to the problem of violence against women in Kazakhstan. The main source of official data on violence against women in Kazakhstan is administrative data. According to the Agency for Strategic planning and reforms of the Republic of Kazakhstan Bureau of National statistics (2022a), in 2021, 16% of women aged 18-49 (18-75) have been subjected to lifetime physical violence and 3.9% to sexual violence by a partner. At the same time, in 2022, 5.3% of women experienced domestic violence and 1.2% sexual violence (Agency for Strategic planning…, 2022b). The dynamics of the number of registered cases of domestic violence against women for 2000-2022 is ambiguous: the figures are significantly lower for the period 2000-2010 compared to the period 2011-2022. Thus, for the period 2000-2010, the number of victims of domestic violence did not exceed 40 thousand people. For the period 2016-2022, this indicator tended to decrease, but was still critical. The growth rate decreased by 50.58% (from 124 thousand victims in 2016 to 61 thousand victims in 2022). Despite the fact that in 2020-2022 the number of victims of domestic violence has significantly decreased compared to the period of 2016-2019 (decreased by 50.58%), it still exceeded the figure for 2010 by 1.5 times (Fig. 2).

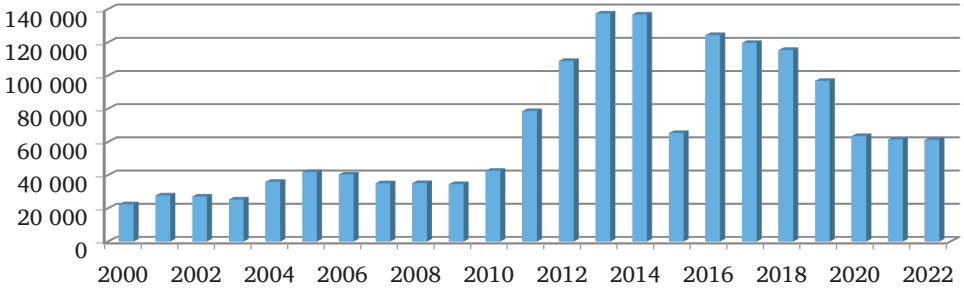

Figure 2. Number of registered cases of domestic violence against women for the period 2000-2022 in the Republic of Kazakhstan

Source: Agency for Strategic planning and reforms of the Republic of Kazakhstan Bureau of National statistics (2022a)

Compared to available data for the 2022 year, the number of women (10.1 million women) (Demographics of Kazakhstan, 2022) in Kazakhstan with the number of cases of domestic violence against them (61.2 thousand women), it can be concluded that every 165 woman was subjected to domestic violence in accordance with official statistics, not taking into account cases when women do not apply for assistance and, accordingly, their cases are not included in the official statistics. According to official statistics Agency for Strategic planning and reforms of the Republic of Kazakhstan Bureau of National statistics (2022a), the number of women who experienced any form of partner violence during their lifetime in urban areas was 56% of cases, and in rural areas – 44%.

During the years of independence, a number of strategic documents have been adopted, where an important area of gender policy is to ensure equal rights and opportunities for women from rural areas, including the implementation of their human rights expedient and relevant in modern conditions, this is social work with women subjected to domestic violence in Kazakhstan (Law of the Republic of Kazakhstan No. 214-IV, 2009). The country has crisis centres and shelters designed to help victims of domestic violence. These institutions provide temporary shelter, counselling, and support for women suffering from domestic violence. The number of crisis centres, including those with shelters, increased by 69.23% over the period 2002-2022 (from 26 units in 2002 to 42 units in 2022). At the same time, 12 out of 42 crisis centres are located in the Karaganda region and there are no centres in the South Kazakhstan region (Agency for Strategic planning…, 2022a). Given the number of victims, it can be assumed that there are not enough crisis centres in all regions, or their effectiveness is low. Governments are failing to meet the SDG targets of ending violence against women, despite strong evidence that intimate partner violence is preventable (Sardinha *et al.*, 2022). The presence of permanent crisis centres is a necessity and a guarantee of access for victims of RLS to emergency social assistance (Aytenova *et al.*, 2022). There is an urgent need to invest in effective multisectoral interventions, especially from social services.

In conclusion, although official statistics reveal that one in every 165 women in Kazakhstan encountered domestic violence in 2022, the true figures may be elevated due to underreporting. Although there was a 50.58% reduction in registered cases from 2016 to 2022, the victim count remains alarmingly elevated, especially in rural regions where access to support services may be constrained. The 69.23% increase in crisis centres over two decades is commendable; however, the absence of centres in specific regions and the ongoing elevated rates of violence highlights the critical necessity for additional investment in comprehensive, multisectoral strategies to effectively tackle and prevent domestic violence against women.

Results of a survey of social workers in Kazakhstan on violence against women in rural areas. In order to identify directions for improving social work with domestic violence against women in rural areas, it is necessary to identify the main problems that were extracted from the conducted empirical study – a survey of social workers in Kazakhstani crisis centres. The first question was: “Are women in rural areas more likely to seek help in the case of violence than women in urban areas?”. Respondents responded

that women in rural areas often seek help for violence to a lesser extent than women in urban areas. 89% of respondents answered in the affirmative.

As a result, the above answers were justified by the following question: "What problems and barriers do women from rural areas most often face when seeking help in the case of domestic violence?". The low proportion of rural women seeking help from social workers is due to lack of access to crisis centres and limited resources. Women face challenges and barriers such as lack of information about available resources and services – 76 (36%) of respondents, fear of judgment – 68 (32%), distrust of law enforcement – 38 (18%), and lack of economic independence and housing solutions – 30 (14%). According to the results of the analysis of the survey of social workers, all barriers can be grouped into three main groups. First, shame in recognizing what happened. Social workers noted such a word, which is dictated by the Kazakh society, as "uyat" (shame and disgrace) (Nukezhanova *et al.*, 2024). At the same time, women do not ask for help from relatives, law enforcement agencies, or social workers. That is, a barrier to the provision of social assistance to women from rural areas who have experienced domestic violence is latency. Secondly, the reason for this is the patriarchal attitudes and accepted morality, ethics, and rules of conduct that are rooted in Kazakh society: a man controls family life, exposing his woman to gender discrimination (Ricoy-Cano *et al.*, 2024).

The third question was: "What kind of support and assistance is provided by social workers for women suffering from domestic violence in rural areas?". As a result of the analysis, the responses are grouped into subcategories (Table 1).

Table 1. Types of support and assistance from social workers for women suffering from domestic violence in rural areas of the Republic of Kazakhstan

Types of support and assistance	Share of respondents, n (%)
Counselling and emotional support	68 (32)
Security and shelter	45 (21)
Legal support	42 (20)
Financial aid	34 (16)
Psychological help	15 (7)
Educational programs and trainings	6 (3)
Referral support	2 (1)

Source: developed by the author

According to the interviewed experts, the most common responses are measures for counselling and emotional support for women (68 responses), providing advice on problem-solving. Also, a significant number of responses related to the provision of security and shelter (45 responses). The least common responses were about educational programs and trainings (6 responses) that are aimed at raising awareness about domestic violence, strengthening self-protection skills and preventing domestic violence. The minimum number of responses in the form of referral assistance (2 responses), which involves referring a woman to specialized organizations and services where they can receive further help and support.

In order to identify contemporary issues that become barriers for women who are victims of domestic physical violence, the survey asked the following question: "What are the specific challenges and barriers that social workers face in helping women in remote rural areas?". Among the existing problems, the main one is limited access to resources 102 (48%) of respondents (Fig. 3). This concerns the lack of adequate institutions, especially in rural areas, as well as the lack of specialists. Together, these two aspects can make it difficult to provide effective assistance to women. Problems with transport – 51 (24%) – are observed in rural areas remote from central cities or other settlements where crisis centres are located. These problems manifest themselves from two sides. On the one hand, this creates difficulties in organizing the mobility of social workers, and, on the other hand, makes it difficult for women themselves to access. There are significant communication problems – 23 (11%) – to provide coordination of activities with other services and organizations. In remote areas, there may be differences in culture and language, which requires social workers to adapt and take into account local characteristics, which was found in 19 (9%) of the respondents' answers. It should also be noted the social exclusion of women, which drew the attention of 17 (8%) of respondents. Women living in remote areas or with low socioeconomic support may suffer from social exclusion and limited access to assistance. Lack of information about available resources and services, fear of stigmatization and distrust of services can become barriers to seeking help.

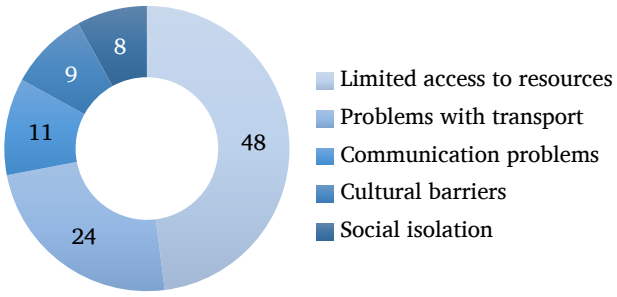

Figure 3. Special challenges and barriers for social workers in assisting women in remote rural areas, %

In order to consider new opportunities to improve the provision of assistance to women victims of domestic violence, the question was asked: "What innovative approaches or models of work exist to improve social assistance to women suffering from domestic violence in rural areas?". For 89 (42%) of respondents, the focus was on mobile assistance services, which is appropriate given the problem with transport to the nearest crisis centres. For 40 (19%) – the development of online resources in the form of platforms or chats in support and the provision of counselling and psychological

assistance. 64 (30%) of respondents noted networking, that is, the establishment of networks and partnerships between various organizations and institutions, including governmental, non-governmental and international organizations, allows pooling resources and experience to help women more effectively. This may include knowledge sharing, training, joint programs and coordination of activities. 15 (7%) of respondents paid attention to the development of local initiatives, which involves the creation of local resource centres. The remaining 4 (2%) of respondents noted the active introduction of social innovations and technologies, as well as the use of telemedicine and video communication in a ratio of 1:1. The introduction of modern technologies, such as alert and alarm systems, mobile device applications and online reporting systems, can increase the availability of care and ensure a rapid response to situations of violence in remote areas.

Based on the analysis of innovative approaches and current aspects of addressing domestic violence in rural areas, it is clear that a multifaceted approach is necessary to improve the provision of assistance to women victims of domestic violence. The survey results highlight several promising strategies, with mobile assistance services, networking, and online resources emerging as key areas for development. These findings, combined with the four main aspects of social services identified, provide a foundation for developing comprehensive recommendations to enhance support for women in rural areas. To build upon these insights and create a more robust system of support, the authors propose the following expanded recommendations:

Given the strong support for mobile assistance services, implementing fully equipped mobile units staffed with social workers, psychologists, and legal advisors is crucial. These units can provide on-site support, counselling, and emergency assistance in remote rural areas. They should also be equipped with technology for immediate connection to crisis centres and law enforcement if needed. Expanding on the support for online resources, it is important to create a user-friendly, secure online platform that offers 24/7 chat support and counselling services, educational resources on domestic violence and women's rights, a directory of local and national support services, safety planning tools, and anonymous reporting mechanisms (Lokot *et al.*, 2024).

Building on the support for networking, and establishing formal partnerships between governmental agencies, non-governmental organizations, healthcare providers, law enforcement, and educational institutions is essential. This network should facilitate regular knowledge sharing and training sessions, develop standardised protocols for identifying and responding to domestic violence cases, create a centralised database for case management and resource allocation, and implement a coordinated community response model. Empowering local communities by expanding on the idea of local initiatives is crucial. This can be achieved by establishing community-based resource centres that provide information, support, and referrals, training local volunteers as first responders and peer support providers, and engaging community leaders and influencers in awareness campaigns and prevention efforts (Tian, 2023).

Leveraging technology for safety and support is another important aspect. This includes developing and distributing personal safety apps with discreet alert systems, implementing telemedicine services for remote psychological counselling and medical assessments, and utilizing AI-powered chatbots for initial screening and information provision. Enhancing early identification and intervention is critical. This involves training healthcare providers, educators, and community workers in recognizing signs of domestic violence, implementing routine screening protocols in healthcare and social service settings, and developing confidential reporting mechanisms accessible to rural communities (DeKeseredy & Rennison, 2020).

Providing comprehensive support services is essential. This includes offering holistic support such as legal aid, psychological counselling, financial assistance, and job training, developing family-centred interventions that address the needs of both victims and perpetrators and implementing long-term follow-up and support programs to prevent the recurrence of violence. Focusing on prevention and education is paramount. This can be achieved by integrating domestic violence awareness and gender equality education into school curricula, conducting regular community workshops on healthy relationships and conflict resolution, and engaging men and boys in prevention efforts through targeted programs and mentorship initiatives (Aytenova *et al.*, 2022).

By implementing these expanded recommendations, we can create a more comprehensive and effective system of support for women experiencing domestic violence in rural areas of Kazakhstan. These strategies address the unique challenges of rural settings while leveraging innovative approaches and technologies to improve access to services and support. Continuous evaluation and adaptation of these initiatives will be crucial to ensure their effectiveness and responsiveness to the evolving needs of rural communities.

Discussion

The analysed literature and the results of the empirical research indicate that rural societies differ significantly in social dynamics compared to urban societies, which leads to a difference in society's response to domestic violence. The results of this study are in line with other studies that address the additional complexities and risks for victims of domestic violence in rural communities. Researcher P. Moffitt *et al.* (2022), studying intimate partner violence and COVID-19 in rural Canada, determined that the impact of COVID-19 has made social work even more important to rural communities and required continuous improvement to reach the most vulnerable victims of domestic violence. Analysing domestic violence against women in the world before and after the SARS-CoV-2 coronavirus pandemic, L. Sardinha *et al.* (2022) concluded that this problem was likely exacerbated by the COVID-19 pandemic, which caused an unprecedented downturn in efforts to reduce violence against women, as well as due to the long stay at home during the period of quarantine restrictions (Usher *et al.*, 2020). Exploring the relationship between the pandemic and rural violence, A. Peterman *et al.* (2020) also focused on the worldwide increase in the incidence of domestic violence against women in the wake of COVID-19. Since the effects of the pandemic are international, it can be assumed that this argument also applies to the situation in Kazakhstan, which is supported by statistics on domestic violence against women. Resources are not always readily available to victims living in rural areas due to the many factors that create barriers for women to get help with domestic violence (Spytska, 2024). It is difficult to quantify the amount of abuse of women in Kazakhstan in rural areas based on official data, as not all cases are recorded.

Analysing urban and rural violence, W.S. DeKeseredy and C.M. Rennison (2020) find that higher levels of acceptance and tolerance for domestic violence among rural residents contribute to higher levels of violence internationally. The Republic of Kazakhstan is no exception. The reasons may be different, aspects of which were studied by N. Youngson *et al.* (2021). When comparing the distance between houses in urban and rural areas, the greater distance in rural areas makes it difficult for neighbours to detect domestic violence. Understated information about violence can be caused by the silence of both the victim and the society that surrounds her for cultural reasons, the refusal of other fellow villagers to help the woman due to a similar situation. Also, it should be taken into account that even if a woman is ready to report violence, the problem is the distance to the nearest help centre and the difficulty of getting there by public transport. Gender inequality can also be considered as the cause of women's violence (Aliyeva & Adli, 2024). Coercive, controlling behaviour that isolates women from their support networks. Taco conclusion made by D.C. Slakoff *et al.* (2020) examining intimate partner violence against women.

Trying to analyse the difference between the problems of violence against women in rural and urban areas, the American researcher S.R. Benson (2009), in the process of interviewing victims of violence, found a number of problems: lack and delay of transport to the nearest shelter, slow police response and minimal medical care. Despite a number of progressive steps taken at the state level to make life easier for women, support for women and protection from violence – these problems have yet to be solved. Sh. Aytenova *et al.* (2022), studying the costs of combating domestic violence in Kazakhstan, identified the main current problems. As of 2021, spending amounted to 4.5 billion tenge, where only 17% is spent on social services for victims of domestic violence. That is, one of the main problems is the lack of funding for the work of social services (Dodonova & Dodonov, 2024). What is agreed and confirmed by the survey conducted in this study. At the same time, scientists focus on the fact that the availability of crisis centres in the country is 15%, which limits access to assistance for residents of remote rural areas. Some regions do not allocate sufficient funding for the implementation of holistic projects related to the problem of domestic violence. For example, in the Mangistau region, funding amounted to 2.6 million tenge, Zhambyl – 3.6 million tenge and Pavlodar – 6.9 million tenge. While in the Karaganda region – 125 million tenge, Almaty – 94 million tenge and West Kazakhstan – 81 million tenge. Researchers focus on the lack of relationship between the general situation with domestic violence and the activities carried out. Instead of a systematic approach, there is often a fragmentation of actions, which boils down to holding separate round tables and seminars. However, such activities are not always effective in reducing the level of domestic violence, as their results and implementation indicators do not always contribute to progress in this area. There are no procedures for compiling official statistics on psychological and economic types of violence, which creates gaps in assessing the overall situation with domestic violence in the country.

This study did not take into account such causes of domestic violence, which provokes an increase in cases of violence and the resulting consequences, such as the presence of firearms, which is another important risk factor in rural areas. A.L. Straatman *et al.* (2020), as a result of a study of the lethality of domestic violence against women, determined that the possession of firearms significantly increases the overall risk and vulnerability to lethal domestic violence for women living in rural areas. It can be assumed that this aspect can also manifest itself in Kazakh society. Thus, risk assessment is of paramount importance both for identifying potentially lethal situations and for developing safety plans and risk management strategies. Identifying risk factors such as firearms is critical to determining the level of risk and the appropriate intervention needed to address it (Lynch & Logan, 2020). The study analysed cases of domestic violence against women, but it should also be taken into account that women in rural areas may have disabilities, belong to indigenous peoples or minorities who also need social assistance, which can also be considered a limitation.

Studying the characteristics of abuse of women in different countries, the researcher G. Hunnicutt (2022) in the process of analysis determined that when improving social assistance for women, one should "move to the depth, not the width of the problem". Firstly, in order to improve the work of social services for female victims of domestic violence, it is necessary to minimize latency by raising the legal awareness of the population, strengthen social control and minimize impunity, and improve the legislative framework in relation to the consequences of domestic violence (Yara *et al.*, 2023). Although today there are many possible interventions, as a result of this study it was found that only a few of them are appropriate. The government of Kazakhstan needs to take the following measures to improve the analysis of cases of violence against women in rural areas of the country. First, fund research on women's violence in order to better assess the extent of violence against rural women in Kazakhstan. This aspect is one of the keys to the development of effective prevention policies and programs. Secondly, it concerns the reform of ingrained patterns of behaviour among rural men. Third, this includes the need for rural libraries where women can find resources ranging from legal aid to information about shelters, pamphlets, and books about abuse, as well as Internet access to find shelters and other security services.

Conclusions

This study on social work addressing domestic violence against women in rural Kazakhstan reveals complex challenges requiring multifaceted solutions. The survey of social workers provided critical insights into the barriers faced by rural women and the limitations of current support systems. The results highlight that women in rural areas are significantly less likely to seek help for domestic violence compared to their urban counterparts, with 89% of respondents confirming this disparity. This reluctance stems from various factors, including limited access to crisis centres, lack of information about available services (36% of responses), fear of social judgment (32%), distrust in law enforcement (18%), and economic dependence (14%). These findings underscore the deeply rooted societal and cultural barriers that perpetuate the cycle of violence in rural communities.

Social workers themselves face considerable challenges in assisting, with limited access to resources being the primary concern (48% of responses). Transportation issues (24%), communication problems (11%), and cultural differences (9%) further complicate service delivery in remote areas. These obstacles highlight the need for innovative

approaches tailored to the rural context. The survey also revealed promising strategies for improvement. Mobile assistance services emerged as the most supported solution (42% of responses), followed by the development of online resources (19%) and enhanced networking between organizations (30%). These findings suggest a shift towards more flexible, technology-driven approaches to overcome geographical barriers and improve service accessibility.

Despite recent legislative advancements, including the 2009 Law on the Prevention of Domestic Violence and the 2024 amendments strengthening protections for women and children, significant gaps remain in the legal framework. The current legislation fails to adequately address the specific challenges faced by rural women, such as limited access to support services and economic opportunities. Moreover, the implementation of existing laws remains inconsistent, particularly in remote areas where awareness of legal rights and available protections is often limited. The absence of comprehensive data collection mechanisms, especially for psychological and economic forms of violence, hinders the development of evidence-based policies and interventions. This gap in official statistics obscures the true extent of domestic violence in rural areas, potentially leading to an underestimation of the problem and insufficient allocation of resources.

In conclusion, while Kazakhstan has made strides in addressing domestic violence through legislation, there remains a pressing need for more targeted, comprehensive approaches that consider the specific challenges of rural areas. Future policy development should focus on improving access to services, strengthening the implementation of existing laws, enhancing data collection mechanisms, and developing prevention strategies that address the root causes of violence in rural communities.

Acknowledgements

None.

Conflict of interest

None.

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Соціальна робота з домашнім насильством щодо жінок у сільській місцевості

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Анотація. Актуальність дослідження полягає в аналізі домашнього насильства щодо жінок у сільській місцевості, що може сприяти створенню вдосконалених систем підтримки та захисту жертв. Це дослідження було спрямоване на вивчення соціальної роботи та перешкод, з якими стикаються соціальні працівники при підтримці жінок із сільської місцевості Республіки Казахстан, які постраждали від домашнього насильства. У дослідженні використано порівняльно-аналітичні методи для вивчення кількісних показників та тенденцій домашнього насильства щодо жінок у сільській місцевості. Первинні дані були отримані шляхом опитування. Результати показали, що домашнє насильство щодо жінок у сільській місцевості Казахстану є поширеною проблемою. Офіційна статистика показує, що приблизно кожна 165 жінка зазнає домашнього насильства, але ці дані не враховують незареєстровані випадки через культурні та моральні бар'єри. Дослідження підтвердило підвищену вразливість сільських жінок і висвітлило додаткові проблеми, такі як культурні аспекти, географічна віддаленість, відсутність кризових центрів і недостатнє фінансування соціальних послуг. Важливі перешкоди включають обмежену обізнаність про ресурси, страх стигматизації та недовіру до послуг. Традиції та релігія в казахському суспільстві можуть увічнити насильство та обмежити доступ до допомоги. Аналіз законодавчої бази, зокрема Закону Республіки Казахстан «Про попередження насильства в сім'ї», показав, що, незважаючи на наявність комплексних заходів, їх реалізації перешкоджають різні фактори. В кінці дослідження надано рекомендації щодо покращення соціальних послуг у сільській місцевості, підкреслено практичне значення цього дослідження

Ключові слова: жорстоке поводження; захист жертви; заходи підтримки; неміські території; кризові центри

UDC 336.2
Doi: 10.32518/sals4.2024.48

Соціально-правові студії. 2024. Т. 7, № 4
Social & Legal Studios. 2024. Vol. 7, No. 4

Consideration of the interests of entrepreneurs in the formation of a strategy for effective legislation and evidence in cases of offences related to tax evasion from legal entities

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Abstract. Corporate tax evasion remains a significant problem, the complex mechanisms of which require modern criminological approaches to its solution. The purpose of the study was to characterise the interests of entrepreneurs in shaping the strategy of effective legislation and evidence in cases of crimes related to tax evasion by legal entities in Kazakhstan. The research used a number of methods, including data analysis, analogy, generalisation and formal legal methods to study the topic. The main conclusions of the study were the identification of problems in proving tax evasion, especially in cases involving offshore companies and specially created organisations for the purpose of evading tax liabilities. It is worth noting that the operational investigation of cases falling under Article 245 of the Criminal Code of Kazakhstan is subject to close attention, with a particular focus on the role of documentary evidence. The study demonstrated that the presence or absence of financial documentation has a significant impact on the outcome of criminal proceedings in the field of taxation. In addition, the study suggested that Kazakhstan's tax system could be optimised by introducing simplified tax rates, differentiated sectoral taxation and mandatory electronic invoicing, which could increase transparency and reduce opportunities for tax evasion. The conclusions

Suggested Citation **Article's History**: Received: 07.09.2024 Revised: 29.11.2024 Accepted: 23.12.2024

Bukenessov, A., Kazhenov, Ye., Kazhenova, A., Temirzhanova, L., & Baimoldina, S. (2024). Consideration of the interests of entrepreneurs in the formation of a strategy for effective legislation and evidence in cases of offences related to tax evasion from legal entities. *Social & Legal Studios*, 7(4), 48-58. doi: 10.32518/sals4.2024.48.

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emphasised that improved investigative procedures and a comprehensive assessment of evidence are crucial for the fair and effective conduct of criminal proceedings. In addition, the study proposed recommendations for legislative changes to strengthen Kazakhstan's legal framework for combating tax evasion, facilitate cooperation between companies and the government, and stabilise the country's financial system. This study contributed to the development of reliable methods of detecting and proving tax evasion offences

Keywords: fiscal policy, tax audits, legal reforms, risk factors, financial regulation, economic crime

Introduction

Taxes are a key mechanism of the state, providing not only the preservation of the social organism but also the effective functioning of legislative and regulatory documents governing the legal use of this instrument, on which the subsequent development of the economy of Kazakhstan depends. The provision of the 35th article of the Constitution of the Republic of Kazakhstan (1995) prescribes the obligation and duty of every citizen to comply with taxes, fees and other mandatory payments established by the legislation. It should be noted that no country in modern practice can fully guarantee the full collection of tax revenues, as the phenomena associated with tax evasion are widespread and present in all economic systems.

Under the conditions of transition to a market economy and active development of entrepreneurship in Kazakhstan, tax legislation becomes the subject of active changes entailing the formation of complex tax legal relations. Nevertheless, this process is accompanied by negative consequences, the main of which is an increase in the number of criminal offences related to the evasion of taxes and mandatory payments to the budget. Such acts have a serious impact on the financial stability of the state, as significant monetary funds do not enter the budget, which entails the formation of insufficient funds in the state's extra-budgetary funds (Rexhepi, 2023). The research relevance is determined by the need to develop effective strategies and mechanisms to combat tax evasion and ensure the financial sustainability of the state. In the considered context it should be noted that proving crimes of tax evasion from the organisation in Kazakhstan were the subject of scientific study by Kazakhstani scientists.

D.B. Sanakoiev and B.T. Seitov (2021) provided a comparative legal analysis of various types of tax offences under the criminal laws of Kazakhstan and Ukraine. This analysis reveals the peculiarity of tax crimes – their secrecy and variety of methods used, which gives them a heightened public danger and makes it difficult to stop them. Moreover, these crimes have a negative impact on the economic security of the country, as they limit the financial capacity of the state to implement important government programmes. Therefore, the need for further improvement of criminal legislation is emphasised, and they propose amendments to Articles 244 and 245 of the Criminal Code of the Republic of Kazakhstan (CC RK) (2014) to combat this category of crimes more effectively. R. Chimirova (2022) analysed the current situation with tax crimes, and their criminal liability, as well as considers the causes, consequences, and prospects for their prevention. The importance of this problem is confirmed by systematic reforms in the national legislation of Kazakhstan, including tax and criminal legislation. As a result of the analysis, the importance of control over the legal and economic consciousness of all subjects obliged to pay taxes and other mandatory payments to the state budget is emphasised. Such direction implies preventive measures to prevent the commission of tax offences and contributes to ensuring the stability of the economic system of the country.

K. Andrienko and O. Artyukh (2023) investigated the main problems that exist in the current tax legislation of Ukraine, in particular, in the context of combating tax offenses and tax evasion. As a result of the study, the authors determined that one of the main problems is the imperfection of tax administration, which facilitates tax evasion, as well as the lack of effective monitoring and punishment for violations of tax legislation. They also emphasised the need to reform the tax system, in particular, to improve the legislation governing tax offenses, as well as to introduce more effective methods of controlling and preventing tax evasion.

S. Ciucci (2024) studied the relationship between the level of education, tax evasion and the development of the shadow economy. The study found that a high level of education directly reduces the likelihood of tax evasion, as educated citizens have a clearer understanding of the importance of taxes for the development of the state and their own economic stability. The author also notes that in countries with a high level of shadow economy, the lack of transparency of the tax system and the mismatch between the tax burden and the real benefits for citizens can lead to increased tax violations, regardless of the level of education. Author suggests including educational programs aimed at raising tax awareness as part of a broader strategy to combat the shadow economy.

P. Doligalski and L.E. Rojas (2023) studied the effectiveness of resource redistribution in countries with developed shadow economies. The authors determined that effective redistribution in the shadow economy can significantly improve economic equilibrium and reduce tax evasion, but this requires a proper organization of the tax system and transparency of government social support programs. The authors emphasised the importance of adjusting incentive mechanisms to reduce shadow practices through a proper combination of tax policy and social benefits. It was also noted that for the effective implementation of redistribution, it is necessary to take into account social responsibility and the level of public trust in the state.

M.T. Kulzhabayeva (2019) identified a variety of methods of tax evasion designed to ensure the concealment of income and reduce tax liabilities. In addition to the deliberate actions of subjects, the objective reasons contributing to such behaviour are also argued. The existing deficiencies in tax legislation, which contribute to tax problems and unjustified benefits, are also emphasised. In light of these circumstances, monitoring of compliance with tax legislation and analysing the results of control measures on the part of fiscal authorities remain relevant and important tasks. N.Sh. Zhempiisov and B.T. Seitov (2021) think that it is necessary to further modernise criminal legislation to effectively counteract tax crimes. To ensure economic security and sufficient filling of the state budget with tax revenues,

certain measures are proposed based on the conducted study of regulatory and legal tools. The article considers the inclusion of article 216 of the Criminal Code of the Republic of Kazakhstan (2014) in the category of tax crimes with a formal corpus delicti, as well as the author's proposed revision of articles 244 and 245 of the Criminal Code of the Republic of Kazakhstan. Furthermore, a revision of statistical reporting concerning the qualification of certain types of offences as tax offences is proposed.

The purpose of this study was to analyse the interests of entrepreneurs in developing a strategy for effective legislation and collection of evidence in cases of offenses related to tax evasion by legal entities in Kazakhstan. To achieve the set goal, the following tasks will be conducted:

- an analysis of the criminal-legal characteristic of the corpus delicti of the offence provided by article 245 of the Criminal Code of the RK (2014);
- study on the peculiarities of the investigation of the circumstances of a criminal case by the parties to criminal proceedings in this category of cases;
- determination of the criminological basis of tax evasion in Kazakhstan.

Materials and methods

The study was based on various legal, criminological and economic theories. The criminological approach was used to study the causes, methods and consequences of tax evasion by organisations in Kazakhstan. This theoretical framework is informed by criminology, specifically white-collar crime theory, which posits that financial crimes, such as tax evasion, are often perpetrated by individuals or entities in positions of economic and organizational power. The theoretical underpinning also draws on legal theories related to the application of criminal law and tax legislation, focusing on how legal structures can deter or fail to prevent illicit activities.

The study used a wide range of methods that allowed to comprehensively consider the problem of proving crimes related to tax evasion by organizations in Kazakhstan from various aspects. In particular, formal-logical and formal-legal methods were used to formulate key conclusions and proposals for improving the policy of combating crime. The formal logical method helped to systematize the collected data and identify general patterns in tax evasion processes. This approach made it possible to build a clear logical structure of the research results, which ensured effective identification of the main areas for further action.

In turn, the formal legal method allowed for a deeper analysis of national legislation, in particular laws regulating taxation and combating tax offenses, which helped to identify possible problems in their application and practical implementation. This method allowed us to assess the effectiveness of current legislative initiatives and identify areas for improvement. To obtain additional valuable information, authors analysed the experience of other countries in preventing tax offenses. The use of comparative jurisprudence allowed us to study the measures that have already been implemented in other countries and assess their effectiveness. This helped to develop recommendations for improving the policy of combating tax evasion in Kazakhstan based on the successful experience of other countries, which makes it possible to apply effective strategies in the context of the Kazakh reality.

The research follows a clear and methodical structure. It starts with an in-depth analysis of Kazakhstan's legal framework, particularly focusing on the Tax Code of the Republic of Kazakhstan No. 120-VI (2017), which outlines taxation policies and the responsibilities of individuals and organizations. The Entrepreneurial Code of the Republic of Kazakhstan (2015) is also examined to understand how business regulations intersect with tax obligations and the legal environment surrounding tax evasion. The study includes a comparative element, using Decree No. 49 (2024) of the President of the Kyrgyz Republic to gain insights into how neighbouring countries handle tax policies and social security involvement, offering potential improvements for Kazakhstan's approach.

The research proceeds to investigate the criminological characteristics of tax evasion, analysing the methods organizations use to hide taxable income. Following this, the economic and social consequences of tax evasion are explored, particularly its detrimental effects on Kazakhstan's public finances and the broader economy. The integration of statistical data helps pinpoint regions and sectors where tax evasion is most prevalent, allowing for a more detailed examination of the problem in a regional context. The findings contribute to formulating recommendations for enhancing Kazakhstan's tax policy and enforcement strategies.

The research shifts to a comparative legal analysis, where the experiences of other countries with similar economic conditions are explored to identify effective countermeasures to tax evasion. Finally, the study proposes a set of recommendations for improving Kazakhstan's tax legislation and enforcement mechanisms, based on both the local context and successful international practices. The research concludes with a call for a multi-faceted approach that combines legal reform, increased public awareness, and stronger institutional mechanisms to combat tax evasion.

Results and discussion

Criminal and legal characteristics of tax evasion from an organisation in Kazakhstan. In comparison with similar countries with similar levels of per capita income, Kazakhstan continues to record low levels of tax revenues relative to gross domestic product (GDP) (Fig. 1). In 2024, cases of tax evasion continued in Kazakhstan, which negatively affected the stability of the country's financial system. For example, criminal proceedings regarding the illegal activities of several betting companies are ongoing in the city of Almaty: LLP "Olimp KZ Bookmaker Office", LLP "Alpha Bet", and LLP "Onlybet" (2023). Twelve employees and founders of these companies are accused of creating an organised criminal group, legalization of property and tax evasion. A criminal case against the head of another company in the city of Shymkent, who is also accused of tax evasion and other mandatory payments in the amount of about 250 million tenge, has recently been completed. These illegal actions threaten the tax system by preventing the planned receipt of tax revenues to the budget, which are necessary for the performance of government functions. They also cause an imbalance between honest taxpayers and those who violate tax laws, violating the principle of social justice and disrupting the normal functioning of the economy. Insufficient tax revenues at various levels of the budget lead to delays in the payment of salaries, pensions and subsidies, and limit the implementation of social and scientific programs. In this regard, the fight against

tax evasion remains an important task for ensuring the sustainability of the country's financial system. According to the Tax Code of the Republic of Kazakhstan No. 120-VI "On Taxes and Other Mandatory Payments to the Budget" (2017), tax evasion is a criminal offense punishable by fines, corrective labour or imprisonment. In addition, in accordance with the Criminal Code of the Republic of Kazakhstan, persons guilty of tax evasion may be held criminally liable.

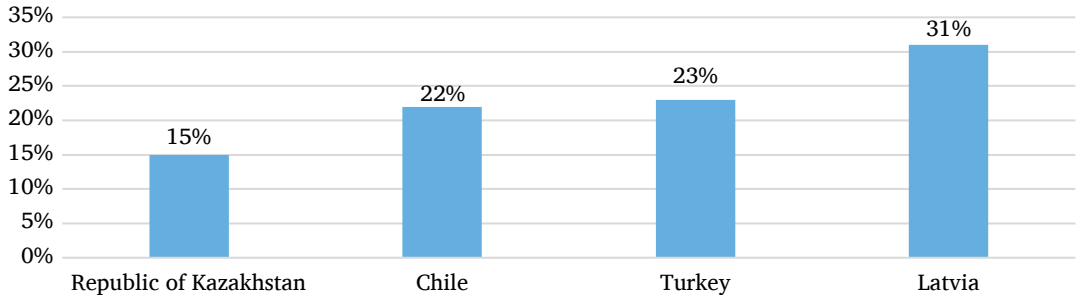

Figure 1. Tax to GDP ratio including tax evasion offences in the period 2020-2023
Source: What is the essence of the ongoing tax policy reform? (2023)

A common trait of tax evasion methods is the use of deception. Numerous studies of ways to commit tax evasion confirm that deception is a basic component of the illegal actions of criminals (Altaf *et al.*, 2019; Enofe *et al.*, 2019; Adekoya *et al.*, 2020). Obtaining information about business entities whose financial and economic indicators do not correspond to reality, gives grounds for the beginning of checks by operational units and possible initiation of investigative proceedings. Deception may be the provision of knowingly false information about the object and/or taxable base – inclusion or exclusion of physical, quantitative, cost indicators, transactions, financial and economic operations related to the acquisition, possession, disposal or use of property, goods, income (profit) or their components, the volume of sale of goods (works, services), supply of goods (works, services) and other objects defined by the tax legislation, the presence of which is associated with the emergence of the taxpayer's taxable base (Tax Code of the…, 2017). The process of deception itself is complex and requires preliminary preparation, including determination of the method of tax evasion, search for accomplices, planning of actions for preparation, commission and concealment of the offence, as well as creation of business entities to be used as counterparties in fictitious, seemingly financial and economic transactions, and involvement of persons who will perform the necessary actions to conceal tax evasion without being aware of their role in the offence. Moreover, actions on preparation and concealment of tax evasion may independently constitute corpus delicti of other offences provided for by the Criminal Code of the Republic of Kazakhstan (2014), or fall under the prohibitions contained in civil, economic, tax, and administrative legislation.

Unfortunately, such conduct continues to exist and poses a serious threat to the stability of the financial system of the state. Therefore, it is necessary to actively develop and implement measures to promote legality in the field of taxation and improve legal culture among the population and entrepreneurs. Only joint efforts of the state, society and the business community can ensure the reduction of tax evasion and guarantee the stability and prosperity of the country's economy. The determination of the specific penalty for tax evasion remains within the competence of the court, which considers the circumstances of the case and other factors when deciding on the imposition of punishment. According to the Normative Resolution of the Supreme Court of the Republic of Kazakhstan No. 3 "On Certain Issues of Application by Courts of Legislation on Cases of Criminal Offences in the Sphere of Economic Activity" (2020), tax evasion and (or) other mandatory payments to the budget is considered only with the direct intent.

Economic, legal, and social aspects are to be considered to grasp the complexity of this phenomenon. The essence of tax evasion consists of deliberate actions aimed at avoiding taxation, which poses a threat to the economic stability and social well-being of the state. It is particularly important to identify the reasons and motives that induce organisations to evade taxes to develop effective measures to prevent and suppress such violations. Possible measures include improving tax legislation, increasing liability for tax offences, and strengthening control by the tax authorities. The relationship between tax evasion and corrupt practices should also be emphasised. Tax evasion is often associated with the illegal influence of tax authorities, which exacerbates the problem and requires additional measures to curb corruption (Kurhan *et al.*, 2023). In Kazakhstan, tax evasion is often associated with illegal influence on the tax authorities, which complicates the problem and requires additional measures to combat corruption. For example, in 2020, assets related to Bulat Utemuratov, a former aide to President Nursultan Nazarbayev, worth up to USD 5 billion were frozen in England. These assets included stakes in luxury hotels, cash in bank accounts in several countries and a Burger King franchise. This was the result of a settlement of a dispute between BTA Bank and Utemuratov, which highlights the existence of corruption schemes related to tax evasion in Kazakhstan (British court freezes billion-dollar..., 2020).

Corporate tax evasion is a criminal offence in Kazakhstan, which carries criminal penalties in the form of fines, correctional labour, or imprisonment (Baturin & Moroz, 2024). The final decision on punishment is made by the court, which considers the circumstances of the case, the amount of money evaded and other factors. This means that each case of tax evasion is considered individually, and the punishment is determined by the court based on the evidence collected and the regulations in force. Funds evaded the degree of systematicity, and other circumstances may affect the imposition of a stricter penalty. Thus, courts in Kazakhstan can impose criminal penalties on individuals and

organisations that evade tax payments. This contributes to maintaining tax discipline and ensuring the fair functioning of the tax system in the country. In Kazakhstan, courts have the authority to impose criminal penalties on individuals and organizations that evade tax payments, thereby upholding tax discipline and ensuring the fair operation of the tax system. For instance, On July 4, 2022, the Court of District 2 in the Baikonur area of Nur-Sultan convicted the head of LLP "ZhylOtDelStroy", for tax evasion by submitting false data in tax declarations, reporting unperformed work and services. This caused damage of 138.5 million tenge (Head of LLC convicted…, 2022). This case highlights several critical aspects of Kazakhstan's legal system regarding tax evasion. First, it shows how tax evasion is treated as a criminal offense with severe financial and legal consequences, even in cases involving false reporting of expenses. The penalty provisions under Article 245 reflect the seriousness with which the government treats such crimes, as tax evasion can have a detrimental effect on the national budget and social programs (Criminal Code of the…, 2014).

The court's application of mitigating factors, such as remorse and the presence of minor children, demonstrates a level of leniency based on the individual's circumstances, which is common in criminal justice systems worldwide. However, the imposition of an imprisonment sentence, albeit reduced by the application of amnesty laws, serves as a strong deterrent against future offenses. Challenges persist in the judicial process concerning tax evasion cases. A notable issue is the inconsistency in sentencing, where similar offenses may result in varying penalties, undermining the principle of equality before the law. There are concerns about the efficiency of the judicial system in handling complex financial crimes, which can lead to prolonged proceedings and potential miscarriages of justice. Addressing these issues is crucial for enhancing the effectiveness of the legal framework in combating tax evasion.

Peculiarities of evidence and investigation of organisational tax evasion offences in Kazakhstan. To fully understand the nature of criminal procedural evidence, especially in the context of the general digitalisation of law enforcement, several key features must be highlighted. Criminal procedural evidence primarily aims to establish the circumstances that occurred in the past. As a result, the process of proving is retrospective, with its main objective being the clarification of events that have already taken place. This retrospective nature determines the tools used in the process of proof and underscores the complexity of the task, as it involves finding and establishing facts from the past based on available traces of the offence, whether left in objective reality or in the minds of individuals. The activity of criminal procedural evidence is also strictly regulated by law. Obtaining evidence must be carried out by authorised individuals using the legal means and methods prescribed by law. This ensures the integrity of the process and the protection of the rights of all parties involved. Criminal procedural evidence serves the purpose of establishing the necessary circumstances for a particular case. The subject of proof in criminal proceedings is of significant interest to researchers in procedural science, as it plays a crucial role in determining the outcome of legal cases.

Several authors unreasonably narrow or expand the subject of evidence in a criminal case (Faccia & Mosteanu, 2019; Mardanov, 2022; Suryadi & Budianto, 2022). System analysis of the legislation allows to conclude that the circumstances subject to proof can be divided into the following categories: (1) the circumstances that characterise the offence; (2) circumstances characterising the personality of the guilty person, including mitigating and aggravating circumstances which are essential for the assignment of punishment; (3) other circumstances established by law that may also be relevant to the criminal case.

Analysing the elements presented in criminal proceedings, it is possible to identify the following key aspects, as outlined in the Criminal Code of the Republic of Kazakhstan (2014): establishment of the existence of a socially dangerous act that falls under the category of criminal offences; identification of the characteristics of the act committed that constitute a criminal offence, including its time, place, manner and other surrounding circumstances; compensation for damage caused by the offence and other expenses related to the pre-trial investigation; selection of the appropriate type and degree of punishment for the person responsible for the offence; restoration of the violated rights of the affected persons resulting from an unlawful act; preventing the commission of other criminal offences aimed at ensuring public safety. Upon investigation of the mentioned stages of the process of proving in the framework of criminal proceedings, the following stages can be distinguished: primary, subsequent, and final. In improving the methods of pre-trial investigation of tax evasion and other compulsory payments to the budget, significant problems have been identified and analysed, which it seems reasonable for the investigator (prosecutor) to solve at each of these stages.

At the initial stage of a tax evasion investigation, the investigator or prosecutor must clearly define the circumstances that need to be proven in order to proceed with the criminal case. This includes identifying key elements such as the concealment of income, the failure to report accurate financial information, and the evasion of tax liabilities. In many cases, suspects involved in financial and economic activities for an extended period may have accumulated uncontrolled profits, paid unofficial salaries to employees (often referred to as "wages in envelopes"), and deliberately concealed the actual amount of income and wages from taxation. Additionally, they may have failed to pay insurance contributions, claiming a lack of funds to do so. These illegal actions can be difficult to detect but can often be uncovered through careful examination of primary accounting documents, tax reports, and other financial records.

A recent criminal case in Shymkent involved the head of a company accused of evading taxes and other mandatory payments, amounting to approximately 250 million tenge (Head of LLC convicted…, 2022). The case was based on evidence gathered from primary financial documents, which revealed discrepancies between reported earnings and actual financial activities. The investigation in this case emphasised the importance of thoroughly reviewing accounting and tax records to identify fraudulent financial practices and establish the period during which insurance premiums were not paid. Another case in 2023 in Nur-Sultan involved the head of LLP "ZhylOtDelStroy", who was under investigation for tax evasion through the submission of false data in tax declarations. The investigation revealed that the company had been paying "wages in envelopes" and had failed to make the necessary social insurance contributions, despite the company's financial capacity to do so. This case

highlighted how financial documents such as salary records and tax declarations can play a crucial role in uncovering tax evasion schemes and ensuring accountability.

These examples underscore the critical importance of detailed analysis of accounting and tax documents to uncover and prove instances of tax evasion and failure to contribute to social insurance. The investigation process relies heavily on accurate financial reporting and the ability to trace discrepancies between declared figures and actual financial activities. Proper examination of these records ensures that the perpetrators are held accountable and that the state can recover the lost taxes and social contributions, ultimately reinforcing the fairness and integrity of the tax system.

To acquire information on circumstances related to tax evasion and (or) other obligatory payments to the budget, after detection and seizure of documents, interrogations of both the offenders themselves – managers and accountants (chief accountants), as well as other employees of the enterprise (farm) are undertaken. Interrogation subjects are obliged to present relevant documents to confirm their testimony, which is recorded in the protocols. As a result, documents play a determining role in the formation of procedural sources of evidence, such as testimony (Criminal Procedure Code of…, 2014). When developing forensic tactics and methods of investigation of offences related to the evasion of legal entities from payment of taxes and other mandatory payments, it is recommended to be guided by the materials of judicial and investigative practice. Considering the aforesaid, the following list of necessary materials to complete the investigation of the offence under Article 245 of the Criminal Code of the Republic of Kazakhstan (2014) within a reasonable period is presented:

- primary accounting and tax accounting documents, including income and expense reports, invoices, bills and other documents related to the payment of taxes and mandatory payments;
- orders appointing and dismissing suspects to accounting positions and job descriptions that may influence tax evasion;
- documents confirming the suspects' ownership of movable and immovable property, cash and other valuables;
- certificates on the mental and physical condition of the suspects, as well as the conclusions of forensic psychiatric expertise (if available) to identify possible motives and intent;
- characteristics of the suspects and information on previous convictions, if any, to assess their criminal recidivism;
- materials collected in the investigation and indicating the involvement of suspects in tax evasion, such as witness statements, expert opinions, and other evidence.

According to the provisions of Article 25 of the Criminal Procedure Code of the Republic of Kazakhstan (2014), judges, prosecutors, investigators, and inquirers evaluate evidence following their inner conviction, relying on the law and conscience. It should be noted that the final decision on the admissibility of evidence and its evaluation is made by the court during the deliberations when considering the materials of the criminal case and adopting a judgment. In the investigation of offences under Article 245 of the Criminal Code of the Republic of Kazakhstan (2014) of particular importance is the documentary confirmation of the facts of deliberate tax evasion on the part of business entities. Witness testimony, as a rule, is not always able to fully disclose the essence of the offence, especially in cases of prolonged investigation, when witnesses may forget certain facts. Thus, the analysis of court decisions shows that witness testimony often acts as indirect evidence confirming the facts established by acts of audits or other written documents.

Important aspects to be proved in the investigation of tax evasion offences are the guilt of the accused in committing the offence, the form of guilt and motives for committing it; evidence of the origin of the property subject to confiscation and its connection to the criminal acts; and the type and amount of damage caused by the criminal offence (Kostiuk & Drok, 2024). An analysis of the specifics of the evidentiary process for the above offences reveals the key factors that influence the success of the investigation and the bringing of the perpetrators to justice. Thus, cases related to tax evasion are often characterised by the complexity of proof due to the presence of atypical schemes, hidden operations, and the use of offshore companies (Constitution of the Republic…, 1995). This requires from the investigative authorities and judicial instances high qualifications and specialised knowledge to detect and solve such crimes. In the context of tax evasion investigation, financial expertise plays a key role in determining the amount of evaded funds, their sources, and consequences for the state budget (Criminal Code of the…, 2014). The ability to conduct complex analyses of the financial activity of the organisation becomes a prerequisite for successfully proving the crime. Effective investigation of tax evasion requires the interaction of various specialists, such as tax experts, financial analysts, auditors, and criminalists (Sanakoiev & Seitov, 2021). The cross-disciplinary approach allows to analysis of information comprehensively and identifies illegal actions of an organisation. At the same time, it is equally important to respect the procedural rights of the accused in the process of proving tax evasion offences. The guaranteed right to defence, the right to defence counsel, as well as compliance with procedural rules and deadlines play a crucial role in establishing a fair trial and preventing possible violations of the rights of the accused.

To improve tax evasion investigations and better protect entrepreneurs' interests, two changes could be made to the Criminal Procedure Code (2014) and the Tax Code of the Republic of Kazakhstan No. 120-VI "On Taxes and Other Mandatory Payments to the Budget" (2017). First, the Criminal Procedure Code (2014) could mandate the involvement of financial experts or forensic accountants at the initial stage of a tax evasion investigation, especially for complex cases. This would improve the transparency and accuracy of investigations, ensuring fairer assessments of the evaded amounts and financial activities. Second, the Tax Code of the Republic of Kazakhstan No. 120-VI "On Taxes and Other Mandatory Payments to the Budget" (2017) could introduce clearer guidelines for tax audits, specifying deadlines for completion and allowing businesses to request independent reviews of audit findings. This would reduce ambiguity, prevent abuses by tax authorities, and help entrepreneurs contest discrepancies in a timely manner, ultimately safeguarding their interests. These proposed changes would lead to more efficient tax investigations, offer better protection for entrepreneurs, and contribute to greater fairness and transparency in the overall tax enforcement system in Kazakhstan.

Criminological characteristics of offences under Article 245 of the Criminal Code of the Republic of Kazakhstan. As noted earlier, tax deviations appear in various documents used for accounting reports submitted by taxpayers to

authorities. The tax deviations cited are often related to the intentional dissemination of false information about various aspects of tax liabilities. These manipulations include such actions as concealing the real volume of sales of goods, work performed and services rendered, falsely reducing indicators on the payroll and number of employees, as well as creating false documents on the return of goods or payment for services. Such manipulations result in significant tax reporting irregularities and non-payment of related tax liabilities.

Tax offence causes are similarly significant. These offences are widespread for different reasons. Some are due to general national shortcomings associated with the crisis state of the economy, while others depend on specific features of the functioning of the tax service and its counteraction to offenders (Onu *et al.*, 2019). Individuals and legal entities strive in various ways to reduce the amount of tax payments. Non-payment of taxes can lead to hidden financial resources that can be used for the purchase of personal goods, investment in business development and production, as well as payment of wages. This is exactly the position of taxpayers that encourages them to evade tax payments. It is important to note that in Kazakhstan the problem of tax evasion is also related to the attitudes of citizens who view this offence as something less serious (Bimo *et al.*, 2019; Irawan & Utama, 2021). Some people believe that tax evaders are not criminals but are more successful entrepreneurs with positive business qualities. It is important to note that the desire to enrich oneself is not the only motivation for tax evasion.

Common tax evasion tactics include overestimating production costs by including unjustified expenses, such as prepayments for non-received products, increasing labour costs, and artificially inflating the number of employees through fictitious contracts to conceal excessive wage payments (Tynaliev *et al.*, 2024). Other tactics involve transferring funds to special company accounts for non-existent services, work, or products. To combat tax evasion, E.T. Kassa (2021) recommends establishing a fair taxation system with appropriate tax rates, offering tax education to improve taxpayer understanding, and promoting tax morality by emphasizing citizens' moral obligations to contribute to the nation's development. D. Onu *et al.* (2019) suggest eliminating the belief in loopholes within the system, increasing taxpayer confidence, and ensuring fair treatment by authorities to reduce tax evasion. Other scholars emphasize the significant impact of reducing errors in management decision-making and the evaluation of corporate tax policy (Bimo *et al.*, 2019; Wicaksono *et al.*, 2021). Internal control mechanisms play a key role in ensuring compliance with laws and regulations, including tax laws, thereby reducing the risks of tax offenses. According to F. Irawan and A.S. Utama (2021), forensic accounting is crucial for detecting tax fraud and evasion, particularly in developing countries with high levels of informal sectors, corruption, and growing tax losses. This approach helps increase government revenues, which are vital for funding public goods and services, improving social and economic infrastructure, and reducing budget deficits.

Forensic accounting techniques to increase tax revenues also improve morale among taxpayers, which will increase tax compliance. It will also ensure tax fairness and equitability as the number of tax complaints by individuals and companies will decrease until the gap between those who comply with tax laws and those who evade tax and will improve the quality of the taxpayer database as many taxpayers will be brought into the accounting records which will facilitate revenue planning and budgeting. In the long term, as compliance increases, the time and costs associated with investigation and recovery will be minimised and eliminated (Wilke & Macpherson, 2019; Ciocanea *et al.*, 2020).

After all, the processes related to the preparation, commission and concealment of tax evasion have a non-linear nature of cause-and-effect relationships, where the consequences of each previous action do not serve as a direct cause of subsequent actions. This should support the data in the tax or customs declaration. Thus, the choice of a particular type of tax, fee (compulsory payment), from which it is planned to evade, determines the peculiarities of accounting of taxable objects, determination of tax rates, calculation of amounts of tax, fee (compulsory payment) or taxable base, use of tax benefits. At the same time, it is necessary to form "actual" grounds for the data to be included in the tax or customs declaration, which determines the mechanism of committing an offence, where the imaginary results of actions that have not yet occurred become causal circumstances for subsequent actions. Thus, in the process of preparation for the commission of this offence, actions are carried out aimed at disguising from the controlling authorities the commission of this offence.

Thus, the criminological characteristic of crimes under Article 245 of the Criminal Code of the Republic of Kazakhstan (2014) reveals the main features and trends of these offences. First of all, such crimes are characterised by an economic component, as their purpose is the illegal evasion of mandatory financial obligations to the state. This may have serious consequences for the economic stability and development of the country. Crimes under Article 245 of the Criminal Code of the Republic of Kazakhstan (2014) are most often committed by organised groups or persons with special knowledge of finance and taxation. This indicates that such offences are planned and premeditated. These crimes can cause significant damage to the state budget and society as a whole, as they result in the loss of significant funds that could have been allocated to social programmes and the development of the country.

In conclusion, the criminological characteristic of crimes under Article 245 of the Criminal Code of the Republic of Kazakhstan (2014) indicates the need to take effective measures to combat such offences, including strengthening control over tax reporting, increasing legal literacy and awareness of the population in the field of tax legislation, as well as toughening the responsibility for committing such crimes. Only thus it is possible to ensure fairness and efficiency of the tax system, as well as to protect the interests of the state and society as a whole. After a comprehensive analysis of scientific sources concerning the problems of prevention of concealment of taxation objects and evasion of taxes and mandatory payments, it becomes obvious that it is necessary to develop a comprehensive system of socio-economic and legal measures. In this context, it seems appropriate to use some approaches to influence the behaviour of taxpayers and their intentions to conceal objects of taxation:

1. Stabilisation and clear formulation of tax legislation. It is advisable to improve and regulate tax regulations, codify tax laws, and simplify their wording to make these documents more accessible and understandable.

2. Lowering tax rates while broadening the tax base.

3. Reduction of administrative procedures related to fiscal management. Fiscal levies whose administration is excessively costly should be abolished, which will reduce the tax burden on economic entities and create better conditions for their development.

The Tax Code of the Republic of Kazakhstan (2017) plays a central role in shaping the country's tax policy, but there are areas where further improvement could enhance its effectiveness. One key aspect is the stabilization and clear formulation of tax legislation. While the Tax Code provides the framework for tax obligations, its complexity and frequent amendments create uncertainty for businesses. Simplifying and codifying the tax laws would make them more accessible and understandable, reducing the administrative burden on both taxpayers and tax authorities. Clearer language in the Tax Code of the Republic of Kazakhstan No. 120-VI "On Taxes and Other Mandatory Payments to the Budget" (2017) would foster greater compliance, as businesses would be better able to navigate the rules and avoid costly mistakes.

In addition, the Decree of the President of the Kyrgyz Republic No. 49 "On Creating a Favorable Tax Environment for Business Entities and Increasing the Interest of Insured Persons in State Social Security" (2024) offers valuable insights for Kazakhstan's tax policy. This decree, aimed at creating a favorable tax environment for businesses, proposes measures to enhance the efficiency of the tax system and ensure that businesses are not overburdened by taxes. Drawing from this, Kazakhstan could consider lowering tax rates while broadening the tax base. By reducing the tax burden on businesses, the government would encourage entrepreneurship and investment. Moreover, focusing on reducing administrative procedures related to fiscal management could be beneficial. In particular, eliminating or simplifying costly fiscal levies would create a more business-friendly environment and promote economic growth.

Tax culture and discipline improvement through active anti-corruption efforts, improvement of democratic institutions efficient use of tax revenues and setting marginal tax rates above the rates of penalties for violation of tax legislation are also especially significant. Increasing the effectiveness of tax authorities in detecting tax evasion and creating conditions under which such evasion becomes practically impossible is an integral element of countering this type of crime (Petersone *et al.*, 2016). Even a small increase in the probability of punishment will have a positive effect, contributing to the narrowing of the scale of evasion. Finally, there is a need to actively promote the formation of national tax consciousness through information and education activities that aim to maximise voluntary tax payment. By overcoming these and other taxation problems, the country will be able to create favourable conditions to reduce budget losses and the number of tax defaulters actively evading their constitutional obligations. Kazakhstan will be able to become a significant participant in tax competition on the world stage.

Several effective measures have been implemented around the world to improve tax culture and discipline, which could be useful for Kazakhstan. In Singapore, the Inland Revenue Agency (IRAS) is actively fighting corruption and ensuring high efficiency of the tax authorities. This agency is known for its transparency and high level of trust from taxpayers. As a result, Singapore has one of the highest levels of tax revenue in the world. In Sweden, the transparent budgeting system allows citizens to have access to information about the use of public funds. This not only improves the efficiency of tax funds, but also increases public trust in the state, encouraging them to pay taxes voluntarily. Germany imposes significant fines for tax evasion, which can exceed the amount of unpaid taxes. This encourages businesses and individuals to comply with tax laws and reduces tax evasion. New Zealand actively uses modern technologies to detect tax evasion. The tax authorities regularly conduct audits and analyse data, which allows them to promptly detect violations and minimize the scale of evasion (Enofe *et al.*, 2019; Kassa, 2021). Canada conducts national campaigns aimed at raising awareness of the importance of paying taxes. These information and education activities help to build a tax culture among citizens and businesses, which in turn increases the level of voluntary tax payment. Implementation of similar measures in Kazakhstan could help reduce budget losses, improve tax discipline and ensure transparency in the use of public funds.

Conclusions

The investigation of tax evasion offenses under Article 245 of the Criminal Code of the Republic of Kazakhstan underscores the significant role that documentary evidence plays in proving violations of tax legislation. The availability of reliable documents can serve as the foundation for other admissible evidence, such as witness testimonies, expert opinions, and physical evidence, while their absence hinders the ability to hold offenders accountable. A major drawback of the current system is the inconsistency and complexity within the existing regulatory framework, which makes it challenging to enforce tax laws effectively. Ambiguities and frequent amendments in tax legislation create uncertainty for businesses, increasing the risk of non-compliance due to confusion over obligations and procedures.

The existing tax system also lacks clear guidelines on how to handle various industries differently, despite the need for sector-specific tax policies. As a result, businesses in certain sectors may face higher-than-necessary tax burdens, which can impede economic growth and discourage investment in those industries. Moreover, the current system's reliance on paper-based invoicing and cash payments creates ample room for tax evasion, as these methods lack the transparency of electronic transactions. To address these challenges, several measures can be proposed to optimize Kazakhstan's taxation system. These include implementing a low, predetermined tax rate (no more than 10%) on gross income, simplifying tax obligations, and reducing consultancy costs for companies. Tax rates should also be differentiated across various industries, taking into account their unique characteristics and helping the government manage production policies more effectively. Furthermore, requiring businesses to issue only electronic invoices and make payments through traceable methods would enhance transparency and minimize opportunities for tax evasion. Introducing a flat-rate income tax, paid directly by banks on behalf of the government, could further streamline tax collection.

Despite these potential solutions, the current regulatory framework's lack of clarity and consistency remains a significant challenge. Future research should focus on evaluating the impact of these proposed reforms in the context of

Kazakhstan's evolving economic environment and regulatory needs. Further studies could explore ways to harmonize tax policies and enhance the alignment between tax laws and business practices, with the aim of reducing evasion and fostering a more efficient and fair tax system.

Acknowledgements

None.

Conflict of interest

None.

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Врахування інтересів підприємців при формуванні стратегії ефективного законодавства та доказування у справах про правопорушення, пов'язані з ухиленням від сплати податків з юридичних осіб

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Анотація. Ухилення від сплати корпоративних податків залишається значною проблемою, складні механізми якої вимагають сучасних кримінологічних підходів до її вирішення. Метою дослідження була характеристика інтересів підприємців у формуванні стратегії ефективного законодавства та доказування у справах про злочини, пов'язані з ухиленням від сплати податків юридичними особами в Казахстані. У дослідженні було використано низку методів, включаючи аналіз даних, аналогію, узагальнення та формально-юридичні методи для вивчення теми. Основними висновками дослідження стало визначення проблем у доведенні ухилення від сплати податків, особливо у справах за участю офшорних компаній та спеціально створених організацій з метою ухилення від податкових зобов'язань. Варто зазначити, що оперативне розслідування справ, які підпадають під дію статті 245 Кримінального кодексу Казахстану, є предметом пильної уваги, з особливим акцентом на роль документальних доказів. Дослідження продемонструвало, що наявність або відсутність фінансової документації має значний вплив на результати кримінальних проваджень у сфері оподаткування. Крім того, в дослідженні запропоновано оптимізувати податкову систему Казахстану шляхом запровадження спрощених податкових ставок, диференційованого галузевого оподаткування та обов'язкового електронного виставлення рахунків-фактур, що могло б підвищити прозорість і зменшити можливості для ухилення від сплати податків. У висновках було підкреслено, що вдосконалення слідчих процедур і всебічна оцінка доказів мають вирішальне значення для справедливого та ефективного ведення кримінальних проваджень. Крім того, в дослідженні було запропоновано рекомендації щодо внесення змін до законодавства з метою зміцнення правової бази Казахстану у сфері боротьби з ухиленням від сплати податків, сприяння співпраці між компаніями та урядом, а також стабілізації фінансової системи країни. Даним дослідженням зроблено внесок у розробку надійних методів виявлення та доказування злочинів, пов'язаних з ухиленням від сплати податків

Ключові слова: фіскальна політика; податкові перевірки; правові реформи; фактори ризику; фінансове регулювання; економічна злочинність

UDC 343.8
Doi: 10.32518/sals4.2024.59

Соціально-правові студії. 2024. Т. 7, № 4
Social & Legal Studios. 2024. Vol. 7, No. 4

Problems of efficiency of the system of execution of punishments in the criminal law of Kazakhstan: Between legislation and the experience of repeat offenders

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Abstract. The importance of the research is conditioned by conflicts in the current legislation, which has a considerable adverse impact on law enforcement practice. Accordingly, the aim of the study was to analyse the criminal legislation of Kazakhstan in the context of investigating the system of execution of punishments. For this purpose, such methods as dogmatic, logical analysis, legal hermeneutics, deduction, induction, formal legal, and other methods were used. The study revealed that the number of registered criminal offences in Kazakhstan has decreased by half from 2018 to 2022, but the figures are still quite high. The study analysed the Criminal Code, Criminal Procedure Code, and Penal Code, as well as other regulations of criminal law of Kazakhstan. This provided an opportunity to characterise the current types of penalties in Kazakhstan. It was found that arrest is often used as an alternative punishment, despite being the main punishment. It was noted that there is a conflict between the Penal Code and Criminal Procedure Code, and Law of the Republic of Kazakhstan No. 261-IV "On enforcement proceedings and the status of bailiffs", which leads to incorrect application of the norms by private executors in the context of the execution of punishment in the form of a fine. The practical significance of the findings lies in the provision of recommendations that will eliminate the current conflicts in the criminal law of Kazakhstan, solve the problems of law enforcement practice and increase the level of effectiveness of the execution of punishment, which will contribute to the reduction of crime rates

Keywords: preventive measures; analysis of legislation; fine; arrest; conflicts

Suggested Citation

Article's History: Received: 11.09.2024 Revised: 01.12.2024 Accepted: 23.12.2024

Rakhimova, G., Izbassova, A., Dyussebayev, T., & Baisymakova, D. (2024). Problems of efficiency of the system of execution of punishments in the criminal law of Kazakhstan: Between legislation and the experience of repeat offenders. *Social & Legal Studios*, 7(4), 59-68. doi: 10.32518/sals4.2024.59.

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Introduction

Criminal law was created to address the important challenges that society faces. These tasks include protection of human and civil rights and freedoms, protection of private property, maintenance of public order and public safety, protection of the environment, ensuring peace and security of humankind, and prevention of crime. Criminal punishment fulfils its role by ensuring that the public interest is protected from criminal acts and by providing the threat of punishment that prevents the commission of offences. Punishment is one of the main instruments of the criminal law system, which effectively restores the normal state of law and order in society and prevents the commission of offences. The effectiveness of special prevention can be measured by the number of repeat offenders, i.e., persons who re-offend with a previous criminal record. An example of such an indicator is the statistics on repeat offences. For instance, in 2021, the number of criminal offences was 157,884, of which 64,110 were repeat offenders; among them 4,917 had an unexpunged and outstanding convictions and 1,467 were under the supervision of the probation service. In 2022, 140,592 criminal offences were recorded in the Republic of Kazakhstan, of which 21% were committed by a repeat offender (Legal statistics, n.d.). For comparison, let's consider Germany in the same timeframe. In 2021, Germany recorded 5,047,860 criminal offenses, with a repeat offender rate of approximately 40.3%, meaning that nearly 2,036,268 of the offenses were committed by individuals who had previously offended. The number of criminal offenses in 2022 increased slightly to 5,628,584, maintaining a similar repeat offender rate of around 39% (Bundeskriminalamt, n.d.). These statistics indicate that a considerable proportion of convicts re-offend after serving their sentence, and some even while serving their sentence. This raises the question of why the punishment imposed for criminal offences does not always contribute to the purpose of special prevention. There are many reasons for this, but some of them include shortcomings in the law, types of sentences and the sentencing practices of judges. It is quite important to examine the main problematic aspects that prevent the function of punishment and criminal law in general from being fully implemented.

The significance and specific feature of criminal law is that one of its key aspects is punishment, which only a court acting on behalf of the state may impose (Kolb *et al.*, 2023). This applies to persons who have committed a criminal offence (a felony or misdemeanour) and includes a variety of criminal penalties, including imprisonment, in rare cases deprivation of citizenship, and in extremely rare cases – the death penalty. According to Article 1 of the Constitution of the Republic of Kazakhstan (1995), the highest values of human life, rights and freedoms are recognised and acknowledged as the principles of Kazakhstan. S.R. Bekmagambet and B.K. Shnarbaev (2021) believe that the essence of a country's criminal policy is determined by the relevant legislation in force. Accordingly, throughout the development of Kazakhstan, the state has always used criminal legislation to ensure internal and external security.

G.Zh. Osmanova and A.R. Bizhanova (2022) note that with the help of Criminal Code of the Republic of Kazakhstan (2014) (CC RK) the state was able to maintain balance, ensure public safety and stability in society, using criminal law methods of combating crime, and this was especially relevant in the 1990s. For example, when the number of dangerous criminal offences for the society increased, the state toughened criminal punishment, introduced new articles in the CC RK. In contrast, as specific criminal acts declined in number, changes in the situation and other reasons, it could mitigate criminal punishment, even excluding certain corpus delicti from the Special Part of the CC RK. In analysing the problems associated with the application and enforcement of criminal penalties, the state should seek to restore social justice, rehabilitate convicted persons and return them to normal society (Khablo & Svoboda, 2024). Examining certain facets of crime prevention theory is essential to comprehend the function of criminal law as an instrument for successfully influencing crime and offenders, as well as the function of public and private prevention. For instance, R.K. Sarpekov and S.M. Rakhmetov (2022) link the prevention of crime with the impact on its causes, offenders, and providing them with preventive and corrective action.

The Message of the Head of State Kassym-Jomart Tokayev to the people of Kazakhstan (Official Website of the…, 2020) has given important attention to the evolution of the criminal code in the Republic of Kazakhstan. The President stressed the need to ensure the stability of criminal and criminal procedure legislation, as frequent adjustments and changes can have an adverse impact on law enforcement, creating heterogeneous investigative and judicial practices. According to S. Apenov *et al.* (2024), the inevitability of punishment for socially dangerous acts should be guaranteed in law enforcement. The worrying increase in criminal offences and prison populations is one of the reasons for the focus on crime prevention. With the passage of the Law of the Republic of Kazakhstan No. 271-IV "On the prevention of delinquency" (2010), Kazakhstan became one of the first countries in the post-Soviet era to implement a preventative system in the fight against crime.

Notably, measures of criminal influence regarding individuals who have violated the law do not always accomplish the objective outlined in Article 39 CC RK (2014), paragraph 2, and sometimes even turn out to have negative consequences. Accordingly, the purpose of this study was to examine the main problems that reduce the level of effectiveness of criminal penalties. For this purpose, it was necessary to analyse the current legislation and practice, highlight conflicts, and propose recommendations for their elimination.

Materials and methods

There were several different types of analysis techniques used in the study. The functional analysis was used to cover the concept "system of punishment", to determine the characteristic qualities, principles on which the implementation of the mechanism is based, types, as well as to determine the function and role in ensuring national security. The logical analysis allowed for identifying links between different aspects of the punishment system, types of offences and punishments, and the purposes of punishment. It also allowed for an assessment of whether the punishment system was fair and effective in terms of its objectives, public safety, and respect for human rights. The method of logical analysis allowed for a more detailed examination of such aspect of the research as arrest and fines as independent types of punishment. This provided an opportunity to define their concepts, to accentuate the characteristic aspects and principles of implementation, to cover the essence and role in

the system of punishment in criminal law in general. Thanks to this method, statistical indicators were also investigated, which showed the number of registered criminal offences in Kazakhstan from 2018 to 2022. These indicators were analysed, the dynamics of these acts and the effectiveness of the punishment system in this aspect were assessed.

The formal legal approach was incorporated to examine the legislative doctrine of Kazakhstan in the context of criminal law. Thus, it provided an opportunity to investigate the Criminal Code of the Republic of Kazakhstan (2014), Constitution of the Republic of Kazakhstan (1995), Message of the Head of State Kassym-Jomart Tokayev to the people of Kazakhstan (Official Website of the…, 2020), the Law of the Republic of Kazakhstan No. 271-IV "On the Prevention of Delinquency" (2010), the Law of the Republic of Kazakhstan No. 404-VI ZRK "On the Ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty" (2021), Criminal Procedure Code of the Republic of Kazakhstan (2014), the Law of the Republic of Kazakhstan No. 261-IV "On Enforcement Proceedings and the Status of Bailiffs" (2010), Penal Code of the Republic of Kazakhstan (2014), the Law of the Republic of Kazakhstan No. 418-V "On Informatization" (2015), the Law of the Republic of Kazakhstan No. 38-IV "On Probation" (2016).

The legal hermeneutics technique was used to study the texts of laws and other legal records that relate to the system of punishment in Kazakhstan, to investigate the goals and intentions of the legislator in creating these laws, to clarify the meaning and interpretation of the laws on punishment in Kazakhstan. The dogmatic method enabled a detailed study of the texts of the laws related to the punishment system, which included analysing the structure, the terms used and the logical links within the laws, identifying the types of punishment, the criteria for their imposition and trial procedures, and determining how the acts interrelate. These methods were introduced to create a systematic and clear understanding of the laws and their application. The method of deduction was used to characterise the penal system based on its inherent structural elements and its role in national security. The method of induction, based on the attributes and principles identified during the analysis of legislative acts, allowed for assessing the function of the punishment system and its effectiveness in greater detail. The synthesis method was used to combine the findings of the study and develop recommendations.

Results

Evolution of Kazakhstan's criminal policy. Since 2015, Kazakhstan has pursued an active state policy to improve criminal legislation and counter crime. Particularly important for Kazakh society was the passing of the Law of the Republic of Kazakhstan No. 404-VI ZRK "On the Ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty" (2021). Under this protocol, the death sentence is not applied unless there have been exceptionally serious war crimes. Other innovations include the expansion of alternative measures of deprivation of liberty, the introduction of new types of penalties, and stricter sanctions for offences against the person, including sexual offences, especially against young people. However, the crime rate in Kazakhstan is still quite high (Fig. 1). Proceeding from the data provided, the level of reported offences has decreased significantly. Thus, from 2018 to 2022, the indicator decreased by 2 times. Notably, crime dynamics accelerated during the lockdowns. Crime prevention measures have considerably improved their level of effectiveness, but there is still a spectrum of challenges.

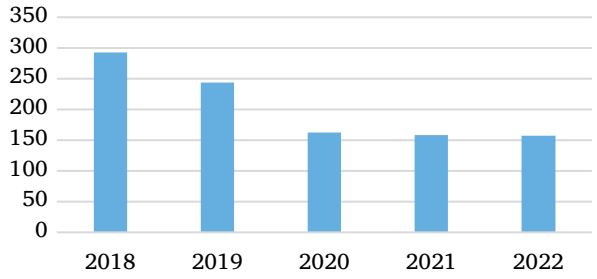

Figure 1. Number of registered criminal offences in 2018-2022, thousand crimes

Source: compiled by the authors based on Forbes.kz (2023) and Legal statistics (n.d.)

The state attention to the issues of criminal punishment has its reasons, because the problem of punishment has always been and stays a key issue in the criminal legal sphere. Current Kazakh legislation makes provision for many types of penalties applicable to various criminal misdemeanours and offences. According to Article 38 of the CC RK (2014), the main penalties for criminal offences are correctional labour, fine, community service, arrest, deportation of foreigners. In the case of offences under paragraph 2 of the same article, the main penalties that may be imposed are fines, correctional labour, community service, restriction of liberty, deprivation of liberty, and the death penalty. Furthermore, the criminal legislation of the Republic of Kazakhstan prescribes additional penalties for criminal offences, such as confiscation of property, deprivation of various titles and awards, restriction of rights and even deprivation of citizenship or expulsion of foreigners.

Specific issues in criminal punishments. Nevertheless, certain aspects of the imposition and execution of certain types of punishment cause difficulties in law enforcement practice. For example, arrest, as a type of punishment, has its own specific features. According to Article 45 of the CC RK (2014), arrest entails isolation the convicted individual from public for a duration of 10 to 50 days. However, arrest does not apply to minors, pregnant women, women with young children, single fathers, women over the age of 58 years and men over the age of 63 years, and persons with disabilities of the first and second groups. Notably, arrest as a form of punishment was first introduced in the system in 1997, but the issues of its execution are still unresolved (Criminal Code of…, 2014). It may be applied only in case of substitution of a fine, community or correctional labour, and in respect of military personnel. Thus, although there is an independent type of punishment in the form of arrest, its imposition is still low, and the practice of its application as a basic punishment is practically absent. According to the current legislation, arrest is executed in places of detention, including special sections of remand centres; military personnel serve their arrest in the disciplinary cell (Criminal Code

of…, 2014). Arrest as a form of punishment is widely used in foreign countries. For example, in countries such as Argentina, Belgium, China, Denmark, Finland, Germany, Greece, Italy, Poland, Spain, Poland, Ukraine, and Spain, arrest is used as a criminal sanction. Detention periods vary from 1 day to 3 years; e.g., in Italy, arrest periods range from 15 days to 3 years, in Denmark – from 7 days to 2 months, and in China – from 1 to 6 months (Turney & Wakefield, 2019).

An important issue hindering the use of this type of punishment in Kazakhstan is the lack of suitable conditions for its execution – the availability of arrest houses. When this type of punishment was introduced, the places where arrests were served were determined as arrest houses, which were later replaced by pre-trial detention facilities. It was only in 2014 that pre-trial detention facilities precincts were introduced into the system to serve arrest sentences (Criminal Code of…, 2014). However, due to the lack of resources for creation of the required conditions for the application of arrest, it should either be excluded as an independent type of punishment, or its name should be changed following the practical possibility of its application and execution. For instance, short-term deprivation of liberty could be considered, as the essence of arrest is a combination of deprivation and restriction of rights accompanied by short-term isolation from society. According to Articles 82-83 of the Penal Code of the Republic of Kazakhstan (2014), persons serving an arrest are held in strict isolation in cells and have certain rights and obligations. There is also ambiguous practice in the enforcement of the penalty in the form of a fine. According to Article 41 of the CC RK (2014), a fine is a pecuniary penalty determined in the amount of monthly calculation indices established by law and in effect at the time the offence was committed, or may be defined as the amount or value of the bribe, transferred property, income, or default on payments. The fine shall be enforced within the term set by the sentence, if the fine is not paid within the term set by the court, compulsory execution shall be applied. Accordingly, there are two stages of penalty enforcement: voluntary and compulsory.

Considering this, an analogy should be established with the procedure for payment of a fine imposed as an administrative penalty to ensure the enforcement of this type of penalty upon voluntary payment. For example, administrative legislation makes provision for deferment and instalments of payment of administrative fines imposed by court decisions or prescriptions of authorities. It was also prescribed that a bailiff may refuse to initiate enforcement if the deadline for voluntary payment has not yet expired. Thus, these aspects require special attention from the representatives of the legislative authorities to develop innovative approaches to the execution of arrest and fine as forms of criminal punishment. A criminal misdemeanour is a culpable act (active or passive) that does not pose a great public danger, causes minor harm or threatens harm to a person, organisation, society, or the state (Maculan & Gil Gil, 2020). Such acts are punishable by fines, correctional labour, community service, and arrest. However, since many persons brought to criminal responsibility do not have a permanent place of employment, the application of this type of punishment is limited. Consequently, the most common type of punishment in the category of criminal misdemeanour cases is a fine. Currently, there are difficulties in the enforcement of fines, which worsens the effectiveness of this form of punishment and contributes to impunity among offenders.

Inmate rights, psychological aid, and probation in Kazakhstan. According to national laws and international human rights standards, including the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (United Nations Office on Drugs and Crime, 2015), Kazakhstan's legal system guarantees the preservation of prisoners' rights. These rules protect detainees' fundamental rights, which include the freedom from torture and cruel treatment, access to healthcare, decent living conditions, and protection from other forms of abuse. Kazakhstan has ratified several international treaties, such as the International Covenant on Civil and Political Rights (ICCPR) (1967), further committing the country to uphold the rights of prisoners. But even with these legal safeguards, there are still practical obstacles to overcome in order to guarantee that these rights are completely upheld. Numerous jails in Kazakhstan are still severely overcrowded, which leads to subpar living conditions, unhygienic conditions, and restricted access to leisure activities. More than 37,000 prisoners spread across 78 correctional facilities, exceeding the system's capacity. Additionally, 7,500 individuals are held in 16 pretrial detention centers (SIZO), many of which are also operating beyond their limits (Zhulmukhametova, 2024). The jail system's already limited resources are made worse by overcrowding, which makes it more challenging to offer sufficient food, healthcare, and other necessities (National Bar Associations, 2023). This circumstance raises the possibility of communicable diseases spreading within prisons and contributes to the declining health of prisoners.

Studies have consistently shown a strong link between mental disorders and incarceration, with many prisoners suffering from conditions such as depression, anxiety, and post-traumatic stress disorder (Anderson *et al.*, 2016; Baranyi *et al.*, 2019). Because of this connection, essential psychological care is needed to address the mental health needs of prisoners. Although basic counselling and crisis intervention are the main emphasis of mental health support services, they are insufficiently comprehensive to address the complex mental health requirements of the jail population (Substance Abuse and Mental Health…, 2020). The lack of licensed psychologists and mental health specialists is a significant factor in the limited efficacy of psychological assistance in Kazakhstan's prisons. Numerous jail institutions may only have one or two psychologists on staff, if any, to care for hundreds of prisoners. For instance, some reports suggest that there is only one psychologist available for up to 300 prisoners, which greatly limits the ability to offer individualized care and rehabilitation services (Satybekova & Tileubayeva, 2023). Ideally, the number of psychologists should be significantly increased to ensure more comprehensive mental health support, with an optimal ratio closer to international standards of one psychologist per 50-100 prisoners.

Also, the existing mental health services typically prioritise short-term therapeutic interventions over long-term crisis management. This indicates that while acute psychological needs, like aggressive or suicidal thoughts or behaviours, may be attended to, long-term rehabilitation is not given enough attention (Mukasheva *et al.*, 2024). This lack of consistency in care is particularly troublesome for repeat offenders (those who have done time in jail or prison and have a history of reoffending) (Beaudry *et al.*, 2021). These people frequently exit jail without a support network or aftercare, which raises the possibility that they will relapse

into criminal activity because of unresolved psychological problems (Downs, 2020). Recidivism is greatly increased when there are no ongoing rehabilitation efforts since the released individual is likely to encounter the same mental health and environmental issues that preceded their original offences (Zgoba *et al.*, 2020).

One significant step forward in Kazakhstan's criminal justice reform has been the enactment of laws pertaining to probation, including the Law of the Republic of Kazakhstan No. 38-IV "On Probation" (2016). This statute permits some offenders to serve their sentences under community supervision rather than in prison, providing a more compassionate and restorative option to incarceration. Since its introduction, the number of people placed on probation has risen gradually, relieving pressure on the jail system by cutting down on congestion and the accompanying expenses of incarceration. In Kazakhstan, the number of people on probation grew from 28,079 in 2021 (Open Data GOV, 2021) to 28,463 in 2023 (SOZmedia.kz, 2024), reflecting a 1.37% increase. In contrast, the UK saw a slight increase in probation numbers from 238,500 in 2021 to 238,765 in 2023 (GOV.UK Justice Data, n.d.), representing a small growth of about 0.11%. While Kazakhstan's probation numbers are rising, the growth rate remains modest and may not be sufficient to meet broader objectives of reducing incarceration and enhancing rehabilitation, especially when compared to larger systems like the UK's. Offenders, especially those found guilty of less serious offences, can stay in their communities under probation as long as they follow supervision and take part in rehabilitation programs. One of the biggest issues facing Kazakhstan's probation services is the scarcity of qualified personnel, such as psychologists and social workers, which makes rehabilitation less successful (Salamatov, 2018). Furthermore, because there are no standardised practices, pretrial reports are administered inconsistently among locations. And since probation officers are not formally recognised by the legal system, their reports have minimal influence on criminal proceedings. These problems seriously impair the probation system's efficacy (Alimpiyev, 2024).

It was indicated that persons serving jail sentences are more likely to commit crimes again than those placed on probation, particularly if they have access to appropriate rehabilitative resources (Fox *et al.*, 2021). But repeat offenders often pose more difficult problems. These people may be more resistant to rehabilitation attempts because they have more severe behavioural problems or established criminal behaviour patterns. The probation system has produced inconsistent outcomes for these offenders. Some people effectively reintegrate back into society, but others can turn back to crime, especially if they don't obtain timely and focused treatment.

Enforcement challenges and recommendations. According to Article 472 of the Criminal Procedure Code of the Republic of Kazakhstan (CPC RK) (2014), all state bodies, local self-government organisations, legal entities, officials, and the general public are bound by court rulings and judgements that have become legally binding. These rulings are also strictly enforced across the Republic of Kazakhstan's territory. Failure to execute a judgement or court order shall entail criminal liability. The imposition of the fine is determined pursuant to Article 41 of the CC RK (2014) and depends on a certain number of monthly calculation indices established at the time of the offence. For criminal offences, the fine can range from 25 to 500 monthly estimates. According to Article 41 (3) of the CC RK (2014), if a fine imposed for a criminal misdemeanour is evaded, it may be replaced by community service or arrest. However, difficulties arose in connection with the amendment of Article 138 of the Law of the Republic of Kazakhstan No. 261-IV "On Enforcement Proceedings and the Status of Bailiffs" (2010), which gave private bailiffs the right to recover amounts up to 1,000 monthly estimates. This has led to incorrect application of this article by private executors, even though Article 24 of the Penal Code of the Republic of Kazakhstan (2014) (PC RK) grants the exclusive right to territorial justice authorities to carry out a fine-based form of punishment. Thus, these problems require the attention of legislators to improve the penalties in the form of fines and ensure their more effective enforcement. The CPC RK (2014) and the PC RK (2014) are more legally binding according to the hierarchy of laws than Law of the Republic of Kazakhstan No. 261-IV "On Enforcement Proceedings and the Status of Bailiffs" (2010).

The Penal Code of the Republic of Kazakhstan (2014) gives the probation service the right to declare wanted persons under probation supervision if such persons evade serving their sentence. Such powers are not delegated to private bailiffs. The probation service has a well-established system of control over convicts and would not have to fulfil other functions in case of a transfer to the execution of a fine, whereas the transfer of the execution of sentences to private bailiffs undermines the foundations of statehood and principles. Only the state is the coercive organisation and only the state authorities have the right and obligation to carry out the penalties imposed in the name of the state. Furthermore, according to Articles 170 and 178 of the CPC RK (2014), when executing a judgement for recovery of civil claim and procedural costs, the court shall send the judgement for enforcement to the relevant justice authority pursuant to the process outlined in the laws governing civil proceedings. Procedural costs in criminal cases are also recovered only in favour of the state, and writs of execution must also be sent to the territorial justice authorities. Regarding the absence of an application from the claimant, it should be noted that private court bailiffs carry out their activities only on a paid basis after concluding an agreement (contract) with the claimant over how the enforcement document will be executed. In most cases, victims who have already suffered a crime and suffered damages do not have the resources to pay for private bailiffs. This is particularly relevant in situations where it is a question of recovery of procedural costs in favour of the state. In such cases, it is also unclear how private bailiffs should be dealt with.

With the introduction of the Law of the Republic of Kazakhstan No. 418-V "On Informatization" (2015), writs of execution for amounts less than 1,000 monthly estimates are automatically sent to the regional chamber in electronic form. Thus, as of 1 January 2016, sentences in cases of criminal misdemeanours, which prescribe the recovery of damages for victims and procedural costs, shall not be enforced if the amount does not exceed 1,000 monthly payments. The same applies to penalties in the form of fines. Due to the emergence of contradictions between Article 138 of the Law of the Republic of Kazakhstan No. 261-IV "On Enforcement Proceedings and the Status of Bailiffs" (2010) and Article 24 of the PC RK (2014), it became impossible to enforce penalties as monetary penalties for criminal acts.

This circumstance is conditioned by the fact that such enforcement is carried out only by territorial justice authorities, and the Chamber of Private Bailiffs is not included in this category. The Criminal Procedure Code of the Republic of Kazakhstan (2014) and the Penal Code of the Republic of Kazakhstan (2014) have greater legal force in the hierarchy than the above Law. In this regard, there is a need to bring the provisions of Article 138 of the Law of the Republic of Kazakhstan No. 261-IV "On Enforcement Proceedings and the Status of Bailiffs" (2010) in line with the provisions of Article 24 of the CPC RK (2014). Further research should be aimed to analyse how to detect and counter frauds using information technology.

Discussion

Today, there is no doubt about the independence of penal law, but even though it is separated from criminal law, there is still a close connection between the two branches. Notably, many problems in the penal enforcement system are primarily related to the content of criminal legislation. According to D. Sznycer and C. Patrick (2020), penal law can be considered as an extension of criminal law at the point where the penal system is putting punishment into practice. The enforcement of sentences, as the final stage of the law enforcement process, requires serious review and improvement.

During the period of Kazakhstan's independent development, there have been positive changes in the economy, in the consciousness of its citizens, and the country's situation in the global context has improved, including the performance of international obligations in penal enforcement (Buribayev *et al.*, 2020). However, there is a crisis in the penal system. There is an insufficient material base, low wages, insufficient status of the profession, difficult and harmful working conditions, use of torture, shortcomings in criminal and penal enforcement legislation, lack of high-paying jobs, imperfect system of professional training, and many others. According to D. Husak (2020), convicts do not improve their situation after serving their sentence, but on the contrary, they become even worse. This happens, unfortunately, with the direct involvement of the staff of the penal and correctional system and under the influence of factors in the creation of which we ourselves are actively involved.

According to M. Langer (2020), frequent changes and adjustments in it adversely affect law enforcement and hinder the development of uniform investigative and judicial practice. It is worth agreeing with this position, as decisions related to the application of legislation are often made without doing adequate research and predictions, concentrating on what makes law enforcement convenient. This raises the need to develop new definitions for administrative and criminal offences so that the logic of determining punishment for violations becomes clearer to society and the legal community (Moroz & Horislavska, 2024). According to the position of T. Skolnik (2020), in the law enforcement process it is necessary to ensure inevitability of punishment for committed socially dangerous acts. It should be added to the above opinion that one of the factors causing increased focus on the issue of crime prevention is the increasing amount of criminal acts and the growing prison population, which raises serious concerns. Considering the examination of criminal law, it was noted that measures of this impact on those who have broken the law, not only do not achieve the intended purpose defined in the Criminal Code of the Republic of Kazakhstan (2014), but even lead to negative results, as convicted persons, instead of correction, become even worse, despite the requirements of criminal law.

There is a debate among scholars as to whether criminal law norms have a restorative function. Some scholars believe that the restorative function is unique to civil law. For instance, A. Kornya *et al.* (2019) argue that criminal punishment has only a compensatory function because the punishment deals with the compensation of bodily and/or moral injury sustained by the victim by the criminal offence. On the other hand, A. Ristroph (2020) takes the position that criminal punishment also has restorative or compensatory functions, as in its imposition, social justice and the rights of the victim violated by the criminal offence are restored. For example, the state compensates the aggrieved party's moral damages by excluding the offender from society, and through the application of fines, labour penalties and confiscation of the criminal offender's property, the state contributes to the compensation of material damage caused to the victim (Nukezhanova *et al.*, 2024).

According to D.L. Rhode (2019), the arguments presented do not provide a full understanding of how recovery occurs during punishment, as there is currently no rigorous scientific study of this issue, and the necessary set of indicators to assess the effectiveness of criminal penalties has not been developed. According to A. Aliverti *et al.* (2021), the restorative function of punishment exists because it includes the restoration of legitimate rights, duties, and interests of people and legal organisations, society, the state, and the world community, which were violated by the offence. It is important to support the stance that in the imposition of punishment it is acceptable for social justice to be restored, although this procedure is only partially guaranteed. For example, A. Corda and S.E. Lageson (2020) note that in traditional law there was no such punishment as deprivation of liberty. It ought to be included in the writers' perspective that the main purpose of the penalties was to restore justice. In this context, it is important to mention the study by A.K. Das *et al.* (2019), who write that different types of punishments such as death penalty, corporal and dishonouring punishment, ransom, fine, extradition of the perpetrator to the injured party and banishment from the community instead of prison were differentiated earlier. The minimum task to be achieved in the purpose of punishment is to deter the convicted person from carrying out new offences due to fear of punishment. The maximum challenge is adaptation and re-socialisation. Since punishment includes the elements of punishment, the execution of punishment can be considered as a formally regulated procedure for the application of punishment pursuant to the penal enforcement legislation. According to D. Epps (2021), the regime of detention of convicts contributes to the punitive functions of punishment by creating favourable conditions for the achievement of its objectives.

Notably, modern criminal law doctrine does not pay enough attention to punishment itself. This is conditioned by the fact that this problem is sufficiently studied and does not require revision. This is confirmed by the fact that when the Criminal Code of the Republic of Kazakhstan (2014) was adopted, the provisions related to the General Part of the Code stayed virtually unchanged, although they could have been revised and adjusted. Correction means the application to the convicted person of a set of procedures, because of which the person should improve (Spytska, 2023).

For example, Article 4 of the Penal Code of the Republic of Kazakhstan (2014) duplicates the objectives of criminal enforcement specified in Article 39 of the CC RK, as well as forms and methods of influence on convicted persons. In this context, the execution of punishment is inextricably linked to the accomplishment of criminal punishment's objectives and the correction of the convicted person. For example, according to G.D. Caruso (2020), the correction of the convicted person is not an independent goal but serves as a means to achieve the goal of preventing the commission of new offences. It is important to agree with this viewpoint and add that to increase the role of criminal legal influence on those who have committed crimes, it is important to be mindful of the personality of the offender, since it is the study of the personality of the offender that has a significant impact in the imposition of a correct and fair punishment, as well as in the offender's subsequent correction.

Based on the above, the following actions are suggested to better enhance the criminal code:

- the concept and objectives of penalty formulated in Article 39 of the Criminal Code of the Republic of Kazakhstan (2014) do not correspond to the modern reality and require revision and adjustment;
- it is also necessary to change the title of Article 11 of the Criminal Code of the Republic of Kazakhstan (2014) from "Categories of Crimes" to "Categories of Criminal Offences" to better fit the two-tier structure of criminal offences (crimes and criminal misdemeanours);
- a new category of criminal offences – criminal misdemeanours – should be added, as they have been excluded from the general concept of classification;
- the phrase "as well as those convicted of criminal misdemeanours" should be removed from paragraph 2 of Article 79 of the Criminal Code of the Republic of Kazakhstan (2014) to make a conviction for a criminal misdemeanour similar to a conviction for a crime. Considering these aspects, the suggested method to revising some features of combating criminal acts through the means of criminal code will help to address a lot of the problems faced by law enforcement agencies and civil society in the fight against crime.

Conclusions

This study was conducted to analyse the punishment system in Kazakhstan and identify the main problems that reduce the effectiveness of their implementation. First of all, it was found that the rate of reported criminal offences has halved between 2018 and 2022. This indicates that the current criminal law system is operating in a very good quality, but that there are significant issues with the execution of law enforcement practice. Persistent problems of inmate rights violations remain. Overcrowding, a lack of healthcare, and mistreatment keep undermining reforms meant to improve prison conditions. Despite Kazakhstan's international commitments, these issues are made worse by poor oversight by independent agencies and a lack of openness in complaint procedures. There is also a lack of psychological support offered in prisons due to the low number of mental health specialists and inadequate long-term treatment. Although probation legislation has reduced overcrowding and recidivism, challenges persist, especially in rural areas where probation officers face heavy caseloads and uneven access to rehabilitation services. Despite advancements, more work is required to guarantee a more equitable and restorative criminal justice system in Kazakhstan by strengthening the probation system, enhancing mental health services, and protecting inmate rights.

Such type of punishment as arrest shall be applied in case of replacement of a fine, community or corrective labour, and in respect of military personnel. Even though this type of punishment is independent, its imposition is still low and there is virtually no practice of its application as the main punishment. The main reason for this is the lack of arrest houses. The solution to this problem is to allow for the introduction of short-term deprivation of liberty. Another problem in the penal system is the ambiguous practice of enforcing punishment in the form of a fine. It was suggested that an analogy be established with the procedure for paying a fine as an administrative penalty to implement this type of punishment on a voluntary basis. It was noted that there was a conflict between Article 138 of the Law of the Republic of Kazakhstan No. 261-IV "On Enforcement Proceedings and the Status of Bailiffs" and Article 24 of the Penal Code of the Republic of Kazakhstan, which made it impossible to implement fine as a form of punishment. This is because this implementation is carried out exclusively by the territorial justice authorities, but the private bailiffs' chamber does not fall under this category. Accordingly, it was proposed to amend the norm set out in Article 138 of the Law of the Republic of Kazakhstan No. 261-IV "On Enforcement proceedings and the Status of Bailiffs" following the provisions of Article 24 of the Penal Code of the Republic of Kazakhstan. Further research should focus on the impact of different types of criminal punishment on recidivism rates.

Acknowledgements

None.

Conflict of interest

None.

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Проблеми ефективності системи виконання покарань у кримінальному праві Казахстану: між законодавством і досвідом рецидивістів

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Анотація. Актуальність дослідження зумовлена наявністю колізій у чинному законодавстві, що має значний негативний вплив на правозастосовну практику. Відповідно, метою дослідження був аналіз кримінально-виконавчого законодавства Казахстану в контексті дослідження системи виконання покарань. Для цього були використані такі методи, як догматичний, логічний аналіз, правова герменевтика, дедукція, індукція, формально-юридичний та інші методи. Дослідження показало, що кількість зареєстрованих кримінальних правопорушень у Казахстані з 2018 по 2022 рік зменшилася вдвічі, але цифри все ще залишаються досить високими. У дослідженні було проаналізовано Кримінальний, Кримінально-процесуальний та Кримінально-виконавчий кодекси, а також інші нормативно-правові акти кримінального права Казахстану. Це дало можливість охарактеризувати сучасні види покарань у Казахстані. Було виявлено, що арешт часто використовується як альтернативне покарання, незважаючи на те, що він є основним покаранням. Зазначено, що існує колізія між Кримінальним та Кримінально-процесуальним кодексами, а також Законом Республіки Казахстан № 261-IV «Про виконавче провадження та статус судових виконавців», що призводить до неправильного застосування норм приватними виконавцями в контексті виконання покарання у вигляді штрафу. Практичне значення одержаних результатів полягає в наданні рекомендацій, які дозволять усунути наявні колізії в кримінальному законодавстві Казахстану, вирішити проблеми правозастосовчої практики та підвищити рівень ефективності виконання покарання, що сприятиме зниженню рівня злочинності

Ключові слова: превентивні заходи; аналіз законодавства; штраф; арешт; конфлікти

UDC 346
Doi: 10.32518/sals4.2024.69

Соціально-правові студії. 2024. Т. 7, № 4
Social & Legal Studios. 2024. Vol. 7, No. 4

Contractual relationships of social entrepreneurs in the healthcare sector in Kazakhstan

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Abstract. The purpose of this study was to study of features and evaluate the contractual relations of social entrepreneurship entities working in the field of healthcare in Kazakhstan to cover their contribution to improving the quality of medical services, as well as their accessibility to the population. The study employed the following methods of cognition: system approach, comparative legal method, and hermeneutic method. The study considered the legislation of the Republic of Kazakhstan in the field of social entrepreneurship and healthcare, the basis of their contractual cooperation. It was found that regulations prescribe certain measures of state support for individual entrepreneurs and organisations engaged in social entrepreneurship. These include tax incentives to encourage employment initiatives, priority rights to take part in public procurement, and the possibility of receiving grants and microcredits. However, it should be emphasised that these measures are fragmented and informal, which in general does not contribute to the structural and systemic development of social entrepreneurship. Regarding contractual relations, it was found that the basis of social entrepreneurs' involvement in state social contracts is through contracts for the provision of services or goods, as well as the conclusion of outsourcing contracts. The study analysed cases of social entrepreneurship in Kazakhstan, their specific features and problems. The study concluded that social entrepreneurship in Kazakhstan is a modern economic trend, despite the presence of relevant legislation, it faces a range of problems that hinder its development. The practical significance of this study is to provide an in-depth understanding of the structure and effectiveness of social entrepreneurs' interaction in this field and highlight concrete practical aspects that contribute to the development and optimisation of social entrepreneurship in healthcare in the Kazakh economic environment

Keywords: non-profit organisations; collective projects; public problems; business support; crowdfunding

Suggested Citation

Article's History: Received: 06.08.2024 Revised: 24.11.2024 Accepted: 23.12.2024

Tursynova, B., Kopbayeva, A., Malikova, A., & Akhmetov, Zh. (2024). Contractual relationships of social entrepreneurs in the healthcare sector in Kazakhstan. *Social & Legal Studios*, 7(4), 69-78. doi: 10.32518/sals4.2024.69.

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Introduction

World experience demonstrates the growing relevance of social entrepreneurship development, characterised by the focus not on profit, but on the improvement of public welfare. In times of crisis, the need to mobilise all available resources increases, and entrepreneurial activity becomes a key factor in maintaining socio-economic sustainability. In the Republic of Kazakhstan, social entrepreneurship is a relatively new and developing phenomenon in the economy. The rapid development of the market economy has had a negative impact on the solution of social problems. Income inequality remains a significant issue in Kazakhstan, with a marked disparity in the proportion of the population earning below the subsistence level between urban and rural areas (Ryskaliyev *et al.*, 2019). In the reporting period, the share of people with incomes below the minimum living standard in rural areas was 6.6%, exceeding the urban rate of 3.6% by 3 percentage points (Bureau of National Statistics, 2023a). Despite improvements in healthcare infrastructure, economic pressures have left some groups, such as low-income families and those in remote regions, without affordable or nearby medical facilities (Health Advocacy Coalition, 2023).

It should be emphasised that such dynamics are observed not only in Kazakhstan, but also in many other countries, including developed states. In these contexts, social entrepreneurship has become an effective tool for addressing a variety of social challenges in society, and Kazakhstan is no exception. In Kazakhstan, social entrepreneurs in the healthcare sector are expanding access to healthcare services and supporting the creation and modernisation of medical infrastructure.

Currently, social entrepreneurship in Kazakhstan is just beginning to develop, but already faces substantial obstacles, such as limited access to funding, incomplete legislation, low levels of public awareness and insufficient entrepreneurial competence among organisers of this type of projects. Understanding contractual relationships in this area allows for the identification of best practices, the development of effective strategies for cooperation between the state and social entrepreneurs, and the promotion of improved health and public welfare (Saebi *et al.*, 2019).

B. Bimbetova *et al.* (2023) cover the concept of social entrepreneurship and its importance in promoting the realisation of social change. The research analyses global experience, explores case studies of successful social entrepreneurial projects and their impact on society, with a special focus on the aspects of financing social entrepreneurial initiatives and strengthening cooperation between state and non-state sector bodies. The authors, analysing global experience, do not provide working financial models used to support social entrepreneurial initiatives, including grants, social investments, microfinancing, and other forms of financing. S.T. Okutayeva (2023) considers the concept of social entrepreneurship. Furthermore, the author's research is aimed at analysing the current state of development of social entrepreneurship in the Republic of Kazakhstan, identifying relevant issues that hinder its current development, and the researcher offers her own concept for solving these problems.

S.T. Okutayeva *et al.* (2021) investigate the establishment and development of social entrepreneurship in Kazakhstan, focusing on its definition and how it differs from non-profit organisations. The authors identify the various challenges that hinder the growth of social entrepreneurship in the country, such as the absence of a comprehensive legal framework, limited access to financing, and high taxation levels. Through an examination of global experiences and the operational obstacles encountered by social entrepreneurs worldwide, the authors aim to offer workable answers that are appropriate for Kazakhstan's situation. F. Karagusov (2021) briefly summarises the current understanding of key concepts such as social economy and social enterprise in different modern legal systems. The author also analyses the first steps taken in Kazakhstan in the development of legal foundations of social entrepreneurship and their contractual cooperation. The researcher substantiates the expediency of introducing amendments to the Civil Code of the Republic of Kazakhstan (1994) to create a new legal status (apart from commercial and non-commercial organisations) for the subjects of social entrepreneurship, as well as to regulate special legal forms for the implementation of social entrepreneurship. Furthermore, the author does not identify a range of other regulations that will need to be changed for social entrepreneurs to implement their activities.

The purpose of this study was to analyse and evaluate the contractual relationships that exist between social entrepreneurship entities focused on healthcare in Kazakhstan, as well as to identify their contribution to improving the quality of healthcare services and to cover measures that contribute to improving access to healthcare for the population.

Materials and methods

Agreements, contracts and contractual relations between social entrepreneurs and medical institutions or state bodies in the field of health care of Kazakhstan became the subject of the study. The study included an analysis of the content, legal framework, financial aspects and practical impact of such contracts on the quality and availability of medical services, as well as their role in the modernization of the health care system in Kazakhstan. The study of the topic contractual relations of social entrepreneurs in the sphere of healthcare Kazakhstan used a variety of materials, including statistical data from official data of the state and international metric sites, materials of international and regional research organisations specialising in social and healthcare: Federal Statistical Office (Destatis) (2021), Bureau of National Statistics (2023a; 2023b), The Register of Social Entrepreneurs (2024). The following legislative acts were studied: Civil Code of the Republic of Kazakhstan (1994), Companies (Audit, Investigations and Community Enterprise) Act (2004), Community Interest Company Regulations (2005), The Code of the Republic of Kazakhstan No. 375-V "Entrepreneur Code of the Republic of Kazakhstan" (2015), Code of the Republic of Kazakhstan No. 360-VI "On the Health of the People and the Health Care System" (2020), Order of the Minister of Healthcare of the Republic of Kazakhstan No. KR DSM-230/2020 "On Approval of the Rules for the Organisation and Conduct of Internal and External Quality Reviews of Health Services (care)" (2020), Order of the Acting Minister of Health of the Republic of Kazakhstan No. KR DSM-170/2020 "On the Approval of Tariffs for Medical Services Provided as Part of the Guaranteed Scope of Free Medical Care and in the System of Compulsory Social Medical Insurance" (2020), Law of the Republic of Kazakhstan "On Changes and Amendments to Some Legislative acts of the Republic of Kazakhstan on

Issues of Entrepreneurship, Social Entrepreneurship, and Compulsory Social Health Insurance" (2021), Law of the Republic of Kazakhstan "On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Administrative Reform in the Republic of Kazakhstan" (2023), Order of the Minister of National Economy of the Republic of Kazakhstan "On Approval of the Rules for Supporting Social Entrepreneurship Development Initiatives by State Bodies, National Holdings, National Development Institutes and Other Organisations" (2023), Law of the Republic of Kazakhstan "On Compulsory Social Health Insurance" (2023).

The present study used the systematic approach, through which a comprehensive investigation of legislative acts and regulations governing contractual relations in the field of healthcare and social entrepreneurship in Kazakhstan was carried out. Various types of contracts between social entrepreneurs and medical organisations were analysed, such as contracts for the provision of medical services, supply of equipment. The role of social entrepreneurs in improving the quality of healthcare services and access to healthcare for the population was explored. The systemic method helped to consider the topic in its comprehensiveness and to identify the interrelationships between different aspects, which contributes to a more profound understanding of the problem under study and the development of more effective strategies and recommendations.

Comparing and contrasting the opinions of different scholars on this issue and conducting relevant research helped to identify fundamental differences and similarities in the legislation regulating social entrepreneurship and contractual relations in different countries. The hermeneutic method was used to investigate laws and sub-legislative acts related to the problem of contractual relations of social entrepreneurs in the field of healthcare. This method helped to expand the understanding of the context in which social entrepreneurship develops, particularly as it relates to healthcare, and to understand the interpretation and perception of contractual relationships by different actors in this field. The hermeneutic method contributed to an in-depth analysis and interpretation of meanings, which enriched the research context and led to more comprehensive conclusions.

The comparative legal method was employed in the study to evaluate and contrast the legal frameworks governing social entrepreneurship in healthcare across different countries, with a focus on identifying best practices and applicable models for Kazakhstan. The study identified particular legislative components that could improve the efficacy of Kazakhstan's own policies by examining the contractual arrangements, legal frameworks, and regulatory strategies in areas where social entrepreneurship is well-established. This method enabled the researchers to assess the strengths and weaknesses of Kazakhstan's current legal environment for social entrepreneurship by drawing comparisons with successful frameworks abroad, providing insights into how these foreign policies could be adapted to meet local needs in the healthcare sector.

Results

According to the Law of the Republic of Kazakhstan "On Changes and Amendments to Some Legislative acts of the Republic of Kazakhstan on Issues of Entrepreneurship, Social Entrepreneurship, and Compulsory Social Health Insurance" (2021), social entrepreneurship is defined as entrepreneurial activity, the purpose of which is to solve social problems of citizens and society. Private entrepreneurs and legal entities, except for large entrepreneurs who are included in the register of social entrepreneurs, are recognised as persons engaged in social entrepreneurship. The Register of Social Entrepreneurs (2024) is an electronic database containing information on individuals and legal entities engaged in social entrepreneurship.

Social entrepreneurship stands out from the general practice of entrepreneurship in that, apart from carrying out profitable operations, it also fulfils a social mission aimed at solving or mitigating various social problems in society. These problems may include employment of low-income groups such as people with disabilities, parents raising disabled children, mothers of many children, as well as issues related to education, medical care, employment of pensioners. Table 1 summarises the criteria that characterise social entrepreneurship and make it different from traditional business.

Table 1. Criteria for social entrepreneurship

Social entrepreneurship	Focus on solving or reducing a particular tangible social problem
Ability to break even and maintain financial stability	Absence of the need for permanent external funding
Innovativeness	The use of innovative methods and approaches to address long-standing social problems
Mode of entrepreneurship	The quality of a social entrepreneur, which lies in their ability to identify untapped market opportunities, mobilise resources, and develop innovative solutions that contribute to long-term positive impact on society as a whole
Replicability	Expansion of the operations of a social organisation and transferring its expertise or model to increase its social impact

Source: compiled by the authors of this study based on Order of the Minister of National Economy of the Republic of Kazakhstan No. 130 (2023)

Economic growth increases social welfare, but it is also often accompanied by an increase in social problems due to rising social inequality, particularly in terms of income distribution and access to basic services. Data from the Bureau of National Statistics (2023a) shows that the income gap between urban and rural populations remains substantial, with rural areas experiencing a higher percentage of people living below the subsistence level. This disparity highlights ongoing challenges in rural regions, where limited access to employment, healthcare, and educational opportunities restricts economic mobility. Therewith, private enterprise, which is essentially profit-oriented, sometimes pays less

attention to social aspects. In such cases, solving social problems may not pay off economically (Ineza, 2021). On the other hand, the state, being obliged to redistribute its limited resources to meet the most urgent social needs, is not always capable of supporting all socially important areas, given its limited funds.

In the Republic of Kazakhstan, 293 projects are planned to be implemented, of which 17 cover the social sphere, 56 are related to healthcare and 81 to education (Bureau of National Statistics, 2023b). Figure 1 provides statistics on the number of registered social entrepreneurs in Kazakhstan, from which one can conclude that every year the number of entrepreneurs oriented towards social cooperation is growing. Cooperation between business and public authorities has a substantial impact on economic growth and the promotion of innovation, such relationships are fostered through social entrepreneurship mechanisms.

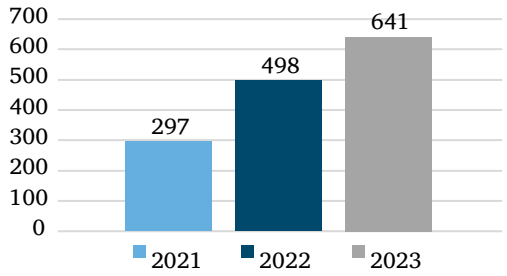

Figure 1. Growth dynamics of the total number of registered entrepreneurs in 2021-2023
Source: Bureau of National Statistics (2023b)

For comparison, in Kyrgyzstan, social entrepreneurship is gaining momentum as a means to address social challenges and promote inclusive economic development. Although specific data on the total number of social enterprises in 2023 is limited, the sector's growth is evident. For example, in November 2023, around 300 women entrepreneurs from across Kyrgyzstan gathered at the Women's Entrepreneurship EXPO 2023 satellite event in Bishkek, underscoring the nation's commitment to gender equality and economic empowerment (UN Women, 2024.). Social enterprises in Kyrgyzstan span sectors such as social care, education, and retail, focusing on improving community welfare and supporting vulnerable populations. The government's "Development Program of the Kyrgyz Republic for 2018-2040" further emphasises social entrepreneurship's role in achieving sustainable development goals, fostering an environment that supports socio-economic progress (Buxton *et al.*, 2018). In the United Kingdom social enterprises play a significant role in the economy. As of 2023, there are approximately 131,000 social enterprises in the UK, contributing £78 billion to the economy and employing 2.3 million individuals (Social Enterprise UK, 2024).

Social entrepreneurship in healthcare in Kazakhstan is a type of entrepreneurial activity focused on solving social problems and improving the availability and quality of medical services. This approach combines commercial and social objectives, where profit is combined with public benefit. In Kazakhstan, social entrepreneurship in healthcare is becoming increasingly relevant in the context of changes in the global economy, lower prices for export goods and limited budgetary resources (Carayannis *et al.*, 2020). Social entrepreneurs in this field can provide innovative healthcare services, collaborate with government healthcare programmes, and provide better access to healthcare. An essential aspect of social entrepreneurship in healthcare in Kazakhstan is the sustainability of funding and the ability to self-sustainability. These kinds of entrepreneurs and organisations in this field are not only looking for profit, but also for long-term financial stability, which enables them to effectively address social problems.

However, social entrepreneurship is a fairly new area of activity for the Republic of Kazakhstan and faces a range of issues (Otar *et al.*, 2024). It is necessary to emphasise the importance of the role of the state in the development of social entrepreneurship. In developed countries, the state promotes improvement of the economic environment by creating favourable conditions for entrepreneurs, attracting investment, and supporting start-ups and innovation, which brings considerable benefits for both business and philanthropy and charity (Soogwan, 2020; Kadakure & Twum-Darko, 2024). However, Kazakhstan lacks the infrastructure to foster social entrepreneurship. Credit resources are expensive, and the legislative framework is underdeveloped. Access to credit resources is challenging, particularly because financial institutions prioritise factors such as revenue and collateral availability, which many small businesses struggle to meet. Additionally, businesses focused on innovative products face significant barriers, as creditors view these ventures as high-risk, further limiting their access to external financing (Krupina *et al.*, 2021). There is a lack of understanding of the essence of social entrepreneurship on the part of the government and business in the country. There are legislative and administrative obstacles to promoting this idea. Legislative obstacles for social entrepreneurship in Kazakhstan arise from fragmented constitutional and administrative norms that lack uniformity and fail to meet the specific needs of social enterprises. This inconsistency complicates legal support and protection, making it challenging for social entrepreneurs to operate effectively within the current legal framework (Zhumadilov & Maishekina, 2023). There is also a lack of a coordinating structure regulating social entrepreneurship and insufficient financial resources to support social initiatives of entrepreneurs. There are no available tools for the social entrepreneur, collateral is required everywhere or there is a very high interest rate (TSnik, 2023).

In Kazakhstan, the definition of social entrepreneurship is formally established in Paragraph 6-1 of the Entrepreneur Code of the Republic of Kazakhstan No. 375-V (2015). This section outlines the criteria and characteristics that differentiate social enterprises from traditional business entities, focusing on their commitment to addressing social issues alongside generating revenue. The inclusion of this definition in the Entrepreneur Code marked a foundational step for recognising social enterprises within the Kazakh legal framework. This paragraph was the base for the following Law of the Republic of Kazakhstan No. 52-VII "On Introducing Amendments and Additions to Some Legislative Acts of the Republic of Kazakhstan on Issues of Entrepreneurship, Social Entrepreneurship and Compulsory Social Health Insurance" (2021). This law defines social entrepreneurship, outlines eligibility for state support, and establishes the inclusion of social enterprises in public health initiatives, but the framework remains limited in scope.

In the United Kingdom, social entrepreneurship is primarily supported through the legal structure known as the Community Interest Company (CIC). The foundational legislation for CICs is the Companies (Audit, Investigations and Community Enterprise) Act (2004), which introduced this unique form of company designed for social enterprises. It allowed them to operate as legally recognised entities dedicated to community benefit. CICs are subject to specific regulatory that are detailed in the Community Interest Company Regulations (2005) and oversight by the CIC Regulator. They must meet criteria demonstrating their commitment to social purposes, including the "asset lock" provision, which ensures profits are reinvested in social projects rather than distributed as dividends.

The differences in legal support reflect broader approaches to social entrepreneurship. Kazakhstan's framework is still evolving, aiming to integrate social entrepreneurship within its legal and economic systems, but it lacks the specificity and support mechanisms found in the UK. Without specialised entities or detailed guidelines for operations and funding, Kazakh social enterprises face obstacles in gaining financial and legal stability. In contrast, the UK model supports social enterprises through structured legislative tools, such as the CIC status, which provides both legitimacy and distinct legal benefits. These differences suggest that Kazakhstan could benefit from adopting certain aspects of the UK model to enhance legal consistency and operational support for social enterprises dedicated to social change.

With the epidemic situation caused by coronavirus infection in the country, there is a need to strengthen the radiological diagnosis of lung lesions. In response to this, new radiology diagnostic centres such as Shipager, Invivo, and Orchun Medikal were established (Callegari & Feder, 2021). They were launched to maximise coverage of chest CT scans for patients with suspected or already confirmed coronavirus infection. Another area of development has been the partnership between the state and private organisations to expand the network of primary medical and social care for the population.

Kazakhstan already has similar medical organisations in cities such as Karaganda, Astana, and Almaty. The question is how private organisations interact with the government in the healthcare sector now. There are two main methods of social entrepreneurship in healthcare in the Republic of Kazakhstan: institutional and contractual. As defined in the Code of the Republic of Kazakhstan No. 360-VI "On the Health of the People and the Health Care System" (2020), contract social entrepreneurship is the most common in the healthcare sector. It includes the provision of healthcare services by private partners under public contracting. In this model, the private sector provides healthcare services using its own logistical resources such as buildings and equipment. Thus, social entrepreneurship in healthcare in Kazakhstan is based on contractual relations between the state and private medical organisations, where the latter provide the services required to meet the needs of the population using their own resources.

Another form of social entrepreneurship is outsourcing contracts, which are concluded between public healthcare institutions and social entrepreneurs to perform various services such as security, cleaning, laundry, catering. For medical organisations to take part in public procurement, it is necessary to follow the established standards and conditions, including the mandatory use of proven information systems in the field of medicine. In terms of financial aspects, medical organisations involved in this partnership are obliged to submit reports and statistics to the supervisory authorities at a higher level (Order of the Minister of Healthcare of the Republic of Kazakhstan No. KR DSM-230/2020, 2020). Payment for services under the public procurement is made according to the state tariff. Here, however, is where the main disagreement in this partnership arises.

To ensure the quality of healthcare services provided, the state, through the Ministry of Healthcare and healthcare departments, implements various measures, such as signing agreements on the achievement of targets according to state strategic documents and developing evaluation criteria based on internal indicators (Order of the Minister of Healthcare of the Republic of Kazakhstan No. KR DSM-230/2020, 2020). However, the contradiction is that in most cases such actions lead to the imposition of disciplinary measures, including penalties on medical organisations, rather than to the achievement of the set goals and improvement of the quality of medical services. In 2019, Kazakhstan's Social Health Insurance Fund (SHIF) imposed penalties totalling 6.8 billion tenge on medical organisations for various violations of healthcare standards (Pharmaceutical Review of Kazakhstan, 2020). Specific cases included fines for poor-quality services, failure to meet established medical protocols, and deficiencies in patient care. For instance, medical facilities were cited for inadequate sterilisation practices, incomplete medical documentation, and delays in patient treatment, all of which compromised the quality of care. Admittedly, these issues can be addressed by increasing the number of examination rooms and hiring more medical staff. However, the main problem here is the underfunding of organisations involved in public-private partnerships. When entering into a social enterprise programme, the business entity is always looking to make a profit. However, government tariffs are low and do not consider the needs of services, quality, staff training, and population, and the fact that people interested in the outcome and activities are unlikely to pay extra for comfort and services (Order of the Acting Minister…, 2020; Law of the Republic of Kazakhstan No. 52-VII, 2021). In comparison, countries with more established healthcare systems, such as Germany, allocate higher funds per capita for healthcare services. Germany's healthcare expenditure is approximately 12.9% of its GDP, reflecting a higher investment in medical services, staff training, and infrastructure (Federal Statistical Office (Destatis), 2021). This substantial funding allows for better compensation of healthcare providers, leading to improved service quality and patient satisfaction. The economic entity achieves its goals, and the only way is to reduce costs. As a result, the population suffers and stays dissatisfied, the state becomes frustrated, and the private partners struggle to survive.

There are 5 projects in the healthcare sector with contract periods from 2021 to 2024. These projects include leasing equipment such as magnetic resonance imaging (MRI), computed tomography (CT), construction and operation of a medical outpatient clinic with the possibility of more patient visits, and leasing of a canteen of a state-owned enterprise in the Regional Clinical Hospital with major repairs and replacement of technical equipment. The total state obligations on these projects amount to 1.8 billion tenge (Additional KZT1.8bn…, 2019). The introduction of the public (municipal) procurement of social services into the system

of social services in Kazakhstan and the consolidation of the relevant legislative mechanisms are aimed at organising interaction between the various participants involved in the provision of social services (including government agencies, private social enterprises, non-governmental organisations, and individual entrepreneurs) (Law of the Republic of Kazakhstan No. 223-VII, 2023). The operation of the public (municipal) procurement of social services is carried out within the framework of contracting, as after the selection of service providers, agreements are concluded with legal entities, individual entrepreneurs, and individuals who provide goods, works, and services, thus ensuring the satisfaction of the needs of the population in the social sphere (Law of the Republic of Kazakhstan No. 106-VIII, 2024). These agreements, being the basis for conclusion, create social ties between the state on the one hand and corporate entities, private entrepreneurs providing public (municipal) services in the social sphere, on the other hand, and are based on the principles of coordination or subordination.

The public (municipal) procurement of social services, which establishes the main criteria of quality and volume of provision of state (municipal) services in the sphere of social services and proposes general conditions for the performance of future property obligations, is aimed at organising and regulating the interaction between the competent authorities and potential providers of services in the social sphere (Law of the Republic of Kazakhstan No. 106-VIII, 2024). Consequently, the actions of competent authorities to place a public (municipal) procurement of social services are regarded as a unilateral legal act aimed at establishing preliminary (organisational) relations related to the provision of social services to individuals.

To enhance the effectiveness of social entrepreneurship in Kazakhstan's healthcare sector, specific legislative improvements are necessary to establish a supportive framework for social entrepreneurs. First, creating a specialised legal status for social enterprises would provide these organisations with rights and obligations aligned with their unique social missions. According to the Entrepreneur Code of the Republic of Kazakhstan No. 375-V (2015), specifically Paragraph 6-1, social entrepreneurship is formally recognised, and the criteria distinguishing it from traditional business are outlined. This foundational legal status was expanded with the Law of the Republic of Kazakhstan No. 52-VII "On Introducing Amendments and Additions to Some Legislative Acts of the Republic of Kazakhstan on Issues of Entrepreneurship, Social Entrepreneurship, and Compulsory Social Health Insurance" (2021). However, the current framework remains limited in scope. Additionally, enhancing financial support mechanisms is essential to help social enterprises overcome funding challenges. While some relief is provided by current tax advantages, Kazakhstan does not have the comprehensive financial provisions found in more developed systems, such as in Germany (Federal Statistical Office (Destatis), 2021). More financial stability and sustainability in the provision of healthcare services could be promoted by increasing the availability of microcredit or providing low-interest loans, especially for those servicing rural areas.

Another essential reform is the standardisation of contractual processes to improve the procurement system for social entrepreneurs. At present, public procurement tariffs often fall below sustainable levels, creating financial pressures that may lower service quality and diminish patient satisfaction. As per the Code of the Republic of Kazakhstan No. 360-VI (2020), contract-based social entrepreneurship is predominant in healthcare. This code emphasises that private partners deliver healthcare services under public contracts, though the financial terms frequently fail to cover the true cost of high-quality care. In addition, the Order of the Acting Minister of Health of the Republic of Kazakhstan No. KR DSM-170/2020 (2020), which approves tariffs for medical services provided as part of the guaranteed scope of free medical care and compulsory social health insurance, indicates that current tariffs only cover basic services, neglecting necessary customer care and additional quality considerations. Establishing an independent regulatory body would also provide essential oversight, ensuring contractual consistency and mediating conflicts, as noted by S.T. Okutayeva *et al.* (2021). Such a body could enhance the operational stability of social enterprises and ensure fair treatment within the sector.

Discussion

Contractual relations of social entrepreneurs in the healthcare sector in Kazakhstan have been in the centre of attention, as they represent a vital aspect of modern approaches to the provision of healthcare services and quality healthcare. One of the main findings of this study is that cooperation between the state and social entrepreneurs in healthcare forms an integral part of the modern model of healthcare delivery. The state acts as a customer, and social entrepreneurs act as executors, providing certain medical services, goods, and equipment. Such cooperation allows the government to ensure the availability and quality of medical services, and social entrepreneurs to develop their business and bring innovations to the healthcare sector.

S. Tišma *et al.* (2022) analyse the development of social entrepreneurship in Croatia, focusing on how it addresses growing global challenges through sustainable models. The authors explore key definitions and principles of social entrepreneurship, linking them to recent trends and concrete case studies that highlight the unique context in which Croatian social enterprises operate. The findings indicate that social entrepreneurship in Croatia is supported by a clear legal framework, which has contributed to a steady increase in the number and diversity of social enterprises. Additionally, the researchers emphasise that while progress has been made, further policy measures are necessary to bolster the sector. The results of this study can significantly inform legislative efforts in Kazakhstan by providing insights into the successful integration of social entrepreneurship within a supportive legal framework. Kazakhstan can find best practices and possible legal gaps in its own legislation by looking at Croatia's approach, especially when it comes to draughting specific rules that cater to the demands of social enterprises. The scholars underscore the importance of aligning public policies with the unique characteristics of social entrepreneurship, which could guide Kazakhstan in refining its legal framework to better support the growth and sustainability of social enterprises, ultimately enhancing their impact on social welfare and economic development.

Y. Chandra *et al.* (2021) show how social entrepreneurship works in the UK. Social business cooperates with healthcare workers as well as the healthcare department, business, and government. Furthermore, social entrepreneurship fulfils a wide range of tasks in the healthcare sector, such as coordinating the provision of healthcare services or lobbying

for healthcare policy reforms (Pētersone *et al.*, 2020). The authors found eight major roles that social entrepreneurs have in healthcare service delivery, namely: executive policy maker, service coordinator, industry observer and regulator, performance monitor, lead service provider, service or process innovator, policy lobbyist, and institutional integrator. In their study, the authors emphasise that the main document that social entrepreneurs use in their activities is the contract. Notably, the findings of the present study also demonstrated that social entrepreneurs take on numerous tasks related to providing the population with quality healthcare services, but the difference is that this industry is new in Kazakhstan, and currently, the insufficient regulatory framework, public awareness, and other issues that have been described in this paper do not allow businesses to lobby for new reforms that regulate the relations of social entrepreneurs. Regarding contracts used in the Republic of Kazakhstan, the study also found that contracts are the basis of contractual relations in this area.

S. Khalid *et al.* (2022) raise important questions about the impact of social entrepreneurs on gender and health, while pointing out the lack of research on these issues. Gender-responsive programmes incorporate good healthcare practices and methods to address gender and cultural dynamics and provide resources and services that are responsive to the needs of the population. An interesting fact is that most of the organisations involved define themselves as non-governmental organisations (NGOs) and depend heavily on conventional funding. Whilst fewer organisations (6 out of 21) are adopting market-based and for-profit methods in their operations, representing a missed opportunity to realise the potential of social entrepreneurship as an innovative approach to healthcare financing. Consequently, structural levels of the healthcare system can support new or start-up organisations by providing financial and non-financial incentives such as subsidies, tax breaks, contracting, media support, and involvement in sustainable public procurement and other forms of support (Dyomin, 2023). Comparing with the findings of the present study, it can be noted that in the Republic of Kazakhstan the support of social entrepreneurs by the state is underdeveloped, despite the fact that, as it has already been indicated, the legislation provides financial incentives for social business, but in practice these issues are unregulated and contradictory. The similarity is that social entrepreneurs in the Republic of Kazakhstan take part in public procurement.

F. Koehne *et al.* (2022) carried out a study comparing various aspects of 12 social entrepreneurs' activities. These entrepreneurs come from diverse cultural and national backgrounds, including foreign and national entrepreneurs, as well as indigenous and non-indigenous populations. Their main objective is to improve the economic conditions of indigenous peoples living in rural Ecuador. The authors concluded that the concept of entering into an agreement/contract does not exist in these regions, and therefore it is quite difficult for social entrepreneurs who work in these areas, especially foreign ones, to conduct contractual relations. The authors conclude that despite the difficulties of such cooperation in all social spheres, including healthcare, there is a positive result. It is necessary to agree with the authors' study since it emphasises the importance of social entrepreneurs adapting to a variety of contexts, especially in places where traditional notions of contracts are not applicable. It also points to the importance of social entrepreneurship as a means of improving the living conditions of local communities, even in the absence of formal legal relationships (Nazarova *et al.*, 2024). The present study shows that Kazakhstan is on the way to improving the direction of social entrepreneurship and has much more success among other countries that have also taken a course on social entrepreneurship.

To eliminate shortcomings and ensure more effective functioning of contractual relations in the healthcare sector in Kazakhstan, it is necessary to improve legislation, which includes clarifying and finalising normative acts, adapting them to modern problems and realities of the healthcare sector. It is also important to provide legal support and advocacy for social entrepreneurs. To develop the healthcare sector through cooperation with social entrepreneurs, it is also necessary to invest in infrastructure development, providing social entrepreneurs with the necessary resources and conditions to provide services.

Conclusions

Social entrepreneurship is a modern trend in Kazakhstan's economy, but despite the existence of relevant legislation, it faces a range of issues that hinder its development. Contractual relations between social entrepreneurs and the state are formalised in the form of contracts and agreements that regulate the financial, organisational, and professional aspects of the provision of healthcare services. Public procurements for medical services have become a valuable tool to support social entrepreneurs, providing them with stable demand and financial sustainability. Furthermore, the issues of financing and cost of services are still a challenge for social entrepreneurs who seek to combine profitability with high quality and accessibility of healthcare services. The main challenge facing social entrepreneurs is funding. There are no tools available for the social entrepreneurs. Collateral is required everywhere, or interest rates are very high.

This situation occurs because of the low level of public awareness and insufficient understanding of the essence of this phenomenon on the part of regional authorities and entrepreneurs. Social entrepreneurs need support in the form of publicising their activities so that the public understands what social entrepreneurs do. That social entrepreneurship is not charity, but a business that solves social problems. Lack of necessary infrastructure and shortcomings in the legislative framework, which limits the full utilisation of the benefits provided by the law. Therefore, support for social entrepreneurship requires comprehensive support from both government agencies and non-governmental organisations. The study confirmed the potential for the development of social entrepreneurship in the Republic of Kazakhstan. Since contractual relationships of social entrepreneurs in the healthcare sector are understudied, there are potential areas for further research, such as exploring different models of contractual relationships between social entrepreneurs and healthcare authorities to identify the most effective and sustainable practices, as well as analysing how social entrepreneurs influence the improvement of accessibility and quality of healthcare in different regions of Kazakhstan.

A comparison between the legislation of the Republic of Kazakhstan and that of the United Kingdom reveals significant differences in the support structures and legal frameworks. Although Kazakhstan has made some beginning efforts to formalise social entrepreneurship, the available

support systems are still dispersed and have a narrow focus. In contrast, the UK has developed a robust framework specifically designed to foster social enterprises, most notably through the establishment of the CIC model that is granted both legal recognition and practical benefits, such as an "asset lock" provision to ensure reinvestment into social causes. This structured approach, combined with regulatory oversight, has enabled social enterprises in the UK to operate with greater financial sustainability and clearer legal protections. Kazakhstan may give its social entrepreneurs a more stable environment by implementing comparable policies, which would promote growth and increased involvement in industries like healthcare, where there is a pressing demand for easily accessible and reasonably priced services.

Future studies could examine the impact of legislative reforms on the growth and effectiveness of social enterprises in healthcare, particularly in improving service quality and access. Comparative analyses with countries like Germany or South Korea could provide insights into successful models adaptable to Kazakhstan. Additionally, research on financial sustainability, public-private partnership efficacy, and regional disparities in healthcare access could support targeted policies for underserved populations. These studies would enrich the understanding of social entrepreneurship's role in Kazakhstan, aiding policy development and strategic growth in this sector.

Acknowledgements

None.

Conflict of interest

None.

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Договірні відносини соціальних підприємців у сфері охорони здоров'я в Казахстані

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Анотація. Метою даного дослідження було вивчення особливостей та оцінка договірних відносин суб'єктів соціального підприємництва, що працюють у сфері охорони здоров'я в Казахстані, для висвітлення їхнього внеску в підвищення якості медичних послуг, а також їхньої доступності для населення. У дослідженні використовувалися такі методи пізнання: системний підхід, порівняльно-правовий метод, герменевтичний метод. У дослідженні розглянуто законодавство Республіки Казахстан у сфері соціального підприємництва та охорони здоров'я, основи їх договірної співпраці. Виявлено, що нормативно-правові акти передбачають певні заходи державної підтримки індивідуальних підприємців та організацій, які займаються соціальним підприємництвом. Це і податкові пільги для заохочення ініціатив у сфері зайнятості, і пріоритетне право на участь у державних закупівлях, і можливість отримання грантів та мікрокредитів. Однак слід підкреслити, що ці заходи є фрагментарними та неформалізованими, що в цілому не сприяє структурному та системному розвитку соціального підприємництва. Щодо договірних відносин, то було виявлено, що основою залучення соціальних підприємців до виконання державних соціальних замовлень є договори на надання послуг або товарів, а також укладання договорів аутсорсингу. У дослідженні проаналізовано кейси соціального підприємництва в Казахстані, їх особливості та проблеми. В результаті дослідження було зроблено висновок, що соціальне підприємництво в Казахстані є сучасним економічним трендом, який, незважаючи на наявність відповідного законодавства, стикається з низкою проблем, що перешкоджають його розвитку. Практична значущість дослідження полягає в поглибленому розумінні структури та ефективності взаємодії соціальних підприємців у цій сфері, а також у виділенні конкретних практичних аспектів, що сприяють розвитку та оптимізації соціального підприємництва в охороні здоров'я в казахстанському економічному середовищі

Ключові слова: неприбуткові організації; колективні проекти; суспільні проблеми; підтримка бізнесу; краудфандинг

UDC 343.9
DOI: 10.32518/sals4.2024.79

Соціально-правові студії. 2024. Т. 7, № 4
Social & Legal Studios. 2024. Vol. 7, No. 4

Methodological challenges and social risks of privacy violation in the process of forensic identification of persons from video materials

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Abstract. The relevance of this study stems from the critical need to enhance the effectiveness of crime-fighting efforts while simultaneously safeguarding individual privacy. Thus, the purpose of the study was to examine all aspects of conducting the person's forensic identification from video materials, namely theoretical, which covers the characteristic features and principles of this type of activity, and practical, which shows the implementation of the fixed principles in conducting this investigative action. In the study, various methodological theoretical and practical approaches were used, necessary for the most complete and effective consideration of this issue, namely, theoretical-methodological approach, analysis and comparative analysis, functional-methodological approach. In the course of research on an integrated approach to solving the problem of forensic identification of person's appearance from video materials, was to consider the following aspects: the consideration of theoretical component in defining the concept, characteristic features, and principles of conducting forensic identification of the person's appearance from video materials, the experience of researchers regarding this issue, and the alignment of forensic identification methods with privacy norms in the context of existing laws in the Kyrgyz Republic and Azerbaijan. The practical significance of the research lies in its applicability for law enforcement agencies, forensic experts, and legal professionals in both the Kyrgyz Republic and Azerbaijan, where the results can be used to improve forensic identification processes, ensuring compliance with privacy legislation while enhancing the effectiveness of crime investigation through the use of video materials

Keywords: human body; medical and forensic examination; carriers of portrait information; criminal offences; functional features; confidentiality standards

Introduction

The development of digital technologies has led to an expansion of the range of devices suitable for research: video cameras, dashboard cameras, and even mobile devices with video recording functions. However, along with the rapidly developing digital progress, the number of video recording formats and a variety of device connectors have expanded, which separately and collectively leads to difficulties in the study of video materials necessary for forensic identification. One of the urgent and problematic issues is the growing concern over privacy, particularly in relation to the increasing use of video footage by law enforcement agencies, which raises significant questions about the balance between effective crime-solving and the protection of individual privacy rights. This topic has received a lot of attention in the scientific community. Below are the conclusions obtained by some researchers.

B. Poirier *et al.* (2024) examined the use of police body-worn cameras (BWC) and the associated privacy concerns from the perspectives of both officers and citizens in Quebec, Canada. The authors focused on two primary aspects: police officers' feelings about being monitored by BWCs and citizens' concerns about privacy when interacting with officers equipped with such devices. The findings indicate that police officers are apprehensive about the potential impact of BWCs on their privacy and work performance, while citizens generally express fewer concerns. Certain demographics, however, such as older individuals and those with specific perceptions of law enforcement, show heightened

Suggested Citation

Article's History: Received: 05.09.2024 Revised: 23.11.2024 Accepted: 23.12.2024

Abbasov, N., & Abbasova, M. (2024). Methodological challenges and social risks of privacy violation in the process of forensic identification of persons from video materials. *Social & Legal Studios*, 7(4), 79-89. doi: 10.32518/sals4.2024.79.

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privacy apprehensions. The researchers highlighted the tension between transparency and privacy. However, the analysis could benefit from a deeper exploration of the long-term implications of BWC usage on officer performance and a more thorough investigation of how privacy concerns might evolve as the technology becomes more pervasive.

A. Buhera (2021) explores the topic in the field of modern habitology. The author notes such a modern method of identification as biometric identification, namely, the recognition of a person by their unique biometric characteristics. The most common methods in this type of identification are iris and fingerprint scanning. By examining video footage, it is possible to identify a person by the iris of the eyeball. For example, the iris pattern is finally formed in a person by the age of 2 and does not undergo significant changes throughout life, only in cases of sebaceous trauma or pathologies of the body. Another modern method of identification from video footage is geometric (facial geometry). This method does not require direct contact with the person, as in the case of scanning the eye with infrared light, and does not require additional equipment. The integration of facial geometry identification systems into street surveillance cameras is an effective method of crime prevention, as well as in the investigation and search for individuals for various legitimate purposes. The paper also notes that the biometric method based on facial geometry is the most promising, affordable, and practical.

The paper by T.G. Chashnytska (2021) investigates the problems of identification from video recordings. It is emphasised that certain requirements must be met for portrait studies based on video materials. First, the requirements of comparability, i.e., the same display of elements of the same type on the objects being compared. This means the same angle, the same facial expressions, the same age. Tracing the dynamics of growth when it comes to children and materials of different ages. Second, the requirement of good quality. This requirement means that the image must be of satisfactory quality, clarity, contrast, and show facial features. Third, the requirement of authenticity means that the video materials are obtained legally, in compliance with the rules and regulations, which would make it impossible or minimise substitution, confusion, and forgery. There is also the problem of identifying a person from video due to the complexity of the process itself, which uses different media and subjects of information. Therefore, it is important to optimise the identification process by adapting the methods of assessing the reliability of a person's image to modern portrait studies, new media, and to pay attention to the development of new software tools for video identification.

O.A. Kozhevnikov (2020) in his paper determines that the effectiveness of searching for forensic information on the Internet depends on a combination of traditional expertise and modern data retrieval technologies. Namely, the researcher considers Open Source Intelligence (OSINT) as a modern technology – analysis of open sources of information to obtain the required result. Monitoring of open data on the Internet is necessary for several reasons. First of all, the paper draws attention to the need to quickly identify elements of a person's appearance with the person himself or herself using portrait expertise, as well as to detect editing and other manipulations. The paper points to the positive results of identifying offenders and criminals by analysing OSINT information, and also draws attention to the use of specialised knowledge in portrait and photographic examination by involving the conclusions of specialists.

A.R. Zavotpayev *et al.* (2023) focused on the critical importance of timely forensic examinations in the investigation of crimes against the sexual integrity of minors in Kazakhstan. It emphasised that prompt forensic analysis is not only essential for the swift and thorough investigation of such crimes, but also serves as a key means of proving the guilt of suspects, especially when other evidence is lacking. The authors discussed how the evolving forensic analysis system in Kazakhstan, backed by recent legislative initiatives, plays a pivotal role in guiding investigations and ensuring the collection of vital evidence. N.I. Abbasov and M.N. Abbasova (2023) investigated the reasons behind the non-detection of fingerprints during forensic examinations, focusing on both objective and subjective factors. The researchers utilised a variety of scientific methods, including comparison, analysis, synthesis, and deduction, to examine practical and technical challenges faced by forensic experts in Azerbaijan. They analysed the limitations of current fingerprint detection techniques and propose ways to overcome these deficiencies. However, both studies could benefit from a more in-depth exploration of potential challenges or limitations in the studied forensic system, such as resource constraints or the availability of qualified forensic experts.

The purpose of this study was to explore effective methods for enhancing forensic identification from video materials, with a focus on balancing improved investigative efficiency and the protection of privacy in the digital age. The main tasks of the study were:

- to review modern methods of forensic identification from video footage to evaluate their effectiveness and applicability;
- to analyse how specific forensic identification methods align with the current privacy legislation of the Kyrgyz Republic and Azerbaijan;
- to review whether the existing instructions on handling confidential information comply with the new legislation of the Kyrgyz Republic.

Materials and methods

The study in the field of forensic identification of person's appearance based on video materials requires the use of both practical and theoretical-methodological approaches necessary for the successful conduct of research. Specifically, the study used the theoretical method, analysis, synthesis, deduction, comparative analysis, and analysis of scientific literature. Along with the methods, the research also applied dialectical and functional methodological approaches.

Firstly, the theoretical method should be noted, which forms the basis for further research, by studying the basic concepts and their definitions in the field of forensic science, characteristic features, principles for the implementation of such activities, and the application of theoretical knowledge in practice. Using the analysis, the subject matter of the paper was examined, namely, criminological identification of a person from video materials, and its individual constituent elements, namely: the signs, characteristic features of this type of identification, properties and opportunities which it provides. After that, using the method of synthesis, all the studied constituent elements and features are combined into a single concept of criminological identification from video, which helps characterise the subject matter in full. By means

of synthesis, the topic is considered as an integral separate category, which is assembled from its previously studied individual parts. The study used the method of deduction to investigate criminological identification by video, starting from the general understanding of criminological identification as a phenomenon with its own types to a specific type – identification by video. With the help of deduction, based on the general characteristics of identification, it is possible to identify certain special features of video identification of a person.

The other crucial method was comparative analysis, which allowed investigating scientific achievements of researchers not only of a particular state but also the experience of their foreign colleagues, evaluating their approaches to solving the issue of identifying person's appearance. The comparative analysis contrasted the methods of conducting forensic identification of person's appearance in different countries, which facilitates developing recommendations and ways to improve in this matter. Further, such a methodological approach as a dialectical-methodological method was used, which described all the constituent elements of research consistently and logically. In addition, the functional-methodological approach identified the main purposes and objectives in the study of video materials in the forensic identification of person's appearance and developed recommendations for further improvement and efficiency increase of this area. The analysis of scientific literature allowed considering different concepts of authors for the analysis of the stated problem, including practical and theoretical aspects, which, in turn, will increase the effectiveness of research.

The study was based on the statistics of the State Statistical Committee of the Republic of Azerbaijan (n.d.), the Bureau of National Statistics (2024), and the studies by various researchers on the topic. The legal basis of the study is the Criminal Procedure Code of the Republic of Azerbaijan (2000), Law of the Republic of Kazakhstan No. 94-V "On Personal Data and Their Protection" (2013), Law of the Republic of Azerbaijan No. 998-IIIQ "On Personal Data" (2010), Resolution of the Government of the Republic of Kazakhstan No. 429 "On Approval of the Rules of Classification of Information as Official Information of Limited Dissemination and its Handling" (2022), and Model Instruction on the Confidentiality of Personal Information on Victims of Trafficking in Human Beings (2019).

This study was carried out in several stages, aligned with the outlined tasks. The first stage involved a comprehensive review of modern methods of forensic identification from video footage, covering key concepts such as "forensic identification", "forensic portrait examination", "dynamic and static identification", and the principles guiding these processes. The second stage focused on analysing the alignment of these forensic identification methods with the current privacy legislation of the Kyrgyz Republic and Azerbaijan, ensuring compliance with legal standards. Finally, in the third stage, the study reviewed existing instructions on handling confidential information to assess whether they are in line with the new legislation of the Kyrgyz Republic. Based on this analysis, recommendations were developed to enhance both the efficiency of forensic research and adherence to privacy regulations.

Results

The role of video surveillance in forensic identification. The end of the 20th century and the beginning of the 21st century was marked by the increasing pace of technological progress, which also led to an increase in the number of technical means containing information about the appearance of a person. The growing number of street surveillance cameras, video surveillance of business entities, private entities, urban infrastructure, dashboard cameras increases the number of materials that can be used in performing various types of activities. It is also worth noting that such videos are particularly important in investigating committed offences. Video recordings are used by law enforcement agencies in their activities, such as intelligence-gathering actions (surveillance, identification), investigative measures (identification, collection of materials for comparative analysis), conducting forensic portrait examinations. For investigators or persons assigned to investigate the incident, video surveillance recordings are of high value, 9 out of 10 investigators use video and photographic footage in their work, at the same time, every third investigator finds it difficult to evaluate and solve problems related to image quality and the conditions in which video surveillance cameras were used (Iswardani & Sudibyo, 2020). The active growth in the use of video surveillance systems in conducting investigations suggests that video recordings are an informative and reliable source of information. According to the statistics of the State Statistical Committee of the Republic of Azerbaijan (n.d.), 36,494 crimes were registered in the country in 2022 and 36811 in 2023. Moreover, the number of registered crimes per 100 thousand population in 2023 increased by 94 points compared to 2019, namely, the number of crimes amounted to 363 per 100 thousand, with only 15.5% of them being heavy and especially grave crimes (The State Statistical…, n.d.).

According to the Bureau of National Statistics (2024), 140,272 criminal offences were registered in 2023, which is around 11% less compared to the 2022. The crime rate in Kazakhstan decreased from 80 per 10,000 population in 2022 to 70 per 10,000 population in 2023, indicating an overall reduction in criminal activity by 12.5%. There is an active use of video surveillance systems to monitor the observance of law and order in the Republic of Kazakhstan. In Almaty alone, 38,854 video cameras have been brought out, and by the end of 2024 their number is planned to reach 50,000, that is, to increase their number by almost 30% (The number of video…, 2024). In addition, their effectiveness has been proven in practice, the crime rate in the area where video cameras are installed considerably decreases. According to the data of the Central Operational Directorate of the Department of Internal Affairs of the city of Alma-Ata, more than four thousand administrative offences were detected in the first quarter of 2018, and 10 crimes were solved, including four carjackings (Malchenko, 2018). According to the official representative of the Ministry of Internal Affairs of the Republic of Kazakhstan, N. Oraz, 50% of crimes committed are theft, and in the period from 2016 to 2020, their number was reduced by 67%. Representatives of the Ministry of Internal Affairs associate such positive dynamics, in particular, with preventive work, namely, the implementation of departmental anti-theft programmes, within which more than 54 thousand video surveillance cameras have already been installed in the residential yards, and more than 14 thousand are equipped on the initiative of the residents themselves (What type of crime…, 2021). The most common types of crime in 2024 are theft and fraud, accounting for 22,881 and 31,128 cases respectively (Legal Statistics, 2024). In

summary, Kazakhstan has already introduced a number of measures to combat crime that have proven to be effective, but their further successful use and scaling up will depend on the introduction of relevant investigative techniques.

Methods of forensic identification. When conducting portrait identification of a person, various techniques and methods are used, the main of which are the descriptive comparison, mathematical and graphical methods. In addition, some researchers divide the methods of studying video materials into subjective and objective. Subjective methods include those that are conducted with visual perception using visual memory or special scientific knowledge. Objective methods in such a division criterion include methods based on automatic identification: analysis, comparison of features of person's appearance, and evaluation of such results performed by machine systems (Chashnytska, 2021).

The descriptive comparison is a consistent description of all visible parts of the human body – hair, face, its elements, scars, moles, wrinkles. Measuring proportions such as the size, position, shape, and form of each individual part of the appearance (thickness, depth of fit, width, symmetry, level of facial expression) is of great importance (Baker *et al.*, 2023). The descriptive comparison method must align with privacy policies on personal data protection. According to Article 6 of the Law of the Republic of Kazakhstan No. 94-V "On Personal Data and Their Protection" (2013), personal data can only be processed with consent or under specific legal circumstances. Similarly, Article 5 of the Law of the Republic of Azerbaijan No. 998-IIIQ "On Personal Data" (2010) stipulates that personal data should only be collected for legitimate purposes and should not exceed the requirements of the investigation. While this method generally aligns with these legal standards, any misuse or unauthorised dissemination of personal data collected during descriptive comparison could violate Article 7 of the Law of the Republic of Kazakhstan No. 94-V "On Personal Data and Their Protection" (2013), which requires strict confidentiality of such information. Law enforcement must ensure that this data is handled according to the guidelines for limited dissemination outlined in Chapter 3 of Resolution of the Government of the Republic of Kazakhstan No. 429 "On Approval of the Rules of Classification of Information as Official Information of Limited Dissemination and its Handling" (2022), which specifies how sensitive data should be classified and managed.

In addition, mathematical methods are crucial in identification, which capture the linear distances and angular magnitudes between anatomical and topographic points. Article 13 of the Criminal Procedure Code of Azerbaijan (2000) emphasises the need to collect and process such data only when necessary for criminal proceedings. In line with Article 8 of the Law of the Republic of Kazakhstan No. 94-V "On Personal Data and Their Protection" (2013), law enforcement must ensure that biometric data is securely processed and stored to prevent unauthorised access. These methods are consistent with law enforcement guidelines, but only if additional safeguards are in place to ensure the minimization of data retention after the investigation, as required under Article 12 of the Law of the Republic of Kazakhstan No. 94-V "On Personal Data and Their Protection" (2013). Implementing protocols that limit access to biometric data to authorised personnel would help align these methods more closely with privacy protection standards.

The use of graphical methods involves the development of graphical constructions. In this method, a certain number of anatomical points are taken, and then lines are drawn between them, and the same lines should connect the anatomical points on the study materials. In this way, the formed lines are subsequently compared, and if they intersect (coincide) with each other or are close to each other, the appropriate conclusions are drawn regarding identification (whether it is the same person or not). These methods must adhere to confidentiality standards outlined in paragraph 7 of the Model Instruction on the Confidentiality of Personal Information on Victims of Trafficking in Human Beings (2019). This paragraph requires that all personal information, especially sensitive data such as graphical representations of physical features, be handled confidentially and securely. In addition, Article 22 of the Law of the Republic of Kazakhstan No. 94-V "On Personal Data and Their Protection" (2013) mandates that personal data used for forensic purposes should be restricted to authorised personnel and subject to secure storage conditions. To ensure compliance, law enforcement agencies should limit access to these graphical models and implement strict protocols for their handling, as stipulated by Chapter 9 of the Resolution of the Government of the Republic of Kazakhstan No. 429 "On Approval of the Rules of Classification of Information as Official Information of Limited Dissemination and its Handling" (2022), which governs the classification and handling of sensitive information.

Challenges of forensic identification from video materials. According to the forensic practice of Azerbaijan, the examination of video materials for the purpose of identifying a person is relatively new and complex. Article 20 of the Law of the Republic of Azerbaijan "On Forensic Expert Activity" (1999) provides for the concept of complex forensic medical expertise. Comprehensive forensic examination is appointed when the clarification of matters important to the case can be carried out by conducting only several studies using a system of different methods in different fields of expertise or science or within the same field of expertise. In the forensic science of Azerbaijan, a comprehensive video examination combines several examinations – technical, phonographic (audio research), and person identification. Such a comprehensive examination is defined as video phonographic (or video phonoscopic). This type of expertise has been developed over the last decade, and as a result of research, it has been established that the voice of a speaking person has individual characteristics that depend on the structure and functions of the organs involved in the speech process. Pathological changes of this organ affect the individuality of the speech process. Research shows that the human speaking voice, being stable over time, depends primarily on sex-age characteristics. As a result of the influence of social and mental factors, voice and speech are formed during childhood and adulthood, become a habit and remain unchanged throughout a person's life (Abdrasulov *et al.*, 2023). "Phonos" means "sound", "skopic" means "transmit". That is, it involves a forensic investigation of the language and images recorded on video.

Article 124.2 of the Criminal Procedure Code of the Republic of Azerbaijan (2000) provides one of the types of evidence – digital evidence. This kind of evidence cannot be physically "held", and its fixation and preservation require special technical means, conditions and knowledge. Video

recordings, as important digital data for the case, as a rule have probative value, as physical evidence, and therefore, formally, the carrier itself, and not the information on it. This does not prevent the subsequent alteration, falsification, removal, or distribution of this evidence, which leads to doubt about the authenticity of the data. When a final decision is made in a case, it may be decided to destroy not only the digital evidence, but its carrier. Further, the distribution of this type of evidence without restrictions may lead to an incorrect legal assessment of the digital evidence. The use of the concept of digital evidence facilitates the easier obtaining and use of such evidence, as well as prevents violations of property and other rights of individuals and legal entities (Podoprigora *et al.*, 2019).

However, it is impossible to discuss the absolute differentiation of methods of forensic identification of person's appearance from video materials into subjective and objective ones, since the results obtained by using objective methods in some cases require analysis and evaluation by a specialist in this industry, which indicates the complex application of two types of research methods. When transferring video materials to a specialist in this field of knowledge, they are assigned a number of tasks necessary for the effective conduct of this procedure and obtaining competent results. Thus, in criminology, these tasks are divided into two groups – identification and diagnostic. The purpose of performing identification tasks is to establish the fact of a specific or group identity of material objects. Such tasks include the identification of person's appearance by video material, the location of the video recording, a specific fact displayed on the video. Currently, there is no unified scientific approach to the concept of "diagnostic tasks" in forensics. However, the following diagnostic tasks are most often distinguished: establishing the properties of video recording materials, the conditions under which events were recorded, establishing the fact of changing the video recording and interfering with its integral structure, determining the number of subjects taking part in events displayed on video materials (Kaur *et al.*, 2020).

As for the tasks, methods, and techniques of expert research, in accordance with the Decision of the Cabinet of Ministers of the Republic of Azerbaijan "On the Approval of the "Rules for Maintaining the State Register of Forensic Expertise Research Methods and Entering New Methods into that Register" (2020), a special State Register operates in the country, which is constantly updated. The register, according to the law, contains the following information for experts: the name and essence of the method, information about the author of the method, expert tasks solved by the method, objects of research, research methods and tools, step-by-step description of the method. Along with this, the Methodological Fund of Forensic Expertise was created. In accordance with the Decision of the Cabinet of Ministers of the Republic of Azerbaijan "On the Approval of the "Rules for the Creation and Use of the Methodical Fund of Forensic Expertise" (2020b) is a database consisting of scientific and methodological materials of forensic examinations.

Despite the active use of this method of collecting information, the question of the feasibility of using video surveillance systems as a data source for conducting forensic identification of person's appearance from video materials is actively discussed by specialists in this field, employees of internal affairs bodies, the media, and even ordinary citizens. The reason for this widespread concern is the risk of ineffective use of video materials in the study, conditioned upon a number of causes. This can be attributed to the quality of the material. The quality itself is primarily determined by the means of video recording, and if they are flawed, the video material will be of poor quality. Since surveillance equipment acts as a motion detector and not a specific static image, it may not be possible to identify a moving object with low video quality.

In addition, the quality of the displayed material is affected by a number of external factors in which video was recorded, such as lighting, remoteness of the video recorder from the subject, weather conditions, contamination of the surface of the video camera, the presence of interfering objects, and other factors (Pilyukov *et al.*, 2023). The second, but no less important reason is the obsolescence of research methods, explained by rapid technological progress, the adaptation to which considerably lags behind. Thus, one of the methods of studying video materials is the analysis of static images obtained from video materials, that is, such an analysis involves the study of photographic images from video materials (León-Mendoza, 2019). This method is applicable only to the study of static anatomical features of person's appearance, such as features of individual body parts, head shape, facial proportions, height, width, and position of the forehead. The method of analysing static images from video aligns with government privacy policies and law enforcement guidelines if handled appropriately. According to Article 6 of the Law of the Republic of Kazakhstan No. 94-V "On Personal Data and Their Protection" (2013), personal data, including biometric information derived from video materials, must be processed only with consent or under legal authority. Similarly, Article 5 of the Law of the Republic of Azerbaijan No. 998-IIIQ "On Personal Data" (2010) requires that personal data be collected for specific, legitimate purposes and handled securely. When using this method of analysing video materials, part of the possibilities of obtaining data for identification is lost, namely, the dynamic signs of a person's external appearance – gestures, facial expressions, gait. At the same time, there is a problem of identification conditioned by the lack of a database with information, video recordings or images necessary for identification. Thus, for example, in the comparative analysis of gait, there are no materials that could become objects for comparison, and such dynamic features are directly related to the conditions and the environment in which a person resides. It is proposed to divide the criteria for evaluating video materials into groups.

Analysis and evaluation of each factor and the ratio of the results obtained will allow drawing a conclusion about the possibility of using source materials for forensic identification. The first group of criteria are those that are directly related to the conditions of recording video materials: lighting (daytime or night, frontal or lateral, natural or artificial), the resolution of the video camera, frequency, the position of the person relative to the recording device. The second group of factors is the state of the displayed object, in particular, the appearance of a person. Such components of appearance as body parts, limbs, body regions (back, chest), facial elements (nose, lips), functional features (walking, stuttering), as well as appearance, clothing, belongings, accessories are crucial for identification (Yukhno *et al.*, 2023). The third group includes factors related to the use, transmission, and storage of source data. As is known, the frequent transfer of a file from one medium to another reduces its

quality as well as mechanical impact and interference in the video sequence by third parties.

The need for integrated approaches in forensic research. Despite the fact that some factors may be recognised as suitable for use in identification, others of them are questioned or recognised as such that they cannot be recognised as acceptable, and then the entire video recording cannot be considered. Notably, without an integrated approach, it is difficult to achieve results in forensic identification from video materials. A competent solution to the problem requires complexity and the use of a modern approach based on the application of research from various fields and expertise. It is proposed to distinguish a separate type of expertise, such as a comprehensive examination of video materials, which can be carried out by experts from different types of expertise jointly to address related issues.

Thus, each specialist studies only those properties of the object in which they are competent, which leads to a complete and reliable study of the object. Generally, during the forensic identification of person's appearance, photographic images are used, which are examined by a specialist in this field. The main focus is on the content of the video or image. Researchers primarily focus on content analysis by replaying recordings and identifying evidence by filtering video content in conventional forensic video analysis. In fact, conventional methods are time-consuming and ineffective if there is a huge amount of video material (Singh & Mohan, 2020). The development of digital technologies and the emergence of new sources of obtaining materials for comparison, such as video recordings, necessitate the involvement of specialists from other branches of science. When studying video recordings, it is necessary to evaluate not only the objects displayed on them but also the video itself as an object of research. The setting of additional tasks for forensic research, in turn, requires the involvement of researchers not only in the field of forensic science but also specialists in technical sciences.

This method is largely consistent with government privacy policies and current law enforcement guidelines, but it must be carefully applied to ensure compliance with legal frameworks. According to Article 14 of the Law of the Republic of Kazakhstan No. 94-V "On Personal Data and Their Protection" (2013), video recordings, which are considered personal data, must be processed in a lawful and transparent manner, ensuring the data is used solely for its intended investigative purpose. However, it also carries a risk of overstepping privacy boundaries, especially when large amounts of video material are involved. Therefore, law enforcement agencies must ensure that the analysis is limited to the scope of the investigation.

Since video materials are components of video surveillance systems, mobile devices, video cameras, cameras, the qualitative and quantitative properties of the resulting images directly depend on the quality of the recording device (Kobets, 2023). It is worth noting that there are several approaches to solving this issue. The first approach is based on the fact that video materials suitable for forensic identification must be examined in their original state and their processing, in this case, is impossible. However, this approach complicates the work with the source materials, since the quality of the obtained video materials may be deemed unsuitable for identification, which may subsequently lead to the exclusion of these video materials from the evidence base, and will also help the offender avoid punishment. The second approach is based on the fact that the original video materials, if their condition is not satisfactory enough for their use in forensic identification of person's appearance, can be processed from the standpoint of correcting the parameters of the video, not its contents. Thus, video recording parameters such as light correction, brightness, contrast, colour balance, noise reduction, sharpening, speed mode can be applied, while interference with the structure of the video recording, extraction of its fragments or vice versa, the inclusion of additional frames are absolutely not allowed. Each of these approaches may exist because has its advantages and disadvantages. In the first case, the study of original, raw video recordings is the key to an objective perception of video materials. Nevertheless, the second approach can make the process of studying video materials more efficient and facilitate the work of specialists, but there is still a risk of unjustified interference and falsifications in the processing of video recordings.

In addition, criminologists cannot competently assess whether there has been a change in the video recording from the standpoint of its structure, such as video editing, joining of individual frames. During the initial study of the video recording, primitive editing can be visible to the naked eye. For example, abrupt transitions or jumps in the video, a violation of continuity, changes in the audio track. However, with the advent of new technical capabilities, the skills of people who interact with video recorders and video recordings directly are also being improved. In recent years, the number of videos processed using machine learning on the Internet has increased rapidly. The so-called deepfakes can depict people who have never taken part in a video recording, as their faces are transferred to others. This raises concerns about the authenticity of the carriers, which requires more effective detection methods in forensic examination (Fjellström, 2021). Interference in the structure of the video sequence can be conducted at such a high level that it will be impossible to detect such an action with the naked eye, so the involvement of specialists in this field is required. Today, in the practice of investigating crimes, video materials are checked for interference with each video used as evidence, regardless of whether it arouses suspicion when analysed with the naked eye or not (Chornous & Leliuk, 2023). Regarding the content of video materials – that is, the external appearance of a person. It can be stated that due to the low quality of the source video materials, images of a person can also be distorted, the proportions of person's body, the ratio of different parts of the body, and the relative position of objects on the video recording can be violated. A specialist in working with video materials can, after conducting the necessary research and calculations, eliminate such errors and note the truthful quantitative and qualitative features of person's appearance (Gavilanes *et al.*, 2022).

This approach can sometimes involve handling vast amounts of sensitive personal data, including metadata and digital fingerprints, which raises significant privacy concerns. Therefore, to remain consistent with privacy laws, law enforcement agencies must limit data processing to what is strictly necessary for the investigation and ensure proper security measures are in place to prevent data breaches. According to the Criminal Procedure Code of the Republic of Azerbaijan (2000), digital evidence should be preserved in its original form to maintain its authenticity and integrity, making sure that any manipulations, such as deepfake detection, do not compromise the evidentiary value.

Therefore, when studying video materials, investigating crimes, a number of questions are raised that are of dual competence, namely, on the one hand, this is the state of the video recording and its technical characteristics, on the other hand, the content of the displayed event (place, time, number of subjects, their actions, the establishment of the identities of the participants in the events). All these issues can be solved by one expert if they have enough special scientific knowledge and experience in these areas, but most often for competent and complete research, it is necessary to create a committee of experts in various fields: computer technology, video technical expertise, physiognomists, criminologists. The main area in the study of video recordings and conducting forensic identification of person's appearance based on video materials is the automation of the stages of comparative analysis and the formulation of conclusions about the presence or absence of oneness of identified and identifiable objects. However, already at the stage of theoretical consideration of this issue, a number of problematic issues arise. Developers of video recording systems do not unify their products, often hiding algorithms for software processing of video frames, which complicates the comparison of video materials, while the quality of video images, the position of subjects on them, the angle, and other factors complicate the automation of examinations.

Modern technological advances and their implications for forensic identification. For quite a long time, video recordings have been an integral part of human life, including in the field of crime investigation and expert examinations. Therewith, when conducting forensic examinations, a number of new issues are raised, the solution of which is possible only in conjunction with the use of special scientific knowledge from various branches of science, and hence the involvement of new specialists. As video recording technologies and tools evolve, experts require new knowledge and methods, as well as special scientific information. The need to study computer forensics is growing (Buhera, 2021). The insufficient theoretical basis for the study of video materials is one of the main problems of forensic identification of person's appearance since the lack of a unified approach to this issue leads to a contradiction between the used methods of research, and as a consequence, to the incompleteness or unreliability of the results obtained. In view of the above, the use of methods, means, and techniques of identification by the appearance of a person based on portrait examination for the purpose of solving and investigating crimes today does not correspond to modern realities, and to consider a new type of research, such as forensic examination of dynamic features of a person, the study will be aimed exclusively at studying and identifying a person by dynamic features. Thus, it became necessary to revise and distinguish such a separate type of forensic research in the system of the existing classification of forensic examinations as a forensic study of person's appearance based on video images (Zeng *et al.*, 2022).

Modern computer technologies are designed to improve information about the image of a person in different weather conditions, both day and night, and to display functional elements of appearance and facial features in dynamics and static. In addition, a separate problematic aspect is the lack of competence of experts and specialists involved in the study of video materials. To save time and money, the expert or specialist alone examines the video, both its content and technical characteristics, not always being sufficiently knowledgeable in these matters (Abdrasulov *et al.*, 2024). By comprehending the techniques of researching new objects of expertise, experts and specialists risk interfering with someone else's competence. Negative consequences can be avoided if various specialists who could cooperate are involved in the study of the appearance and its reflection on the research medium (Kozhevnikov, 2020). Solving these problems is the key to an effective, complete, and competent study of video materials for conducting forensic identification of person's appearance. This is important not only within the framework of a certain procedural action but also for the practice of solving crimes in general. To develop forensic research in the field of examination of video recording materials, it is necessary to create new methods and improve outdated ones. The involvement of advanced technologies would provide better initial information, which, in turn, would facilitate accurate and reliable identification conclusions in different conditions.

Discussion

Having analysed and compared the study results with the findings of Kazakh and foreign researchers, the following can be highlighted. A. Badiye *et al.* (2022) in their joint study within the framework of criminological identification of a person from video investigated a separate special aspect of such identification – forensic analysis of a person's gait. The paper draws attention to the problems of limiting the use of gait analysis and criticism of the admissibility of such examinations in courts. Due to the fact that the modern judicial system focuses on accuracy, clarity, and admissibility of evidence, gait analysis has been criticised for its reliability, reproducibility, and compliance with standards and rules, since there are practically no legal standards for such an examination. Gait pattern is a personality characteristic, but the use of such a characteristic is affected by the lack of databases that can be used to compare gait. Human gait is highly variable and has some individual variability, which makes identification difficult. Therefore, in the authors' opinion, gait analysis remains a weak identification method, but in some respects, it is quite reliable. For example, the paper shows that gait analysis helps identify people with a pathology or a specific disease that can affect the way they walk. In this way, traumatologists, neurologists, and orthopaedists can diagnose certain causes of pain that make people walk in this way by watching a video of a person walking. These include problems with the muscles, skeleton, and nerves, and this conclusion significantly narrows the range of suspects. The papers overlap in the importance of applying the method of identification by walking, but in this study, compared to the above, the emphasis is not on one type of research, but rather on the possibility of identification from video materials in general, considering their features. Thus, the method of identification by gait is also an integral part of identification from video material, but the paper also investigates the features of video materials independently without reference to playback, and with reference to the reproduced, recorded material on video with a person.

L. Fjellström (2021), studied the topic of forensic research on video materials in his thesis. The problems of modern video forgery, which makes identification impossible, and, above all, the problems of video materials created by artificial intelligence, are considered. The paper evaluates

the study of video duplication (artificially created video, the method of creating an image and video using artificial intelligence by image synthesis). The paper presents the results of an evaluation experiment by forensic experts and a criminalist. The study is also devoted to the evaluation of the method of using artificial intelligence in video duplication. The author proposes to use the superpixel method to study the tampering, but notes that it is difficult to recognise tampering with a high-quality level of manipulation. It is determined that deepfakes can represent people who have never participated in the video by taking faces from other visual materials, and therefore, there is a problem of identification and reliability, which requires new detection methods. It has been shown that the LIME artificial intelligence method (Local Interpretable Model-Agnostic Explanations) can examine fake videos and assist experts in detecting them. The papers agree with each other on the issue of interaction with modern counterfeiting technologies – deepfakes. Since such forgery methods exist, modern methods of detecting them, and therefore forensic examination, are needed. However, this paper differs from the above in that it is a comprehensive study of video identification based on various features, is theoretical in terms of several practical aspects and does not focus only on the technology of deepfakes. And the paper by the researcher focuses on artificial intelligence and a practical experiment on the study and detection of fingerprinting and modern video modifications by forensic scientists and forensic experts.

A. Singh and N. Mohan (2020) argue that CCTV footage is an important tool for forensic analysis and evidence retrieval. It is noted that investigators primarily use video testing methods by manually playing back and filtering, but such traditional methods are not always effective and time-consuming. Therefore, the researchers propose automated forensic video analysis using face recognition. However, low video quality and an inappropriate source of its acquisition do not allow for a full forensic assessment of the video or significantly reduce the reliability of such an investigation, and hence the evidence. The paper provides proposals that will help solve the problems of low-quality video reflections, namely, a detailed quality improvement procedure, a test scenario for comparing a neural network and relevant algorithms. Attention is drawn to the need to improve the efficiency of analysis methods, and therefore, a system of comprehensive object identification from video is proposed, which will use the relationship between the behaviour of objects, light sources, and subject areas.

D. Lorkiewicz-Muszynska *et al.* (2015) suggest that despite the active use of this method of collecting information, the question of the expediency of using video surveillance systems as a source of data for forensic identification of appearance from video materials is actively discussed by experts in this field, law enforcement officials, the media, and even ordinary citizens. The reason for this widespread concern is the risk of ineffective use of video footage in investigations, due to a number of reasons. One of them is the quality of the analysed material, which, in turn, is determined by the imperfection of the technical means of recording the material, the way it is stored and transmitted. The main role of visual surveillance is to register movement, so the image quality may not be sufficient to identify. Thus, these studies are devoted to improving the efficiency of image quality, quality of analysis methods, materials and methods of data transmission (storage). The papers are aimed at the practical use and application of such methods, while this study is an analysis of theoretical issues with the definition of practical aspects of the topic, but without delving into specific methods and proposals, forms of their use.

In their study, O. Yukhno *et al.* (2023) focus on the forensic identification of individuals based on video materials, with an emphasis on integrating modern techniques and developments in video surveillance systems. The authors employ both theoretical and empirical methods, such as statistical analysis and synthesis, to investigate how video surveillance technology, artificial intelligence, and biometric data access contribute to identifying criminals. The researchers draw on the work of scholars from China, Ukraine, and other countries to assess how digitalization both aids law enforcement in solving crimes and raises concerns about privacy intrusions. The findings highlight the delicate balance between enhancing security and protecting individual privacy in the digital age, particularly in the context of current legislation. Compared to the current study, this research similarly addresses the issue of privacy violations while discussing the increasing use of video materials in forensic identification. However, the researchers take a broader, more global perspective, analysing legislation and developments across multiple countries. Both studies emphasize the technological advancements in video surveillance but differ in their scope and geographical focus.

J. Zeng *et al.* (2022) explore the use of medical indicators for forensic human image identification, a method the authors refer to as medical forensic identification of human images (mFIHI). The researchers argue that diseases, both physiological and psychological, influence a person's appearance and behaviour, and these changes can be used as key indicators for identifying individuals in forensic contexts. The study introduces a process of analysing medical signs observed in images or videos, comparing them with a suspect's medical history to determine identity. By conducting a conformity and difference analysis on these medical indicators, the method provides critical information for human identification. A case study within the research further supports the feasibility of this method, demonstrating its potential as an essential tool in forensic investigations. This research offers a more specialised approach by focusing on medical indicators as a means of forensic identification. Meanwhile, the current study involves more traditional methods such as descriptive comparison and mathematical techniques. Both studies emphasise the importance of using innovative methods to improve identification accuracy.

Based on all the above studies, it can be concluded that this topic has been investigated by various researchers and they all considered different aspects and problems. In this paper, the emphasis is placed on reflecting all the important aspects of the problem and various solutions. At the same time, each study concludes that it is necessary to improve expert research in connection with the spread of artificial intelligence and methods of modifying.

Conclusions

Having conducted a study in the field of the problems related to forensic identification of person's appearance from video materials, theoretical and practical aspects of the research were highlighted. Firstly, it should be noted that the concepts of forensic identification are investigated. The

identification process is defined as a way to establish a causal relationship between two objects. In turn, forensic identification of a person by external features on video materials involves determining the oneness or absence of such features through portrait, operational, and investigative identification methods, using both recorded displays and eyewitness memories. It was established that the objects of such forensic research are photographs, videos, films, X-ray images, and the technical properties of the studied video materials.

Moreover, the object of research in forensic identification is complex and includes also an information carrier containing the studied video recording, that is, a video recording device. The methods that are used in forensic identification were established: descriptive comparison, mathematical, and graphical. Problems during the forensic identification were discovered. In practice, the key problematic aspects are outdated methods and approaches. The study of a video recording by decomposing it into separate photographic images leads to the loss of the possibility of studying dynamic features of person's appearance, such as gait, gestures, limp, leaving it possible to study only static features (face, body parts). In addition, a problematic factor is the lack of competence of specialists who take part in the study. Thus, a comprehensive approach to conducting forensic identification is required using the knowledge of specialists from different branches: computer technology, video technical expertise, physiognomists, and criminologists.

The study emphasises that specific forensic identification methods, such as descriptive comparison, mathematical techniques, and graphical methods, are generally aligned with the current confidentiality legislation of the Kyrgyz Republic and Azerbaijan. These methods are consistent with the respective privacy laws, such as the Law on Personal Data in both countries, which mandates the secure and lawful handling of personal information used during forensic investigations. In addition, the guidelines for managing private data seem to be in line with the new laws in both countries, especially when it comes to forensic investigations.

The prospects for future research in this area should focus on enhancing automated forensic identification systems, addressing the legal implications of emerging technologies like AI, and developing more comprehensive guidelines for handling sensitive biometric data to further safeguard individual privacy.

Acknowledgements

None.

Conflict of interest

None.

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Методологічні проблеми та соціальні ризики порушення приватності в процесі криміналістичної ідентифікації осіб за відеоматеріалами

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Анотація. Актуальність цього дослідження була зумовлена гострою необхідністю підвищення ефективності боротьби зі злочинністю з одночасним забезпеченням недоторканності приватного життя особи. Таким чином, метою дослідження було вивчення всіх аспектів проведення криміналістичного впізнання особи за відеоматеріалами, а саме: теоретичного, який охоплює характерні особливості та принципи цього виду діяльності, та практичного, який показує реалізацію закріплених принципів при проведенні цієї слідчої дії. У дослідженні були використані різні методологічні теоретичні та практичні підходи, необхідні для найбільш повного та ефективного розгляду цього питання, а саме: теоретико-методологічний підхід, аналіз та порівняльний аналіз, функціонально-методологічний підхід. У ході дослідження комплексного підходу до вирішення проблеми криміналістичної ідентифікації зовнішності людини за відеоматеріалами було розглянути такі аспекти: теоретична складова у визначенні поняття, характерні ознаки та принципи проведення криміналістичної ідентифікації зовнішності людини за відеоматеріалами, досвід дослідників щодо цього питання та узгодження методів криміналістичної ідентифікації з нормами приватності в контексті чинного законодавства Киргизької Республіки та Азербайджану. Практичне значення дослідження полягає в тому, що його результати можуть бути використані правоохоронними органами, судовими експертами та юристами як Киргизької Республіки, так і Азербайджану для вдосконалення процесів криміналістичної ідентифікації, забезпечення дотримання законодавства про захист приватності та підвищення ефективності розслідування злочинів з використанням відеоматеріалів

Ключові слова: тіло людини; судово-медична експертиза; носії портретної інформації; кримінальні правопорушення; функціональні особливості; стандарти конфіденційності

UDC 342.7
Doi: 10.32518/sals4.2024.90

Соціально-правові студії. 2024. Т. 7, № 4
Social & Legal Studios. 2024. Vol. 7, No. 4

Protection of information about employee's personal data in the Republic of Kazakhstan

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Abstract. The relevance of this study is conditioned by an increase in the number of cases of leakage of personal data of citizens, which indicates a low level of protection of their fundamental rights. The purpose of the study was to analyse the current legislation in the context of ensuring the protection of information about the personal data of an employee in the Republic of Kazakhstan. For this purpose, several methods were used, such as logical, formal legal comparative analysis, and dogmatic method. The norms that are regulated by the Constitution of the Republic of Kazakhstan, the Labour Code of the Republic of Kazakhstan, the Law of the Republic of Kazakhstan "On Approval of the Rules for the Collection and Processing of Personal Data" were investigated. This provided an opportunity to conduct a comparative legal analysis of the current legislative norms of Kazakhstan and European regulations. It was noted that the legal doctrine of Kazakhstan does not consolidate the fundamental principles that allow settling the issue of collecting, processing, and storing personal data of citizens. In addition, the obligation of the employer and a clear mechanism for maintaining the confidentiality of personal data of employees are not established at the state level. In this regard, recommendations were proposed to improve the current legislation. The practical significance of the results obtained lies in the possibility of using the proposed recommendations to improve the effectiveness of the mechanism for protecting information on personal data

Suggested Citation

Article's History: Received: 20.08.2024 Revised: 23.11.2024 Accepted: 23.12.2024

Syrlybayeva, F., Kassymova, X., Omarova, E., Zhussipova, B., & Nurgalieva, E. (2024). Protection of information about employee's personal data in the Republic of Kazakhstan. *Social & Legal Studios*, 7(4), 90-102. doi: 10.32518/sals4.2024.90.

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of an employee in Kazakhstan, reduce the number of cases of information leakage, and bring legal norms in accordance with international standards

Keywords: privacy; human rights and freedoms; proliferation; threat; digitalisation; security

Introduction

In light of the rapid development of the digital society and digitalisation processes, the relevance of the problem of legal regulation of information security as an information resource is steadily increasing. However, an important aspect remains the achievement of an optimal balance between the changes taking place in the state and society and the individual needs of employees in ensuring the confidentiality of the personal sphere within the framework of the legal mechanism for the protection of information rights. This problem remains urgent and complex. This can be accomplished by adhering to the constitutional principle of prioritising human rights and freedoms, ensuring the inviolability of private life, personal and family secrets, and the protection of honour and dignity, which is consistent with international human and civil rights and freedoms standards. Citizens have a basic right to secrecy and the protection of their personal data (Kakeshov *et al.*, 2023). Every year in Kazakhstan, the importance of protecting citizens' personal data increases, which is associated with an increase in the likelihood of personal information leakage and the resourcefulness of fraudsters. The state and employers are obliged to provide reliable protection, properly organise activities to protect the rights of employees and avoid the risks associated with violations in the field of storage and processing of personal data (Mentukh & Shevchuk, 2023).

According to E.N. Nurgalieva and F.M. Syrlybaeva (2020), a new institution is currently being formed in Kazakh labour law – the right to information of subjects of labour law and its protection. This right includes a number of powers, such as access to information and processing of information, namely its storage, combination, transmission, dissemination or other use. Following E. Yerbolatov *et al.* (2020), a separate aspect is the right to protection of information about labour rights, which is implemented within the framework of the relationship of protection of workers' rights. Modern technologies allow employers to use personal data for their activities on a scale previously impossible. F.M. Syrlybaeva (2022) notes that in this regard, they must ensure a high level of protection of such data based on a reliable legal foundation in the field of protection of information rights of employees. The large-scale changes that are currently taking place in almost all countries are associated with the rapid development of information and communication technologies (ICT). The development of these technologies is happening so fast that all subjects of information relations have the opportunity to access and use various databases. According to S.B. Akhmetova *et al.* (2023), the process of development of the information society, despite the obvious positive results, also generates legal, moral, social and other problems and threats. In this regard, the stage of development of modern society towards information transparency requires reflection and understanding of the consequences for the future.

L.S. Asainova (2021) mentions that in the process of developing an information society, the ways of dissemination and exchange of information change, and the structure of the information space undergoes radical changes. Modern technologies, such as automatic data processing, the creation of global communication networks and the introduction of electronic management, allow collecting, processing, and distributing information with high speed and accuracy. Following B.M. Maksutov (2019), this creates serious threats to the use of personal data of citizens by authorities and individuals contrary to the interests of data subjects, and sometimes with the aim of violating their rights and legitimate interests. Technical means provide ample opportunities for collecting, storing and processing large amounts of socially significant information in various automated systems. However, these systems aimed at structuring, storing, and searching for socially significant information create the problem of leakage and other forms of illegal access to personal data, which emphasises the importance of ensuring legal protection of personal information.

N.N. Alkhamsi and S.S. Alqahtani (2024) examined the creation of a compliance framework for personal data protection laws. The researchers underlined the need of clear standards and efficient enforcement methods for ensuring that organisations follow data protection legislation. Their research emphasised the significance of connecting legislative frameworks with technology improvements in order to protect individuals' privacy rights while also encouraging responsibility among data controllers. R.S. Shahrullah *et al.* (2024) investigated Indonesia and South Korea's personal data protection legislation, focussing on how both legal frameworks uphold privacy rights. Both nations' continuous attempts to improve personal data privacy while navigating the challenges of enforcement and compliance were disclosed. By evaluating the similarities and contrasts in their approaches, the study identified crucial lessons that Kazakhstan might apply to enhance its own data protection legislation. The study underscores the idea that comprehensive legal frameworks are essential for effectively protecting privacy rights in the face of growing data collection and processing. Z. Guo *et al.* (2024) researched the evolution of personal data protection in China, focussing on the transition from a monistic to a dualistic approach in civil and criminal law. Their research demonstrates a growing realisation of the necessity for various legal approaches to manage personal data protection completely. This study emphasises the necessity of adjusting legal frameworks to developing difficulties in digital privacy, as well as the need for constant development in personal data legislation to keep up with advances in technology and social expectations.

In the Republic of Kazakhstan, as in many modern states, addressing these challenges requires the use of a wide range of executive, organisational, and technical measures and the creation of a legislative mechanism. Based on this, the purpose of the study was to examine the shortcomings the current legal doctrine of Kazakhstan in the context of ensuring the protection of employees' personal data. To achieve these goals, it was necessary to investigate the concept of "personal data", conduct a comparative legal analysis of the legislation of Kazakhstan and other acts, and identify a range of problems that reduce the effectiveness of the mechanism for protecting citizens' data.

Materials and methods

This study was carried out using various types of analysis. The functional analysis was used to investigate the protection of information about personal data of an employee in Kazakhstan, to determine its functional components, processes, and security measures. This provided an opportunity to identify which data is considered personal and requires protection, to consider potential threats to data security, and to assess the level of protection of the current information system from identified threats. The functional analysis helped to evaluate the information protection system for personal data of employees in Kazakhstan in terms of its functionality and effectiveness. The method of logical analysis was used to investigate the personal data protection system, potential vulnerabilities in the logical structure of the information system that can be used for unauthorised access or data leakage, compliance of the personal data processing system with the data protection legislation in Kazakhstan, and detection of inconsistencies.

The formal legal method provided an opportunity to study the norms regulated by the legislation on the protection of personal data. Thus, the provisions of the International Covenant on Civil and Political Rights (1996), Constitution of the Republic of Kazakhstan (1995), Law of the Republic of Kazakhstan No. 94-V "On Personal Data and their Protection" (2013), Law of the Republic of Kazakhstan No. 115-VIII "On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on State Control and Statistics, Improvement of the Population Protection System, Data Management, Registration of Legal Entities and Exclusion of Excessive Legislative Regulation" (2024), Labour Code of the Republic of Kazakhstan (2015), Entrepreneurial Code of the Republic of Kazakhstan (2015), Code of the Republic of Kazakhstan "On Administrative Offences" (2014), European Social Partners Autonomous Framework Agreement on Digitalisation (2020), General Data Protection Regulation (GDPR) (2018), Order of the Minister of Digital Development, Innovation and Aerospace Industry (MDDIAI) of the Republic of Kazakhstan No. 395 "On Approval of the Rules for the Collection and Processing of Personal Data" (2023) were investigated.

The method of legal hermeneutics has been applied to analyse and interpret legislation and legal documents, including laws on personal data protection. This method helped to investigate and understand the content of laws and regulations, determine their meaning and application. In the context of studying policy on the security of personal data, the method of legal hermeneutics was used to consider in detail the text of laws, terms, definitions, and structure, to determine the meaning of key concepts used in laws, to specify the purposes of laws and their interpretation. The dogmatic method was used to review the legislation on the protection of personal data, which helped to analyse and interpret existing norms and principles, and identify the relationships between them.

The method of comparative legal analysis was used to compare the norms of the GDPR (2018) and the Law of the Republic of Kazakhstan No. 115-VIII (2024) to identify similarities and differences between them. This provided an opportunity to analyse the key terms and principles in these regulations, compare structures, formulations, and mandatory elements. Although Kazakhstan is not required to adhere to European Union standards, comparing its legislation to the GDPR gives significant insights into best practices and global trends in data protection. This comparison helps to determine how Kazakhstan's law addresses personal data privacy in a rapidly digitalising world, as well as whether it incorporates robust mechanisms found in internationally recognised regulations such as the GDPR, which is frequently cited as a benchmark for comprehensive data protection frameworks. The method of comparative legal analysis helped to investigate two key regulations and assess their impact on the practice of personal data processing in Kazakhstan. The deduction was introduced to provide characteristics about the "employee's personal data" by highlighting the key principles, features, and structure of the protection mechanism. In turn, the induction method, based on the established legislative norms, allowed characterising the mechanism for protecting personal data of an employee in Kazakhstan.

Results

Due to the increasing threat to the security of personal data, laws are being adopted in some countries that provide certain individuals with control functions in the collection, processing, and transfer of personal data to both public and private organisations. The adoption of legislative acts on the regulation of information resources in various countries has become the basis for the development of a branch of law known as information law, which includes public relations related to the legal regulation of information circulation, its creation, storage, processing and use employing communication technologies, and its protection.

The growing frequency and severity of data breaches in recent years has had a significant impact on personal data security, particularly in the United States. According to the Identity Theft Resource Center's (2024) report, the United States remains the most impacted country, with over 2,365 documented intrusions in 2023 alone. These instances, which represent the vast majority of global breaches, have exposed extremely sensitive information such as Social Security numbers, healthcare records, and financial data. Phishing attacks and ransomware were the primary causes, accounting for more than 18.5% and 10.4% of total breaches, respectively. The healthcare and banking industries were notably affected, with over 800 compromises because of the high value of medical data on the black market (101 of the latest data…, 2024).

In 2024, the situation has only gotten worse, with a number of high-profile breaches shattering people's trust in data security. A breach at Find Great People in July 2024 revealed the personal information of approximately 12,000 people, including Social Security numbers and medical records (Borelli, 2024). Similarly, the ShinyHunters organisation engineered the Ticketmaster breach in May 2024, which compromised the personal information of over 500 million individuals, making it one of the most significant breaches in recent history. This attack revealed personal identifiers and partial credit card information, fuelling concerns about massive financial theft. Furthermore, the AT&T breach in July 2024 affected call records and text message data for nearly all of its customer base (Sicurella, 2024).

In early 2024, the National Public Data breach (2024) revealed over 2.7 billion records and affected 170 million individuals. These breaches have far-reaching effects, since stolen data may be used to commit identity theft, phishing

schemes, and unauthorised financial transactions. The escalating cost of breaches also places a significant financial strain on organisations. A single mega breach may cost an average of $332 million, with 20% of breaches in the US resulting in regulatory fines surpassing $250,000 (101 of the latest data…, 2024). These instances emphasise the rising need for robust cybersecurity solutions, including multi-factor authentication, personnel training, and improved security infrastructures. With the United States highest on the number of reported breaches each year, the problem of protecting personal and organisational data remains crucial.

Kazakhstan has not been immune to the global increase in data breaches, and the country has faced growing cybersecurity issues in recent years. One of the most prominent events came in 2021, when a major breach revealed the personal information of millions of Kazakh individuals, exposing flaws in the country's digital infrastructure (Buchelnikova, 2024). This hack exposed sensitive data such as national identity numbers and personal details, raising questions about the effectiveness of cybersecurity in both the public and commercial sectors.

Data breaches in Kazakhstan have grown dramatically during 2018, indicating the country's expanding cyber threat scenario. According to JSC State Technical Service (2023), Kazakhstan saw over 223 million attempted cyberattacks in 2023, with targets ranging from government institutions to telecoms and private organisations. This is a significant increase in cyber events over prior years, especially as the country continues to digitalise its economy. Furthermore, Kazakhstan's important position in Central Asia and importance in regional commerce have resulted in a rise in cyber threats to vital infrastructure. As the country's digital economy grows, weaknesses in its cybersecurity architecture, notably in telecommunications, healthcare, and finance, have grown increasingly apparent. To counteract escalating threats, the government has emphasised the need for stronger legislative frameworks as well as modern cybersecurity technology. The government has implemented measures to improve personal data privacy, progressively matching its rules with international standards such as GDPR (Personal data protection in Kazakhstan, 2022). These reforms include requiring organisations to inform authorities of breaches and enforcing stricter standards for how personal data is maintained and used within the country. The Ministry of Digital Development, Innovations, and Aerospace Industry has been entrusted with managing these security measures, although capacity concerns remain a concern. To address these difficulties, Kazakhstan has worked to enhance its national cybersecurity policy by investing in security infrastructure, increasing citizens' digital literacy, and collaborating with foreign partners. However, as the volume of digital data increases, the dangers of data breaches remain a major issue for both individuals and organisations across the country.

The above suggests that the confidentiality of personal data is under threat. In this case, it is advisable to mention that in 2022, 31% of companies in Kazakhstan were subjected to cyber-attacks, which makes it important to consider these issues to resolve the main aspects that will strengthen the protection of personal data of employees at the legal level (Every third company…, 2023). Cyberattacks were most commonly directed at government agencies, with 133.5 million attacks on local executive bodies. In all, government entities suffered around 47.7 million assault attempts, emphasising the importance of enhanced cybersecurity measures in the public sector (JSC State Technical Service, 2023). This is a huge increase over prior years, when cyberattacks were fewer and less sophisticated.

Citizens' information rights are enshrined in the International Covenant on Civil and Political Rights (1996), which is binding on almost all countries of the world, including Kazakhstan; articles 17-21 of this Covenant. Information rights are also contained in articles 10-39 of the Constitution of the Republic of Kazakhstan (1995), which, although they do not directly regulate the issues of ensuring the protection of personal information rights, nevertheless serve as basic provisions. In 2013, Kazakhstan adopted the Law of the Republic of Kazakhstan No. 94-V "On Personal Data and their Protection" (2013), which for the first time took into account international standards. The main priority of this law is to ensure the protection of human and civil rights and freedoms in the collection and processing of personal data. It also regulates public relations in the field of personal data and establishes the legal basis for their protection. Additional changes were made with the adoption of Law of the Republic of Kazakhstan No. 115-VIII (2024). The revisions were intended to strengthen the present legislative framework, particularly in terms of governmental control, data management, and population protection. The changes aimed to increase government oversight systems for personal data processing and guarantee that enterprises that handle personal data follow amended regulations. These reforms indicate Kazakhstan's commitment to modernising its regulatory framework in response to the growing complexity of data security in the digital age.

It is worth noting that the provisions of this law are not reflected in the current Labour Code of the Republic of Kazakhstan (2015), where there are no articles on personal data and their protection. The Labour Code only mentions the employee's right to protect the data stored by the employer. These references to personal data legislation do not sufficiently solve the problem of information protection within the framework of employment relations, which, of course, has its own characteristics. The employer's obligation to protect the employee's information rights includes the protection of the employee's personal data exclusively in the context of an employment relationship, such as information about the employee, his/her professional qualifications, business and professional qualities, but should in no way affect personal and family life (Rieger *et al.*, 2019). To prevent unjustified expansion of information about an employee in the Labour Code, it is necessary to establish a list of information that is prohibited from being required from an employee.

The problems of personal data leakage indicate the existence of a number of problems. Each government agency that has databases must independently be responsible for storing personal data in its databases and comply with the rules for the use and secrecy of information stored there (Hina *et al.*, 2019). In addition to the problem of leakage of personal information, important aspects include liability for violations of relevant regulations, including the dismissal of the head of the department responsible for the collection and storage of personal data. Currently, there are no statistics on personal data protection in Kazakhstan. Based on this, it is necessary to develop a culture of personal data protection, especially among employers, including reporting information violations to the employee himself, which will help

establish trusting relationships and assign responsibility for the collection, processing, and storage of personal data; ensure the confidentiality of information about the employee, which consists in restricting access to this data. Protecting an employee's information data is a technical issue, whereas data privacy is a legal issue. Many information privacy protection protocols are still vulnerable to authorised persons to whom this information is available. It is also important to ensure the technological capabilities of the subjects for cooperation. With regard to the protection of information data, it is necessary to establish a range of entities that have access to and control the safety of collecting, processing and storing information about an employee obtained using various devices, such as video surveillance (Yakymenko, 2023).

Government agencies and organisations own and manage various informatisation facilities and databases, as they provide electronic services, which gives them access to personal data of citizens. In order for their activities and technical infrastructure to always meet the requirements of information security and be maximally protected from possible hacker attacks and internal threats, there is an authorised body in Kazakhstan responsible for monitoring information security, namely MDDIAI. According to the Entrepreneurial Code of the Republic of Kazakhstan (2015), this authorised body conducts preventive control and unscheduled inspections that help to identify inconsistencies with information security requirements in the work of government agencies and organisations. In case of detection of the facts of illegal collection or leakage of personal data, and violations of the rules for the use of electronic digital signatures, citizens have the right to contact the authorised body in any convenient way to register a complaint (for example, electronically, by mail, through the portal of "Electronic Government" or another way). According to such appeals, the authorised body has the right to start an inspection against the violator, initiate an administrative case and bring him to justice in accordance with the Code of the Republic of Kazakhstan "On Administrative Offences" (2014).

Despite the presence of specialised agencies controlling supervision and other institutions, it is important to note that virtually all government agencies, their committees, departments and departments work with at least one database. The protection of employees' information rights should be an essential link that promotes harmonious relations among state bodies and between these entities and society. This strategy intends to improve trust and communication, two critical components of a digital society. The Law of the Republic of Kazakhstan No. 94-V (2013) provides the foundation for this societal revolution. It should be mentioned that the technical requirements to secure information containing personal data apply only to public authorities. Significant revisions have been made to Article 27, which now clearly specifies the roles of central and local government entities. These changes include a systematic structure for developing and approving legal acts relating to personal data protection, handling appeals from individuals and businesses, and enforcing compliance. Local executive bodies, in particular, are granted more authority to ensure that personal data is legitimately managed within their administrative zones, including the capacity to demand the correction, blocking, or deletion of unauthorised or untrustworthy data. This demonstrates Kazakhstan's commitment to both central control and local enforcement of personal data legislation.

Monitoring the application of the law on personal data protection and monitoring compliance with the requirements for their protection are becoming the main aspects of work in the field of personal data protection (Protection of personal information, 2023). Nevertheless, to date, the existing practice does not contribute to solving systemic problems, since it postpones the solution of the most important tasks to a later date, including personnel training, the creation of a legal and information culture, and above all in government agencies. It is important to note that dismissal (for example, for improper storage or leakage of information) cannot remain the only mechanism of punishment for violation of the law, as it requires the development of clear mechanisms for accountability. Since personal data is subject to protection, and it is the state that acts as the guarantor of this protection, all those involved in the protection of personal data must comply with established technical and legal standards (Custers *et al.*, 2019). The Law of the Republic of Kazakhstan dated No. 115-VIII (2024) aimed at improving state monitoring and compliance, notably by altering Article 27 of Law of the Republic of Kazakhstan No. 94-V "On Personal Data and their Protection" (2013). This offers both central and local executive authorities clearer mandates for enforcing personal data privacy legislation, handling appeals, and penalising offenders. These amendments attempt to get past systemic enforcement deficiencies by delegating additional authority to national and regional agencies to take prompt and decisive action to resolve breaches and other infractions.

The digital transformation in labour relations brings significant benefits to both employers and employees. They include new employment opportunities, increased productivity, improved working conditions, the introduction of new methods of work organisation, and improvement of the quality of services provided (Aloisi & Gramano, 2019). Thus, with proper organisation and protection of information rights in the field of labour relations, this can lead to increased employment and job retention. The legislation of Kazakhstan does not contain an exhaustive list of public personal data and specific legal norms governing the collection and processing of such data. It is important for employers to obtain the consent of employees in advance for the processing of such data, since the purposes of using personal data that have become publicly available may not coincide with the goals stated by the organisation when collecting and processing personal data. The amendments due to Law of the Republic of Kazakhstan dated No. 115-VIII (2024) contribute to this area by enhancing the legal framework governing the collection and utilisation of employee data. The reforms help in this area by strengthening the legal framework governing the collection and utilisation of employee data. They impose stricter monitoring by state bodies, as seen by modifications to Article 27 of Law of the Republic of Kazakhstan No. 94-V (2013), which entrust local executive bodies with state responsibility over compliance with personal data protection rules, particularly those affecting private commercial companies. This guarantees that enterprises processing employee data follow established legal rules, so contributing to the protection of employees' rights as labour practices become more digital.

The authorisation and withdrawal of consent for employee personal data collecting and processing requires adherence to a key principle: the data subject's only right to offer such consent. Current national regulatory frameworks do not allow for transfer of this ability to third parties

through proxy or power of attorney processes. The modifications made by the Law of the Republic of Kazakhstan No. 115-VIII (2024), reinforce this by eliminating any option for third-party permission via power of attorney and instead focussing on expanding local and state authorities' authority over personal data processing. The amendments strengthen local executive bodies' responsibilities by assigning them the oversight of personal data processing issues within their jurisdiction, including ensuring compliance with data protection laws in cases were legal representatives, rather than third-party attorneys, act on behalf of individuals. These revisions emphasise the importance of personal data owners or their legal representatives being the only ones able to offer or withdraw consent. This right belongs only to a legal representative, that is, a person who can act on behalf of an individual in state bodies, since the protected person is not able to exercise his or her rights and duties directly due to age or physical limitations. That is, employers should take this circumstance into account, and legislation should provide for the possibility of giving consent to the processing of personal data by an employee through a trusted person.

As indicated in the Labour Code of the Republic of Kazakhstan (2015), the general requirements for processing employee personal data are regulated by the norms that define the obligations of the employer to collect, process, and protect personal data. Based on this, each employer must establish a clear procedure for collecting, processing, and protecting personal data by adopting an internal document and familiarising all employees with it. With Law of the Republic of Kazakhstan No. 115-VIII (2024), employers' duties in managing personal data are indirectly enhanced by the expanded enforcement powers granted to state entities under Article 27 of Law of the Republic of Kazakhstan No. 94-V (2013). The legislation requires local executive authorities to monitor private commercial organisations' compliance with data protection rules in their area. This underlines the need of organisations to strictly follow internal data handling practices and establishing explicit data protection policies. Refusal to comply may result in local authorities implementing enforcement actions, such as penalties for non-compliance, emphasising the significance of ensuring that only authorised individuals have access to employee data.

The employer must restrict access to personal data of employees and appoint those responsible for their processing. Data processors should only access the information necessary for fulfilling their official responsibilities, while maintaining confidentiality. A large amount of data is accumulated when doing work, but often managing this data is not a priority. Issues related to the legal aspects of data collection, access, and sharing remain unresolved. This affects the confidentiality of information about employees, their mobility in their careers and the quality of the work performed. Collective rights must also be protected, as regulators usually pay attention to protecting the rights of individuals or protected groups, such as those of a particular gender, age, ethnicity, or sexual orientation. While Law of the Republic of Kazakhstan No. 115-VIII (2024) does not explicitly address collective rights or provide extra protections for sensitive personal data like as political beliefs or ethnicity, it does bring a more organised approach to data management. Local governments now have the right to order organisations to clarify, prohibit, or remove untrustworthy or illegally obtained material. This helps to protect individuals' data in circumstances when it is unlawfully managed, but it does not currently provide collective rights protections. Additional legislative efforts may be necessary to close this gap. This is important, but not enough to ensure real freedom of action for both employees and employers and their representatives.

COVID-19 has brought new data sources to the work environment through the collection of health information and remote work (Podoprigora *et al.*, 2019). The digital revolution has significantly transformed the global professional landscape, resulting in a notable increase in remote work. Data indicates that the proportion of employees working remotely rose from 20% in 2020 to 28% by 2023. Within this context, the technology sector exhibited the highest prevalence of remote work, with 67% of its workforce primarily operating from home (Sherif, 2024). Often, employee data is collected during hiring and during work through communication tools, interfaces, and sensors. This employee-related data can bring value to employers, especially in terms of improving productivity. However, the capabilities of employees are often limited due to complex technical aspects, lack of transparency and lack of means to protect their individual and collective rights to personal and collective data.

European Social Partners Autonomous Framework Agreement on Digitalisation (2020) entitles employee representatives to participate in issues related to consent, confidentiality and monitoring, following the GDPR (2018). However, GDPR applies only to personal data, and the assumed and observed data that is often collected in the workplace does not always fall under this definition. Existing legal frameworks lack a specific definition of "confidential data". This uncertainty applies to a wide range of sensitive information, including racial or ethnic identifiers, political views, trade union connections, religious beliefs, health-related data, sexual orientation, and genetic or biometric markers. The lack of specific legislative definitions for various data types complicates their legal categorisation and protection. Employers can use such data in an employment relationship without significant restrictions. Law of the Republic of Kazakhstan No. 115-VIII (2024) reinforces this framework by increasing governmental control over the processing of personal data. Specifically, the new Article 27 gives state agencies more ability to enforce compliance with data privacy legislation. It allows them to impose sanctions on organisations that do not adopt sufficient internal controls, such as those governing employee data access and processing. This strives to guarantee that personal data handling inside organisations meets the appropriate requirements. Technologies are constantly evolving, new identification methods are emerging, and the employer must monitor such innovations. It is also necessary to legislatively regulate the procedures for the collection and processing of personal data of employees not only at the stage of their use, but also at the stage of development.

In comparison with the principle of legality in the Law of Kazakhstan, the GDPR (2018) establishes a more specific and specific nature of the principle of legality, fairness, and transparency. It not only requires compliance with the law when collecting and processing data, but is also one of the fundamental concepts and a key condition for the protection of personal data. The legality of the processing of personal data in the GDPR is supported by the requirement to obtain consent from an individual. Consent must be free, specific, informed and unambiguous, and in its absence, data collection

and processing are considered illegal, except in cases provided for by law. In addition, Articles 13 and 14 of the GDPR establish clear requirements for the information that the data controller is obliged to provide to the data subject at the time of collection of his/her personal data. Mandatory information includes the contact details of the person responsible for the protection of personal data, the purpose of data processing, the conditions for transferring data to third parties, indicating measures to protect them, the terms of data storage, an indication of automated data processing and other details. The alteration to Paragraph 2 of Article 17 of Law of the Republic of Kazakhstan No. 94-V "On Personal Data and their Protection" (2013) through Law of the Republic of Kazakhstan No. 115-VIII (2024) eliminates the need for the authorised data management authority to approve certain data processing operations. This simplifies the procedure but adds no additional particular responsibilities to alert data subjects about its collection, use, or transfer of their personal information. In comparison, the GDPR (2018) sets tougher standards, including the need that permission be free, explicit, informed, and clear (GDPR, Article 6). Consent must be sought prior to data collection, and data controllers are expected to give persons with full information about the purpose of data processing, storage durations, and potential data sharing with third parties (GDPR Articles 6, 13, and 14). The changes to Kazakhstan's law do not address the unique concerns of transparency and informed consent.

The modified Article 27 Law of the Republic of Kazakhstan No. 115-VIII (2024) empowers state and municipal executive authorities to design and adopt normative legal actions, respond to data subjects' concerns, and hold offenders responsible. Furthermore, local organisations are responsible for assessing individual appeals against the processing of their personal data and ensuring that private commercial firms within their jurisdictions comply with data protection regulations. These municipal organisations also have the authority to order the blocking, removal, or clarification of unlawfully obtained or inaccurate data. While this improves state monitoring and enforcement, it does not create specific duties for data controllers to proactively notify data subjects before collecting personal information, creating a gap in comparison to the GDPR's more stringent requirements.

The GDPR (2018) relies on the principles of legality, fairness, and transparency, with Articles 13 and 14 requiring controllers to provide clear, detailed information at the time of data collection, including the controller's identity, the purpose of the data collection, data transfer conditions, retention periods, and whether automated decision-making is involved. This guarantees that consent is fully informed and voluntary. The Kazakh revisions, however, do not include such clauses, implying that, while there is better enforcement, the legislation does not completely address the concepts of transparency and individual rights to the same extent as the GDPR.

The data controller must inform the data subject of his or her rights, including the right to withdraw consent, the right to protection in the state body for the protection of personal data, the right to access personal data, the right to correction, the right to deletion. According to Article 12 of the GDPR (2018), the controller and the operator are obliged to provide information to the data subject in a clear, direct, and understandable form, using simple and understandable language. In comparison with the GDPR, the current Law of Kazakhstan No. 115-VIII (2024) does not contain obligations for database owners and operators regarding the collection of personal data, does not establish important requirements for informing data subjects before obtaining consent to the processing of personal data, and does not provide clear requirements regarding the freedom of consent and the level of awareness of data subjects. Law of the Republic of Kazakhstan No. 115-VIII (2024) primarily clarifies the roles of state and local executive bodies in overseeing compliance with data protection laws, handling complaints, and enforcing actions against violations. However, it does not introduce specific obligations for database owners and operators to inform data subjects about personal data collection and use before obtaining consent. The law states that state bodies "take measures to bring persons who have committed violations of the legislation... to responsibility" and that local executive bodies "exercise state control over compliance with the legislation... in relation to private business entities" (Article 27.1(3) and 27.2(2)). These provisions enhance the government's ability to enforce compliance but do not explicitly require database owners to provide data subjects with detailed information about the purpose of data collection or data retention periods.

Law of the Republic of Kazakhstan No. 115-VIII (2024) does not introduce detailed requirements for ensuring that data subjects are fully informed about the processing of their data. While local bodies are given the power to demand the clarification, blocking, or destruction of unreliable or illegally obtained personal data (Article 27.2(4)), this does not extend to establishing clear requirements for transparency before consent is given. As a result, the law still lacks provisions that mandate database operators to provide data subjects with clear, informed, and unambiguous information regarding the collection and processing of personal data. Although the amendments improve enforcement capabilities, they do not address the issue of ensuring that consent is freely given and informed. The GDPR (2018) requires that consent be "free, specific, informed, and unambiguous", but these detailed standards are not reflected in the 2024 amendments. The Kazakh law does not provide requirements similar to the GDPR's Articles 13 and 14, which set forth the need to inform data subjects about the purpose of data collection, data transfer conditions, and data retention periods.

In accordance with Order of the MDDIAI of the Republic of Kazakhstan No. 395 "On Approval of the Rules for the Collection and Processing of Personal Data" (2023), it is determined which data should be included in the consent, how it should be provided, and even set its validity period. The revisions to this order emphasise the need of obtaining explicit agreement from the data subject or their legal representative before collecting personal information. They also outline the procedures for acquiring this permission through both government and non-governmental agencies. The updated regulations limit data collection to what is deemed necessary and adequate, as specified in an authorised list of personal data. Furthermore, any distribution of data in publicly available sources requires the subject's agreement, fostering a higher level of transparency. The requirements demand that all personal data be stored within Kazakhstan, resulting in stricter controls on cross-border data transfers. This integrates Kazakhstan's system with international data protection standards, ensuring that personal information is managed more securely and accountable.

Order of the MDDIAI of the Republic of Kazakhstan No. 395 "On Approval of the Rules for the Collection and Processing of Personal Data" (2023) allows that database owners and operators can request other information about the data subject with the consent of the data subject, but the authorised body stressed that the list of these data should be exhaustive. The intent is to grant transparency and restrictions in data processing. The order's need for an exhaustive list of data that can be sought from data subjects seeks to avoid unnecessary or excessive data collecting, which could lead to privacy violations. This guarantees that data controllers and processors are open about the categories of personal information they require and collect only the least amount of data required for the indicated purpose, in accordance with the concept of data minimisation. A comprehensive list also protects the data subject by specifying how the information will be used, avoiding misuse or overreach of data processing beyond the initial consent. It also adheres to international data protection regulations such as the GDPR (2018), which emphasises transparency and restricts collecting data to what is required for processing purposes.

The widespread use of advanced ICT and the intensive analysis of personal data in both commercial and public sectors necessitate a thorough revision of existing ethical and legal principles governing data protection. Regulatory principles must be resilient to rapid technological advancements and adaptable to new innovations. Specifically, the GDPR (2018) in Europe provides a model framework. Its foundational principles, such as data minimization (Article 5), and accountability (Article 24), are designed to ensure lawful and transparent processing of personal data. The implementation of such principles into Kazakhstan's legislation could strengthen the protection of personal integrity and privacy. To improve the regulatory framework in Kazakhstan the following is proposed.

The existing legislative framework of the Republic of Kazakhstan does not sufficiently address the principles of transparency and accountability. Incorporating provisions similar to Articles 13 and 14 of the GDPR is advised, which require data controllers to provide detailed information to data subjects regarding the purpose of data collection, the retention period, and the right to access their data. This will increase transparency and ensure data subjects are fully informed.

The existing Article 16 of the Republic of Kazakhstan No. 115-VIII (2024) on cross-border data transfer should be amended to specify stricter controls, similar to Article 45 of the GDPR (2018), which requires an adequacy decision before data can be transferred to a third country. This ensures that personal data transferred outside Kazakhstan will be handled with the same level of protection as within the country.

The principle of accountability is recommended to be adopted as laid out in Article 24 of the GDPR (2018) is recommended. Data controllers in Kazakhstan should be legally obligated to implement suitable technical protocols and organisational measures to facilitate adherence to data protection regulations. This can be achieved by mandating the appointment of data protection officers in public and private organizations that handle large-scale personal data. To ensure these legislative amendments translate into practical improvements, the following measures are proposed:

1. Following the regulatory framework established by Article 35 of the GDPR (2018), it is proposed that entities operating in Kazakhstan be required to conduct Data Protection Impact Assessments (DPIAs) for high-risk data processing operations. These DPIAs, required by GDPR Article 35, have proven effective as analytical tools for identifying and mitigating privacy-related vulnerabilities in data processing procedures. Implementing such a requirement will bring Kazakhstan's data protection policies in line with internationally recognised norms while also strengthening the data governance system.

2. A study by M. Friedewald *et al.* (2022) reports that integrating DPIAs into project management early on helps organisations proactively address privacy concerns before systems are implemented. The study found that DPIAs, when executed thoroughly, reduced high-risk data processing and facilitated compliance with privacy by design principles. These practices are particularly relevant for high-risk sectors such as health and IoT services, where personal data is processed extensively.

3. Empirical studies show that public awareness regarding data protection significantly enhances the effectiveness of laws. Special Eurobarometer 487a (2019) found that 73% of EU citizens were aware of at least one of their rights under the GDPR. This increased public awareness correlates with a higher demand for transparency from businesses regarding how personal data is collected and used. The survey highlights the positive impact of robust data protection regulations and public education campaigns in fostering trust between individuals and organisations. Kazakhstan could replicate this success through public campaigns that educate individuals about their data rights and the obligations of businesses and state institutions under the new regulations.

4. Integrating ICT and digital governance can support data protection while maintaining efficient public services. Estonia and Finland have successfully integrated ICT and digital governance into their national frameworks, ensuring efficient public services while maintaining robust data protection. Estonia's e-Governance model, for example, showcases how digital public services can be securely managed with a strong focus on data privacy. A study by R. Adeodato and S. Pournouri (2020) shows how Estonia's e-Estonia program, in conjunction with legal frameworks, has enhanced both service efficiency and data protection. Kazakhstan could consider a similar digital transformation strategy, integrating data protection into the broader framework of e-governance initiatives to safeguard personal data more effectively.

Kazakhstan may develop a strong and future-proof regulatory framework by aligning its data protection legislation with globally best practices, such as those outlined in the GDPR, and implementing both legal and practical suggestions based on proven cases and empirical data. This will not only preserve individuals' private rights, but will also increase confidence in digital services, resulting in a safer digital society.

Discussion

The amendments with Law of the Republic of Kazakhstan No. 115-VIII (2024) on personal data and their protection make significant changes to the oversight and enforcement of data protection laws but fall short of addressing key GDPR (2018) requirements such as transparency and informed consent. Specifically, while the new amendments (particularly the revised Article 27) clarify the roles of central and local government bodies in addressing complaints,

monitoring compliance, and enforcing data protection violations, they do not impose specific obligations on database operators to notify data subjects before collecting personal data. This contrasts with the GDPR's strict transparency requirements, stated in Articles 13 and 14, which require data controllers to publish extensive information about the purpose of data processing, data retention periods, and restrictions for transferring personal data to third parties.

The law's solidified enforcement measures enhance state control over compliance by allowing local executive bodies to order the corrections, blockage, or elimination of unlawfully obtained or erroneous data (Diegtiar *et al.*, 2023). However, these modifications do not create additional procedures to ensure that data subjects are adequately informed prior to data collection, which remains a significant gap. The lack of specific standards for freedom of consent and data subject knowledge highlights the distinction between Kazakhstan's framework and the GDPR (2018). As a result, while the revisions strengthen governmental monitoring, they do not achieve the degree of openness and accountability required by international standards, notably those established by the GDPR. The study stresses the need for Kazakhstan to tighten its data protection regulations by implementing GDPR concepts such as openness, data minimisation, and accountability. Specific ideas include modifying the legislation to compel data controllers to give data subjects with full information about the purpose of data collection and cross-border data transfers, as well as employing data protection officers in organisations that handle substantial amounts of data. Furthermore, completing DPIAs for high-risk operations and raising public knowledge of data rights are advised strategies for ensuring strong data security. Integrating ICT and digital governance, inspired by successful systems in Estonia and Finland, is also proposed to improve data security and service efficiency (Semeniuk & Horbach-Kudria, 2024).

According to T.T. Ke and K. Sudhir (2022), it is quite important to distinguish between confidential and secret information about a person. It is worth adding that in this case, additional and significant difficulties arise due to the presence of several types of "secrets" in the legislation, including various legal regimes that include the term "secret", such as banking, medical, law. C. Chang *et al.* (2019) investigated the automated extraction of privacy policies under the GDPR, demonstrating how technological developments might improve regulatory compliance. In contrast, Kazakhstan's legal structure lacks such automatic procedures, allowing for oversight gaps and limited transparency. D. McGraw and K.D. Mandl (2021) write that currently, the main difference between confidential information about an individual and secret information is that the regulation of the legal status of confidential information is based on the principle of voluntariness, while restricting access to secret information is mandatory and established by law. Based on this, it can be concluded that the provision of confidential information is always the implementation of the right of a certain subject of information relations, and when access to confidential information is restricted, it is the fulfilment of obligations provided for by relevant legislation.

V.B. Kumar *et al.* (2020) noted that confidential information is considered to be information to which access is restricted by the subject of personal data, while secret information is considered to be data that is subject to secrecy in accordance with the law. It should be added that confidential information includes aspects such as information about the private life of a citizen, such as facts, events and circumstances, or personal data that allow the identification of a citizen, with the exception of information that is subject to publication in the media in accordance with established rules. V.B. Kumar *et al.* (2020) examined the automatic extraction of opt-out statements, emphasising how modern technology may assure compliance with data privacy rules. The absence of such procedures in Kazakhstan's legislative framework demonstrates a huge technology gap that hinders effective data management. Both current research and international studies agree on the significance of increasing automation and transparency in order to achieve GDPR-level protection while managing personal data.

R.N. Zaeem and K.S. Barber (2020) write that personal data includes information related to a specific individual, such as last name, first name, patronymic, temporal and geographic markers of origin, residential information, relational status, socioeconomic indicators, education, profession, and income. Examples of personal data include passport data, information about marital status, information about education, taxpayer ID number, data from the insurance certificate of state pension insurance and health insurance, information about employment, information about social and property status, and income data. In turn, according to H. Li *et al.* (2019), various data are also collected in medical institutions for the treatment of a patient, including test results and information about benefits, health insurance, and previous treatments. Confidentiality of personal data is mandatory for all services and organisations that have access to this data, such as government agencies, legal entities, and individuals who organise the processing of personal data of employees of the enterprise.

N. Truong *et al.* (2021) note that the personal data information system is a system that includes a set of personal data stored in a database, including technical means that allow automating their processing. The processing of personal data includes various operations that manipulate, manage, and transform individual-specific information. M. Di Martino *et al.* (2019) note that when processing personal data, the operator must take all necessary organisational and technical measures to protect this data from unauthorised access, destruction, modification, blocking, copying, and dissemination. The operator creates a commission that assesses data and assigns a security level to the personal data information system. This level determines the processing category, volume, information resource type, processing modes, and user access rights differentiation, ensuring the security of the enterprise security system. Also, M. Di Martino *et al.* (2019) identified possible flaws in the GDPR's right of access and demonstrate how they might be abused to leak personal information. This study emphasises the importance of stringent enforcement methods, a worry that current research on Kazakhstan also emphasises, given the shortcomings in its implementation of personal data regulations. In both circumstances, the lack of robust monitoring and thorough protection measures makes personal information vulnerable to exploitation.

In the legal regulation of the turnover of personal data, two main directions arise, which provide for the specific features of the legal regime of such data. First of all, according to L. Bradford *et al.* (2020), this includes ensuring the confidentiality of personal data in the process of their collection and processing in information systems, when a person

interacts with government agencies and other organisations in the course of his activities. Secondly, it includes ensuring the confidentiality of personal data through the interaction of an individual with the media. Each individual uses his/her personal data to exercise his/her rights and obligations by participating in public relations regulated by legal norms and providing personal data for legal circulation. This leads to the accumulation of personal data, which involves the owners of databases containing personal data and the operators of such databases. Despite the fact that careful legal regulation of the mechanism for ensuring the confidentiality of personal data is a necessary condition for their legal turnover, it is fraught with certain difficulties. M. Finck and F. Pallas (2020) mention that maintaining the confidentiality of personal data requires organisational, technical, financial, and economic costs. It is worth agreeing with the above, as this creates difficulties for some personal data operators, who cannot always properly comply with the legislation due to redundant legal provisions.

This study identifies substantial deficiencies in Kazakhstan's data protection regime, notably in transparency, accountability, and enforcement, in comparison to international norms such as the GDPR. The findings indicate that, while legal amendments like Law of the Republic of Kazakhstan No. 115-VIII (2024) have enhanced state control, they fall short of completely informing data subjects and implementing particular consent methods. This study emphasises the need for increased transparency in collecting data and stricter enforcement of data protection regulations, as well as practical recommendations for policy reforms and the adoption of GDPR-aligned measures to improve data security and protect personal information in Kazakhstan.

Conclusions

The rising appearance of data breaches, along with rapid improvements in ICT, has required updates to data protection regulations across the world, including in Kazakhstan. The 2024 modifications to Kazakhstan's Law No. 94-V "On Personal Data and Their Protection" aimed to improve the legal framework, notably by defining the obligations of state and local executive authorities in data collecting and processing. However, a careful comparison of the GDPR with Kazakhstan's amended law finds that, while the 2024 modifications improve governance, they fall short of GDPR requirements in numerous critical areas.

One of the most significant changes between the 2013 and 2024 laws is the expansion of governmental monitoring and the implementation of more specific enforcement authorities to oversee data protection. For example, Article 27 of the 2024 legislation outlines state authorities' obligations in producing normative legislative actions, resolving data protection violations, and monitoring compliance at the local level. The amendments also required local governments to address data subject appeals and implement stronger compliance measures. However, these changes prioritise administrative enforcement above enhancing openness and data subjects' rights, which are key to the GDPR.

The new law lacks key GDPR provisions, such as the requirement for data subjects' free, specific, informed, and unambiguous consent (GDPR Article 6), as well as the obligation to provide data subjects with detailed pre-collection information about the purpose of data processing, retention periods, and data transfer conditions (GDPR Articles 13 and 14). Accountability provisions, such as those included in GDPR Article 24, which require data controllers to establish organisational and technological measures for compliance, are lacking in Kazakhstan's legislation. The law does not address the need for greater transparency in employment-related data collecting, which allows sensitive information such as political opinions, ethnicity, or trade union membership to be gathered without specific constraints. Further reforms are necessary to fully secure the privacy rights of employees in Kazakhstan's digital economy.

The Law No. 115-VIII outlines broad requirements for database owners and operators regarding the collecting of personal data, which differs from Law No. 94-V. However, it falls short of establishing precise obligations for informing data subjects prior to gaining consent, as well as defined rules for data subjects' freedom of consent and degree of awareness. This contrasts with international frameworks such as the GDPR, which have more thorough laws in these areas. Future research should focus on developing more comprehensive frameworks that incorporate technological advancements, such as automated data protection systems, as well as assessing the efficacy of newly implemented regulations in reducing breaches and increasing public trust in data security.

Acknowledgements

None.

Conflict of interest

None.

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Захист інформації про персональні дані працівників у Республіці Казахстан

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Анотація. Актуальність даного дослідження обумовлена збільшенням кількості випадків витоку персональних даних громадян, що свідчить про низький рівень захисту їх основних прав. Метою дослідження був аналіз чинного законодавства в контексті забезпечення захисту інформації про персональні дані працівника в Республіці Казахстан. Для цього було використано кілька методів, таких як логічний, формально-юридичний порівняльний аналіз, догматичний метод. Були досліджені норми, які встановлені Конституцією Республіки Казахстан, Трудовим кодексом Республіки Казахстан, Законом Республіки Казахстан " Про затвердження Правил збору та обробки персональних даних". Це дало можливість провести порівняльно-правовий аналіз чинних законодавчих норм Казахстану та європейських нормативно-правових актів. Зазначено, що в правовій доктрині Казахстану не закріплені основоположні принципи, які дозволяють врегулювати питання збору, обробки та зберігання персональних даних громадян. Крім того, на державному рівні не встановлено обов'язок роботодавця та чіткий механізм збереження конфіденційності персональних даних працівників. У зв'язку з цим запропоновано рекомендації щодо вдосконалення чинного законодавства. Практичне значення одержаних результатів полягає в можливості використання запропонованих рекомендацій для підвищення ефективності механізму захисту інформації про персональні дані працівника в Казахстані, зменшення кількості випадків витоку інформації, приведення правових норм у відповідність до міжнародних стандартів

Ключові слова: приватність; права і свободи людини; проліферація; загроза; діджиталізація; безпека

UDC 342.72:796
Doi: 10.32518/sals4.2024.103

Соціально-правові студії. 2024. Т. 7, № 4
Social & Legal Studios. 2024. Vol. 7, No. 4

Role and place of sports arbitration in the system of alternative dispute resolution methods

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Abstract. The relevance of this study is caused by the fact that the institution of sports arbitration occupies a key position in ensuring effective and fair resolution of disputes between participants in sport. The purpose of this study was to review the history of the establishment and development, as well as the significance of the Court of Arbitration for Sport and its practice, with a forecast of the development of analogous institutions in Kyrgyzstan. The study employed the hermeneutic, institutional, formal-legal methods, method of analysis. The study covered the specific features of the legal development of the Court of Arbitration for Sport (CAS) and the current problems of its functioning. The generalised conclusion is that a specialised arbitration institutions need to be developed for effective dispute resolution in the field of sport in Kyrgyzstan. The procedural aspects of dispute resolution were investigated on the example of CAS. Although CAS is often considered as an international court, it is not part of an international justice system that is formed with the participation of states or based on international law. The study analysed the existing points of view and opinions expressed by scientists on this issue. The analysis of different approaches helped to comprehend the complexity of this issue and consider possible ways to improve the procedures for consideration of sports disputes by specialised arbitration tribunal in Kyrgyzstan. The findings of this study may be of interest for the development of effective legislation aimed at regulating the activities of specialised arbitration courts in the field of sport in Kyrgyzstan

Keywords: international commercial court; Kyrgyz legislation; mediation; sports law; Court of Arbitration for Sport

Introduction

Currently, there is no system of legal norms in the field of sport that could provide uniform approaches to dispute resolution. At the international level (international and regional conventions, charters, and other acts of international law) and at the level of sports organisations (both international and national), including the bodies governing the Olympic Movement, no uniform rules governing dispute resolution procedures have been established. This was partly the reason for the creation of the Court of Arbitration for Sport (CAS), headquartered in Lausanne, Switzerland. The world practice has not developed a unified approach to the resolution of sports conflicts of different nature, and there are no unified international norms in this area. Litigation in the national justice system is often time-consuming and costly for the parties to a dispute. In modern world of sport, there are many organisations with dispute resolution powers, operating both nationally and internationally. However, a key and most authoritative body stands out – CAS, which

Suggested Citation

Article's History: Received: 06.09.2024 Revised: 20.11.2024 Accepted: 23.12.2024

Kalybaeva, A., Turatbekova, Ch., & Shin, H. (2024). Role and place of sports arbitration in the system of alternative dispute resolution methods. *Social & Legal Studios*, 7(4), 103-110. doi: 10.32518/sals4.2024.103.

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deals with the resolution of sports-related disputes. CAS is an institution independent of sports organisations that facilitates the resolution of sporting conflicts through arbitration or mediation using specific procedural rules adapted to the specificities of sport. The study of the legal and other aspects of this body is a significant subject of research, especially in the context of anti-doping.

As E. Ryall *et al.* (2020) argued, a strong foundation in legal norms and reasoning, especially in selection appeals, is essential for good governance and professionalism in sports. By understanding key legal principles, the likelihood of disputes and appeals can be reduced. To foster this understanding, dispute resolution services should disseminate arbitration decisions as educational resources for professional development. In parallel, I. Bantekas (2023) examined dispute resolution in professional tennis, identifying two main categories: regulatory and contractual. Regulatory disputes, such as those related to discipline, doping, or corruption, are typically handled by specific judicial and quasi-judicial bodies established by tennis organizations, like the International Tennis Federation's (ITF) international adjudication panel or independent tribunals. These entities possess arbitral qualities, with the ITF's independent tribunal's decisions constituting enforceable arbitral awards. The CAS has a limited appellate jurisdiction over decisions made by these entities.

A.F. da Silva and D. Mirante (2020) argue that while the CAS has become an essential factor in resolving sports disputes, there are still lessons to be learned in configuring the best arbitral option for sports conflicts. According to the researchers, sports arbitration has become a vital mechanism for resolving disputes in international sports, providing a harmonised and efficient system. However, ongoing challenges around independence and compliance with broader legal frameworks suggest the need for continued evolution and refinement of this specialised form of arbitration. P.D. Godin (2017) highlighted mediation as a valuable tool for efficiently managing and resolving intricate sports disputes. The SDRCC's mandatory mediation policy has demonstrated significant success, achieving a 46% overall settlement rate over 12 years, with voluntary mediations boasting a remarkable 94% settlement rate. Mediation has proven effective in securing stable and mutually agreeable settlements, while also fostering improved understanding and respect among parties, even when disputes couldn't be fully resolved. The findings of M. Diaconu *et al.* (2021) focus on the features of CAS judicial practice. The researchers' work establishes that judicial practice of CAS has changed considerably since the first judgement was handed down in 1998. Alongside existing international and national rules, CAS dispute resolution rules aim to effectively address the ubiquitous and ever-growing phenomenon of competition. Against this background, the paper briefly describes the current legal environment, followed by a chronological detail of the judgements handed down by CAS.

In this regard, the purpose of this study was to characterise sports arbitration as a key method of dispute resolution in the field of sport, as well as to identify the current challenges faced by Kyrgyzstan in regulating this alternative method of dispute resolution and to propose effective methods to address them.

Materials and methods

The study adopted a comprehensive methodological framework, incorporating philosophical, general scientific, and specialized scientific approaches. Philosophical methods, such as analysis and dialectics, allowed examining the basic principles and concepts underlying the functioning of the Court of Arbitration for Sport. General scientific methods, such as induction and deduction, were used to summarise and systematise the data obtained on the activities of the court. The systemic method was used for a comprehensive investigation of the role and place of sports arbitration in the system of alternative ways of dispute resolution. It helped to consider this issue in the context of the universal provision of solutions to disputes that arise in the field of sport, identifying the interrelationships and the influence of various factors on its establishment and development.

The issues related to the functioning of sports arbitration were investigated using the method of system analysis, determining the role and general understanding of the existence and development of this method of alternative dispute resolution in the field of sport. The method of analysis involved a careful study of scientific papers, theories and concepts concerning sports arbitration, its role and place among other ways of dispute resolution. This process entailed an extensive review of existing literature and an in-depth analysis of contemporary theoretical approaches and concepts pertaining to the structure and operation of a nation's tax system.

A hermeneutic approach was adopted to interpret legislative texts, leading to a more nuanced understanding of their legal ramifications. The method of logical analysis was used to identify the content and focus of regulations governing sports arbitration in the world and Kyrgyzstan. The institutional method seeks to understand sports law through the lens of societal institutions. It is vital to realise that these social institutions arise in response to relevant needs that originate in society. The application of the institutional method in combination with the systemic-functional and systemic-structural approaches helped to investigate what needs and social structures sports law provides. This approach also opened the possibility of comparing the fulfilment of sporting needs through institutions linked to state structures and those created by civil society. The application of the formal-legal method helped to analyse legal relations in the sphere of sport through the lens of statutory regulation. This method focused on the study of laws, rules, and regulations that define permissible and prohibited behaviour.

To fully comprehend and substantiate the issues, the study used the norms of various legal sources and judicial practice, namely: Federal Act on Private International Law (1987), Code of Sports-related Arbitration (2023), decisions of the Court of Arbitration for Sport (Blackshaw, 2013; McArdle, 2013; Arbitrations of CAS in Case No. 2018/A/5546, 2018). Furthermore, comments and explanations from experts in the field of law and sports arbitration were analysed to gain a better understanding of the legislation. This helped to clarify the interpretation of some ambiguous or controversial norms, as well as to assess the practical aspects of their application in real situations. This approach helped to identify possible inconsistencies or shortcomings that may affect CAS performance.

Results

The emergence of arbitration in the field of sport was caused by the fact that courts were slow to deal with sporting conflicts, often handing this responsibility over to sports organisations. As a result, specialised bodies were created, operating under their own rules. Nevertheless, the real impetus for the development of sports arbitration was not so much the formation of courts to resolve disputes in sport, but rather the desire of sport itself to have a global system of conflict resolution.

CAS was officially established on 6 April 1983 during the International Olympic Committee (IOC) session in New Delhi on the initiative of IOC President Juan Antonio Samaranch and Vice President Kebe Mbaye. Although the IOC represented the arbitral tribunal as an independent body, the Swiss Supreme Court, in considering an athlete's complaint about the fairness and impartiality of the adjudication of cases, found that IOC's funding of CAS created doubts about the objectivity of decisions, especially when they involved the IOC or its affiliated organisations (IOC disappointed at decision of…, 2019). On the recommendation of the Swiss Supreme Court, IOC transformed CAS, making it fully independent legally, organisationally, and financially. This move reaffirms CAS as the premier sports justice institution where arbitration tribunals settle sports disputes. In addition to CAS, this system includes arbitration tribunals belonging to both international and national sports federations, as well as international and national public organisations governing the global sports movement. Notably, this system of sports justice has developed and operates independently of the conventional judicial system inherent in each state, as well as the international courts established by states. The principles underlying the system are therefore determined solely by a treaty requiring the agreement of all participants. Problems arise when it becomes clear that participants do not always agree with the rules, including voluntary acceptance of CAS jurisdiction, under which the system operates.

Doubts about the CAS have resulted from frequent recourse to state courts of general jurisdiction to challenge its decisions, illustrated by the case of athlete and Olympic champion Claudia Pechstein, who was subjected to doping allegations and disqualification by the International Skating Union (McArdle, 2013). The organisations that govern the global sports and Olympic movement have a negative attitude towards complaints and lawsuits from athletes. International and national sports federations actually force athletes to accept the condition of mandatory consideration of all disputes by CAS, refusing to consider the possibility of appealing to state courts of general jurisdiction. This involves abandoning the constitutional right of access to justice and recognising the finality of CAS decisions, which are not subject to appeal. Although the Court of Arbitration for Sport (CAS) is often regarded as an international court, it is not part of the international justice system, which is formed with the participation of states or based on international law. Existing international courts established by states, such as the International Court of Justice (ICJ) of the United Nations or the European Court of Human Rights (ECHR), fulfil different functions (Taran & Hryha, 2024). They act not only as judicial bodies but also as interstate structures based on the application of international law. At the same time, it must be realised that not all athletes and national sports federations can afford costly litigation. Even if the case is heard by an *ad hoc* tribunal in another location, such as the venue of a sporting event or the Olympic Games, legally the decision is deemed to have been made in Lausanne.

This was introduced to guarantee the immunity of cases from the influence of other national jurisdictions, thereby ensuring legal stability and uniformity in decision-making. CAS decisions are final and can only be appealed in exceptional cases, usually involving procedural irregularities, to the Swiss Federal Court. An example of such an appeal is the case of José Paolo Guerrero (Arbitrations of CAS in Case No. 2018/A/5546, 2018). This ensures procedural and regulatory consistency in every case before the CAS. It follows from this fact that CAS aims to ensure its independence in handling cases (Table 1).

Table 1. Number of cases handled by the Court of Arbitration for Sport

Year	First consideration	Appeal	*Ad hoc*	Anti-doping	Mediation	Total
2019	107	493	00	5	4	609
2020	129	811	00	8	9	957
2021	147	796	115	29	9	996
2022	151	644	112	15	8	830
Total	1.551	7.721	1.161	75	105	9.695

Source: compiled by the authors of this study based on Court of Arbitration for Sport: Statistics (2022)

Administratively, CAS consists of two chambers located in Lausanne, Switzerland: the General Chamber of the Court of Arbitration, which acts as the first instance for the resolution of disputes, and the Appellate Arbitration Chamber, responsible for hearing appeals in cases previously heard by other bodies (e.g., sports federations). Furthermore, a CAS decision can be appealed if prescribed in the CAS statutes and the Code of International Sports Arbitration (Blackshaw, 2013). The approach to the consideration of each individual dispute is formed on an individual basis. The CAS Regulations make provision for four main types of procedures:

1. Conventional arbitration, which decides cases as first instance, such as commercial disputes involving sponsorship agreements, broadcasting rights, agents' and athletes' contracts;
2. Appellate arbitration, which deals with appeals against decisions of sporting bodies, compensation for breaches of contracts and rules, and disciplinary sanctions and anti-doping rules;
3. An *ad hoc* procedure used to quickly resolve disputes during major events such as the Olympic Games or the FIFA World Cup, allowing a case to be heard within 24 hours of its filing with CAS;

4. Mediation – an alternative dispute resolution method offered to the parties prior to the arbitration process, although it is rarely used in practice.

Under this procedure, CAS is supposed to act as a mediator, helping the parties to reach an agreement on the best way to resolve the dispute. CAS provides appropriate recommendations, which have an advisory nature and are not binding on the parties. CAS rules ensure the confidentiality of the first instance process, but usually the decisions and outcomes of cases are made publicly available because of the public interest and significance of the disputes. However, in an appeal procedure, the judgement is usually published unless the parties agree to keep the information confidential. Notably, most participants in the football world prefer to resolve their conflicts according to the statutes and rules established within the football bodies. An example here is the case of Real Madrid footballer Pepe attacking a player of the Getafe team during a Spanish championship match (Pepe considers future..., 2009). The Portuguese was suspended for nine matches by the Spanish League for his undignified behaviour, but did not face criminal or administrative liability, as is typical of many professional footballers in such situations.

As for the CAS process itself, each party makes an upfront contribution to cover the costs of their witnesses, experts, and interpreters. If the expert is invited by a panel of arbitrators, the costs of the expert's services shall be determined by the panel separately. In CAS hearings, it is not excluded that third parties may be involved, either at the request of the respondent or on the third parties' own initiative. However, the basic prerequisite is the existence of an arbitration agreement between the third party and the disputing party, as well as the written consent of the parties to its participation. If the involvement of a third party is necessary for the case, the defendant should indicate this in their appeal, providing evidence of the need for involvement. Furthermore, the defendant must send a copy of the appeal to the alleged third party through the clerk's office (Blackshaw, 2013). The CAS arbitration process typically involves four steps:

- written enquiry;
- verbal investigation (if necessary by decision of the arbitral tribunal);
- expedited procedure (at the request of the parties, the rules of which are determined by the arbitrators themselves);
- decision-making.

The written stage includes, firstly, providing the parties with a document where they can set out their requests not included in the statement of claim or response; secondly, if the circumstances require, a denial and an objection to the denial by the opposing party. Thereafter, a party may not submit new requests without the consent of the other party. During the proceedings, the parties present their arguments that they believe will help prove their case and also identify witnesses and experts to be questioned. The oral procedure is a court hearing in which arbitrators listen to the arguments of the parties, witnesses, and experts and their presentations, with the defendant appearing after the plaintiff (Baturin & Moroz, 2024). After the parties have finished their presentations, the arbitrators shall render a decision, which shall be made either by majority vote or by a single vote. The arbitral award must be properly written, clearly reasoned, dated, and signed, and only one signature of the presiding officer of the arbitral tribunal is sufficient. The document shall state the final amount of court costs as determined by the administrative service, indicating which party bears the costs or how the amount is divided between the parties. The judgement is final and not subject to appeal, and its execution is mandatory.

Despite all the above-mentioned advantages of CAS dispute resolution, it is still controversial to limit the absolute right of citizens to judicial defence prescribed in national laws. On the one hand, charters and other constituent documents may establish rules of behaviour for participants in sports legal relations. Nevertheless, sports organisations are also members of public associations (e.g., athletics associations, sports federations), which operate on the territory of the country following its constitution and laws. Thus, the best-known sports dispute resolution body in the world is the Court of Arbitration for Sport in Switzerland. International experience shows that the best approach to the establishment of such an arbitral tribunal is the establishment of a specialised non-profit arbitration centre, which acts as its platform. Considering the specific features of sports relations, such specialised arbitration can only function effectively within the sports industry itself. The characteristic of legal relations formed in the context of professional sport is unique and specific due to regulation according to the statutes and regulations of sports organisations. The key aspects of professional sport and achievements in this field at the national level should be clearly defined by a legislative act that also regulates the resolution of disputes in these areas through permanent arbitration.

Discussion

The study of legal issues related to the role and significance of sports arbitration in the field of alternative dispute resolution in the Kyrgyz Republic is a significant topic in the field of legal science, which has many aspects that require in-depth analysis and research. Thus, R. Sroka (2022) addressed the number of arbitrators present at meetings with the parties, their active involvement in the meetings, whether the meetings were held without their participation and what their role was if they were present. While there is some agreement with this thesis, the processes and methods of alternative dispute resolution, including sports arbitration tribunals, vary in the nature and level of control over the proceedings or decision-making, the formality of the process and its formality, and the role of third parties in the hearing of evidence. The study by V. Nehra (2022) provides a broader overview of court cases, considering them as the implementation of specific processes into existing practice. This includes harmonising different settlement methods for different scenarios or, more precisely, having the parties consider approaches to selecting a dispute resolution method. It is worth agreeing that the parties are free to choose their arbitrators or lawyers to resolve the dispute through arbitration or litigation, which is fully consistent with the concept of alternative dispute resolution (Ryskaliyev *et al.*, 2019).

Alternative dispute resolution methods such as arbitration and mediation have been criticised on various grounds, which will be discussed below. According to A. Duval (2022) and S. Fatima (2022), court decisions can serve as precedents and be of great value to the public. However, the requirement of confidentiality in alternative dispute resolution methods denies the public the opportunity to learn

of mistakes made or breaches of duty by defendants whose fault stays hidden from public view. A second criticism of alternative dispute resolution methods, particularly in the context of CAS, relates to their deformation and distortion. According to N. Akhtar *et al.* (2023), there is a concern that these new methods, although an important avenue, may lose their identity and become distorted when integrated into the conventional justice system. In a movement to reduce professionalism in conflict resolution, competition between professional and non-professional actors has emerged for power over standards, ethics, certification, and quality assurance. A criticism of alternative dispute resolution processes is that they do not, according to some researchers, provide a level playing field for negotiation (Nuryshchenko, 2024). According to M. Diaconu *et al.* (2021), alternative dispute resolution methods are not a suitable platform for those in a subordinate position. People belonging to certain social classes, ethnic groups or a particular gender face inequalities when their cases are heard through alternative procedures, as independent third parties may be biased and unable to make neutral judgements (Rexhepi *et al.*, 2024).

In modern world, where litigation can be lengthy and costly, alternative methods offer parties the opportunity to resolve disputes quickly and efficiently without having to go through complex and costly court processes. Furthermore, arbitration and mediation can provide more flexible and personalised dispute resolution, considering the specifics of each case and the needs of the parties. This can lead to fairer and more satisfactory solutions that are not always possible through conventional litigation. Thus, despite criticisms, alternative dispute resolution methods have their advantages, and their use can be an effective tool for achieving justice and resolving conflicts in society. In some cases, alternative dispute resolution methods may take longer than the conventional court system (Rašljanin, 2023). Proceeding from this thesis, it is worth agreeing that if alternative methods of dispute resolution take longer than litigation, the effectiveness of this system will be questioned, as their introduction was intended to save time for the parties among other benefits. H. Xiang (2022) emphasises that as sport develops and social expectations for sports arbitration increase, CAS mechanisms and rules are constantly evolving and improving. In parallel, G. Schmidt *et al.* (2021) suggest that CAS rules will face a variety of challenges and complexities in the future. The above positions can be debated, as CAS is currently actively building up experience in arbitration cases and improving its own processes and rules to meet the needs and promote the development of international legalisation of sport.

C.L. Goh and J. Anderson (2022) raise the issue of the significance of creating a suitable legal framework for the integration of AI technologies into arbitration dispute resolution. According to J. Waihenya (2022), there is a prospect that the application of artificial intelligence technology can bring significant benefits to society as a whole. A. Agus *et al.* (2023) showed that the implementation of machine learning technologies can substantially improve the efficiency and quality of the arbitration process. It is worth agreeing that this helps to ensure the safety and reliability of the application of artificial intelligence technology in the context of arbitration dispute resolution, which provides the parties involved in the arbitration process with the necessary level of protection. However, the application of artificial intelligence in arbitration procedures also entails a series of challenges and risks that require attention. These include data security issues, the need for qualifications in the use of artificial intelligence, and ethical considerations relating to decision-making and its impact on human rights (Horislavska, 2023).

T. Shinohara (2023) found that the Court of Arbitration for Sport can verify compliance with the rules and regulations governing various sports by anti-discrimination standards approved by the relevant bodies, considering the interpretation provided by international human rights organisations. This may be the case where applicants explicitly point to these documents as the applicable law in their claims. In agreement with this view, it should be added that if the parties have not decided on the applicable law, the arbitrators of the Court of Arbitration for Sport also have the right to decide for themselves on the application of international human rights instruments as a normative instrument, if they deem it appropriate. This aspect underlines the significance that the Court of Arbitration for Sport plays in the protection of human rights in the context of the sporting community. M. Mahrous and A. Al-Maamari (2022) address the unique features of the arbitration process conducted by the Court of Arbitration for Sport, which gives it full jurisdiction over relations between international sports organisations and athletes, with its decisions being final and binding on all parties concerned. However, it is difficult to objectively assess the extent to which CAS has developed its own body of substantive law, as this court does not function as an appellate body with a rigid system of legal priorities, and each of its decisions is made on the basis of the unique circumstances of a particular case. This decision-making process, which incorporates elements of both civil and common law systems, has its own degree of subjectivity. The approach taken by CAS aims to prevent suspicions of unfairness by applying a compromise approach that considers the policies of national governments and their judicial systems. This approach is directly related to the fact that the principles recognised by CAS are consistent with the generally recognised principle of fairness.

In conclusion, the CAS stands as a vital institution in the realm of sports, providing an impartial and qualified forum for resolving disputes. Its steadfast dedication to fairness and justice has had a profound impact on sports governance and legal frameworks. By safeguarding the spirit of sporting competition and integrity, the CAS offers athletes and organizations a dependable mechanism for conflict resolution. With its specialized composition of arbitrators and extensive jurisdiction, the CAS remains a cornerstone in ensuring a level playing field and upholding the principles of transparency and fairness in sports. As the sports industry continues to evolve and become increasingly complex, the CAS will continue to be at the forefront of resolving disputes and maintaining integrity in sporting events. His constant adherence to the principles of fairness and neutrality, as well as its extensive experience, provides a robust dispute resolution mechanism for athletes and stakeholders, while upholding the core values of sporting etiquette. In fact, CAS acts as a catalyst for equality in the dynamic arena of sports law, fostering an atmosphere of trust and responsibility among all participants.

Conclusions

In modern sports arbitration, the fundamental principles associated with arbitration must be adhered to. Among such principles, it is essential to consider the condition of voluntary consent of the parties to submit the dispute to

arbitration. If there is no such consent, the case cannot be heard before a sports tribunal. In the world of sport today, the conventional view of an arbitration agreement as a special document signed by both parties has been replaced by what is known as an "exclusive" arbitration agreement. This represents a kind of "caveat" included in the corporate (regulatory) norms adopted by both international and national sports federations. In fact, athletes lose the opportunity to take part in competitions held under the auspices of the relevant federation if they do not agree to have disputes arising heard by a specialised sports arbitration tribunal.

The modern sporting context is dominated by international sports organisations and CAS, which has the power to try athletes without their consent. CAS is currently the most authoritative and professional independent arbitration body authorised to resolve disputes of a diverse nature arising not only in the field of sport, but also in any other activity related to it. A court dedicated to resolving disputes in the field of sport has certain unique characteristics. Apart from the conventional advantages that make arbitrations attractive, such as cost-effectiveness, speed of resolution, review of the dispute by a professional participant in the relevant relationship, one of the key functions of CAS is to provide legal advice on matters not directly related to dispute resolution.

Since its inception, CAS has gained the recognition and trust of the international sporting community. Although it is a non-state dispute resolution body, its effectiveness is evident in its prompt and competent handling of cases and fair judgements. Legal relations in the sphere of professional sport have unique features, as they are regulated according to the charters and rules of sports organisations. In this regard, the establishment of a specialised arbitration centre in Kyrgyzstan, a permanently functioning court in the field of sport, is appropriate. It is necessary to develop a legislative act that will define the main aspects of professional sport and high-level sports activities at the national level, including the regulation of dispute resolution procedures in these areas using permanent arbitration.

Acknowledgements

None.

Conflict of interest

None.

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Роль і місце спортивного арбітражу в системі альтернативних способів вирішення спорів

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Анотація. Актуальність цього дослідження зумовлена тим, що інститут спортивного арбітражу посідає ключове місце у забезпеченні ефективного та справедливого вирішення спорів між учасниками спортивної діяльності. Метою цього дослідження був огляд історії становлення та розвитку, а також значення Спортивного арбітражного суду та його практики, з прогнозом розвитку аналогічних інституцій у Киргизстані. У дослідженні використано герменевтичний, інституційний, формально-юридичний методи, метод аналізу. У дослідженні висвітлено особливості правового розвитку Спортивного арбітражного суду (CAC) та сучасні проблеми його функціонування. Узагальнений висновок полягав в тому, що для ефективного вирішення спорів у сфері спорту в Киргизстані необхідно розвивати спеціалізовані арбітражні інституції. Процедурні аспекти вирішення спорів були досліджені на прикладі Спортивного арбітражного суду (CAS). Хоча CAS часто розглядається як міжнародний суд, він не є частиною міжнародної системи правосуддя, яка формується за участю держав або ґрунтується на міжнародному праві. У дослідженні було проаналізовано існуючі точки зору та думки, висловлені науковцями з цього питання. Аналіз різних підходів допоміг зрозуміти складність цього питання та розглянути можливі шляхи вдосконалення процедури розгляду спортивних спорів спеціалізованим арбітражним судом у Киргизстані. Результати дослідження можуть становити інтерес для розробки ефективного законодавства, спрямованого на регулювання діяльності спеціалізованих третейських судів у сфері спорту в Киргизстані

Ключові слова: міжнародний комерційний суд; законодавство Киргизстану; медіація; спортивне право; Спортивний арбітражний суд

UDC 368
Doi: 10.32518/sals4.2024.111

Соціально-правові студії. 2024. Т. 7, № 4
Social & Legal Studios. 2024. Vol. 7, No. 4

Insurance sector state policy and legal regulation improvement in Kosovo

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Abstract. Kosovo, especially in the circumstances of European integration, requires improvements in social and public insurance policies to ensure that society functions efficiently and protects its members from risks. The study aimed to identify ways of improving national policy and legal regulation of the insurance sector in Kosovo. Regulatory documents and statistical data from insurance authorities in Kosovo were addressed to achieve this goal. An examination of the public policy and legislative framework controlling Kosovo's insurance sector found various issues that demand immediate attention and reform. The analysis showed that existing legislation does not always meet the challenges and needs of the insurance market in the 21st century. The need for a new regulatory framework becomes even more urgent due to the need to introduce voluntary insurance for all segments of the population, which has the potential to provide wider access to insurance services and reduce risks for individuals in the event of unforeseen events. The study also found that one of the important problems is the low level of insurance culture among the population. Many Kosovo citizens might underestimate the advantages of insurance or are unaware of the many insurance products and possibilities available. Addressing this problem require large-scale educational campaigns and programmes aimed at raising public awareness of the importance and benefits of insurance, as well as disseminating information about available insurance products and their options. The practical significance of this study is the development of ways to improve the insurance sector in Kosovo

Keywords: service agreement; damage; policy; regulatory authorities; social protection

Introduction

As part of the European integration process, Kosovo needs to address social and public insurance policies. Kosovo is improving its structures and legislation to align with European Union standards, as the insurance industry is crucial for sustainable development and competitiveness. To ensure that society functions effectively through the advancement of the insurance sector, a suitable legal and regulatory framework must be established, as well as active support for social programs and initiatives that improve financial literacy and protect the interests of insurance consumers. Problems include a lack of clarity and efficiency of state policy, underdeveloped legal regulation, low consumer protection, limited competition in the insurance market, and the need to adapt to international standards caused by the need for European integration and development of society. Given the constant changes in the social and economic environment, it is imperative to adapt and improve the policy and legal framework in the insurance sector. Kosovo, which has faced challenges in developing its insurance industry in the context of global trends, is facing the challenge of optimising its policy and legal framework to ensure a stable and efficient insurance sector.

A. Shabani and M. Hashani (2023) determined that life insurance is a new segment of the market in Kosovo, having developed significantly over the past twenty years. The study discovered a crucial element influencing Kosovo people's decisions to obtain life insurance plans. In this field, R.K. Ranjan *et al.* (2020) contended that greater competition has resulted in the introduction of novel techniques targeted at obtaining a bigger market share. To do this, businesses were boosting their penetration, distribution, and sales skills, with a focus on increasing client access. Since 2010, the insurance

Suggested Citation

Article's History: Received: 10.09.2024 Revised: 02.12.2024 Accepted: 23.12.2024

Isufi, X., & Miloshoska, D. (2024). Insurance sector state policy and legal regulation improvement in Kosovo. *Social & Legal Studios*, 7(4), 111-120. doi: 10.32518/sals4.2024.111.

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industry has been growing steadily, reflecting the general trend towards greater financial security for both individuals and businesses. As the economy develops and the number of risks associated with life activities increases, the demand for various insurance products grows. This includes both traditional types of insurance, such as health, motor and property insurance, and newer areas, such as cyber insurance or pandemic insurance. This issue was studied by S. Todorova and G. Deda (2022). The authors concluded that insurance is a complex category that requires a deep understanding of many aspects. This applies to economic and financial mechanisms, as well as legal, social and ethical issues.

S. Gojani and E. Hajdari (2021) investigated the evolution of obligatory and optional insurance in Kosovo. Their findings emphasised that the expansion of the insurance industry is a critical component of Kosovo's economic prosperity, and the growing emphasis on social and public policy in this domain underscored the necessity of expanding compulsory insurance for society to operate effectively. B. Zekaj and A. Rexhepi (2022) conducted a study on the activities of insurance businesses in Kosovo, which are vital components of the financial sector. Their findings demonstrated that the insurance sector plays an important role in economic development, contributing to the country's financial stability. Citizens, businesses, and the government benefit from insurance firms' business security, investment protection, and financial stability, which promotes economic and financial development. However, in order for society to function properly, it is critical that all population segments' requirements be met and that compulsory insurance be expanded. H. Kukaj *et al.* (2019) evaluated the insurance industry's impact on the country's economic development. Their research results reveal a positive association between insurance, particularly life insurance, and development in the economy, owing to the sector's ability to provide financial stability, social safety, and investment possibilities.

Kosovo has several laws and regulations related to social insurance and protection, but this legal framework does not always meet the needs of citizens adequately. As a result, the most vulnerable segments of society do not have access to a sufficient level of social insurance due to the lack of special programmes. A. Robaj (2019) studied the functions of social insurance in Kosovo and found that although the legal infrastructure for social insurance recipients in the country is available, it is not sufficient to meet their needs in full. The insurance market in Kosovo is characterised by a more distributed structure. More insurance companies are operating in Kosovo, which contributes to greater competition and compliance with antitrust laws. E. Korsita and E. Meka (2022) highlight important differences between the insurance markets of Albania and Kosovo, emphasising the need for effective regulatory policies for maintaining the competitiveness and development the Western Balkans' insurance markets. Areas that remain unexplored include what are the challenges in Kosovo's public insurance sector and how to improve public policy, as well as what technological innovations can enhance the efficiency and accessibility of insurance services in Kosovo.

The study aimed to identify ways to improve the national strategy and legal regulation of the insurance sector in Kosovo. To achieve the research objective, the following tasks were set: to analyse the current state of the insurance industry in Kosovo; to identify key problems and shortcomings of the state policy in the insurance sector; to analyse international experience in the insurance sector to identify best practices; to develop proposals for improving national insurance policy and legislation.

Materials and methods

This research examined the legislative and regulatory framework of Kosovo's insurance sector to establish its influence on the industry's operating and development. The main types of insurance, minimum requirements for the authorised capital of insurance companies, solvency requirements and reserves that insurance companies must maintain to ensure the fulfilment of their obligations were analysed by studying Law of the Republic of Kosovo No. 05/L-045 "On Insurances" (2015). This defined the role and powers of state supervisory authorities over insurance activities, with the Central Bank of Kosovo (CBK) as the main regulator.

The next legal act that was studied in the research is the Law of the Republic of Kosovo No. 03/L-209 "On Central Bank of the Republic of Kosovo" (2010). This law established the rights and obligations of the supervisory authority, as well as how the CBK regulates and supervises insurance activities and set out the criteria for obtaining permission to conduct insurance activities (licensing). In general, the law assessed the impact of the insurance sector on general monetary policy, including the investment of insurance reserves and their impact on the financial market.

The use of statistical indicators provided by the CBK made it possible to obtain an objective assessment of the state of the insurance market (Financial stability report, 2023; Ghetu, 2024; Victor, 2024). Financial indicators such as gross written premiums (GWP), net profits, and asset composition were collected and analysed to determine the insurance sector's economic contributions and growth patterns. Market performance data, such as the number of policies issued and claims processed, was also evaluated to show market stability and consumer engagement patterns. This data provided extensive information on insurance companies' financial positions, market competition, and development patterns. The analysis of these reports formulated recommendations and made appropriate decisions to improve public policy and legal regulation of the insurance sector in Kosovo. This approach provided a deeper understanding of the current and potential problems of the industry and contributed to the development of effective strategies for the further development of the insurance market in the country.

The study of international Solvency II standards determined what requirements and regulatory policies may affect the insurance market (Directive of the European Union No. 2009/138/EC, 2009). This includes an understanding of the possible implications for competition, innovation and the affordability of insurance services for consumers. The study of Solvency II provided detailed information on the financial aspects of the insurance industry, helped to identify risks and issues, and provided a basis for developing policy and regulatory recommendations for the sector.

Results

The insurance sector in Kosovo started to emerge in 1974, when a new constitution was adopted, according to which Kosovo was granted equal status with other territories of the former Yugoslavia. This event was a significant milestone in the region's history, as it contributed to economic

development and the creation of new institutions. At that time, the Property Insurance Association was established, with its headquarters in Pristina, the capital of Kosovo. The Property Insurance Association has taken on the task of developing the basic principles and standards of the insurance business in the region. It began to introduce a variety of insurance products covering property, motor, liability and other types of insurance. Subsequently, given the efforts of the Association, public confidence in insurance services has increased (Ahmeti & Iseni, 2022). The relevant organisation was engaged in insurance of property that was 100% owned by the state. In the period from 1990 to 1999, insurance companies of both state and private ownership appeared in Kosovo, with the main activity of these insurance companies being vehicle insurance. After the end of the war in 1999, the international community handed over the administration of Kosovo to the United Nations Mission in Kosovo. It aimed to create and strengthen state institutions, including those in the insurance sector.

With Kosovo's autonomous status, the insurance industry was allowed to develop further. New insurance companies emerged and began to compete, which helped improve the quality of services and expand their range. It is necessary to note that this process was influenced by economic and political changes both in Kosovo and in the former Yugoslavia as a whole. After the break-up of Yugoslavia in the early 1990s, the insurance industry in Kosovo faced new challenges. However, despite the economic difficulties and political instability, insurance companies continued to operate, adapting their activities to the new environment (Canh *et al.*, 2020). This period saw the gradual integration of the Kosovo insurance market into European and global standards. The insurance business began to grow fast in the early 2000s, as Kosovo's economy recovered and stabilised. The introduction of new legislation, such as Law of the Republic of Kosovo No. 05/L-045 "On Insurances" (2015) and Law of the Republic of Kosovo No. 03/L-209 "On Central Bank of the Republic of Kosovo" (2010), has created a legal framework for operating and regulating the insurance companies. This industry in Kosovo continues to grow, introducing novel items and services that match the demands of the 21st-century market. Integration into international markets is also a significant factor, which contributes to the competitiveness of Kosovo's insurance companies.

Since 2010, the insurance sector in Kosovo has shown favourable development, in particular, due to the implementation of reforms and the emergence of companies presenting innovative services. State regulation of the insurance sector in Kosovo is carried out through a range of bodies and regulations to make sure that the insurance market is stable and reliable. The main state regulatory authority in Kosovo is the CBK. It performs a crucial function in regulating and supervising the country's financial sector, including insurance companies. Its functions and responsibilities cover several key areas. The CBK is responsible for issuing licences to insurance companies operating in Kosovo. The licensing process involves a thorough review of applicants, an assessment of their financial standing, business reputation, business plans, and compliance with legal requirements (Akhil, 2022). In addition, after obtaining a licence, the CBK exercises ongoing supervision over the activities of insurance companies. This includes regular reviews and monitoring of financial statements, analysis of solvency and risk indicators, and compliance checks. Since Kosovo has not yet joined the Green Card system, the Kosovo Insurance Bureau (KIB) regulates some insurance companies. Kosovo has reached agreements with its neighbouring countries, including Serbia, North Macedonia, and Albania. In certain cases, the KIB handles losses incurred by vehicles from these countries to vehicles insured with local firms in Kosovo, or vice versa. The KIB operates as both a correspondent and supervisory body for insurance firms operating in the country, overseeing that compensation is paid on a regular basis by responsible parties and mandating regular updates from these organisations.

The CBK also ensures that insurance companies comply with applicable laws governing their activities, such as capital, reserves, transparency and reporting requirements. The CBK has the right to impose sanctions on companies that violate the law. Consumer protection is an equally important activity of the CBK, namely, ensuring that insurance companies provide accurate and transparent information to their customers, handle insurance claims fairly and resolve complaints promptly. The CBK develops and implements regulations governing the insurance sector (creating rules and instructions that define the standards of insurance companies' operations, corporate governance, asset valuation and risk management requirements). The CBK, in its function as regulator and supervisor, has made numerous concrete and positive initiatives that had been missing for many years. Among them is the adoption of Law of the Republic of Kosovo No. 05/L-045 "On Insurances" (2015) and Law of the Republic of Kosovo No. 04/L-249 "On Health Insurance" (2014). The legal framework governing insurance companies in Kosovo consists of several laws and regulations covering various aspects of insurance institutions, such as licensing and registration of insurers, setting financial requirements, including capital and reserves, control over compliance with financial reporting and audit standards, regulatory and supervisory mechanisms, and the rights and obligations of insurers and policyholders.

The fundamental regulatory act governing the activities of insurance companies is Law of the Republic of Kosovo No. 05/L-045 "On Insurances" (2015), which regulates the activities of insurance companies in Kosovo. This law establishes general provisions for the establishment, licensing, operation and liquidation of insurance companies. This law develops minimum capital requirements, corporate governance rules and regulations to ensure the financial stability of insurance institutions. Following Chapter 3, Article 19 of Law No. 05/L-045, the authorised capital of all insurance companies licensed to conduct insurance business in Kosovo, except for life insurance, must be at least two million two hundred thousand (2,200,000) euros. In the case of inclusion of one or more risks in classes 10-15 referred to in Article 7 of this Law, the share capital may not be less than three million two hundred thousand (3,200,000) euros. The law specifies the rights and duties of insurance firms and policyholders, including the terms and conditions of insurance policies, claims procedures, and means for settling disputes between the parties.

Insurance companies in Kosovo follow the rules outlined in the asset investment regulation, which encompasses technical and material reserves alongside the financing of central bank policyholders' capital shares, as enacted by Law of the Republic of Kosovo No. 03/L-209 "On the Central Bank of

the Republic of Kosovo" (2010). This regulation demands all insurers to maintain a minimum share capital of 3 million EUR as a requirement for getting a license. Of this total, 10% must be deposited with the CBK. The remaining share capital can be invested through various avenues, such as deposits with commercial banks regulated by the CBK, up to 20% of the capital held in a trust account at a commercial bank, or securities released by the Government of the Republic of Kosovo, contingent upon obtaining approval from the CBK.

In accordance with the law, insurers must maintain a minimum level of equity capital throughout their operations, which cannot be less than the authorised share capital of at least EUR 3 million. If an insurer does not achieve this minimum equity requirement, its shareholders must infuse extra capital to address the deficit and return the company to the requisite equity position over 30 days upon discovering the shortage. Insurers can invest in a variety of financial instruments, including treasury bills, bonds, and other capital market assets issued by the Government of the Republic of Kosovo. Non-life insurers must have investments with a maximum term of one year, whereas life insurers are not subject to such restrictions. Insurers may also participate in these instruments upon special request and prior approval from the CBK, provided that the securities have a credit rating of "BBB" or above from Standard & Poor's, Fitch, or Moody's.

According to Law of the Republic of Kosovo No. 05/L-045 "On Insurances" (2015), there are varieties of insurance to satisfy the demands of many sectors and individuals. The main types of insurance provided for by this law include property insurance, including insurance of buildings, housing, vehicles, enterprise property and other material assets. Property insurance protects owners from financial losses associated with the risks of fire, theft, natural disasters and other events. Liability insurance covers a person's liability to third parties for losses or injuries caused to them as a result of negligence or negligent act, which may also include car owners' insurance, corporate liability and other types of liability insurance. Another type of insurance is life and health insurance. This type of insurance offers financial security to individuals and their families in the case of a serious disease, accident, or death. It includes disability insurance, surgical treatment, chronic diseases and other medical expenses (e.g., doctor's visits, medicines, hospital treatment and other medical services that may be provided for in the insurance contract) (Barannyk & Kachula, 2023).

It is worth noting that Kosovo has a separate, special Law of the Republic of Kosovo No. 04/L-249 "On Health Insurance" (2014), which regulates the health insurance system and ensures access to healthcare services in Kosovo. It establishes rules and procedures for compulsory and voluntary health insurance (VHI) and defines the scope of coverage and the rights and obligations of insureds and insurers in this area. The Law of the Republic of Kosovo No. 05/L-045 "On Insurances" (2015) regulates the general aspects of insurance in Kosovo, covering a wider range of insurance types. Business insurance aims to protect enterprises and entrepreneurs from risks associated with their activities. It includes corporate liability insurance, property insurance, and insurance against natural disasters (Sanjeewa *et al.*, 2019). Transport insurance covers the insurance of vehicles, including cars, motorcycles, trucks and other types of transport. It may include insurance against losses from accidents, theft, fire and other risks. These types of insurance are provided by various insurance companies in Kosovo following the legal requirements and standards set by the CBK and other relevant authorities (Fig. 1).

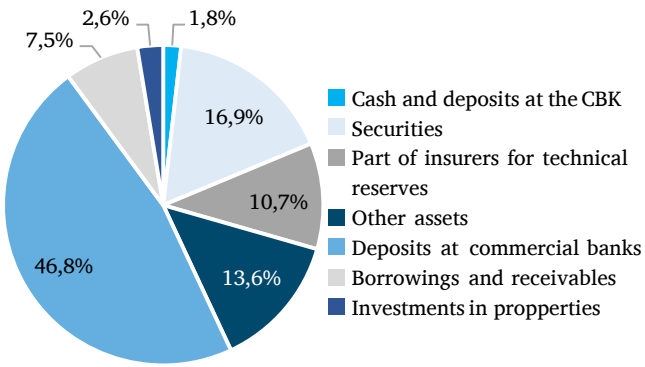

Figure 1. Structure of assets of insurance sector (December 2022)

Source: compiled by the authors based on Financial stability report (2023)

Another important law in the insurance sector in Kosovo is the Law of the Republic of Kosovo No. 03/L-209 "On Central Bank of the Republic of Kosovo" (2010), as the Central Bank plays a key role in ensuring the financial stability of the country. Its policies and regulations affect the financial situation in general, including the insurance sector. Accordingly, an understanding of central bank supervision and regulation can be useful for insurance companies in determining their risk and risk management strategies. The policy set by the Central Bank affects the country's macroeconomic indicators, such as inflation, exchange rate, unemployment rate. These factors, in turn, affect the demand for insurance services, the financial stability of insurance companies and the overall dynamics of the insurance market.

The legal framework governing insurance companies in Kosovo ensures the stability and transparency of the insurance market. It includes a wide range of regulations covering all aspects of insurance companies' activities, from licensing to consumer protection. Such a regulatory system promotes the establishment of a competitive insurance market and protects the interests of all market participants. The insurance industry contributes positively to economic growth, financial system stability, employment, balance of payments, and, thus, human well-being (Tasdemir & Alsu, 2024). Insurance contributes to gross domestic product growth as people who purchase or use insurance services pay fees to insurance firms. These companies then use the premiums received for financing and investment activities, which positively impact economic activity. By investing in various sectors of the economy, insurance companies assist in the growth of entrepreneurship, the creation of new jobs and an increase in overall production.

In Europe, insurance has a substantial influence on economic growth by facilitating the efficient allocation of resources (Wanat *et al.*, 2019). With insurance products, companies and individuals can protect their assets from various risks, thus planning and allocating resources more effectively. Reducing transaction costs is another important aspect, as insurance reduces the cost of settling unforeseen financial losses. Liquidity creation is another key aspect of insurance's impact on the economy. Insurance companies, accumulating

large amounts of funds in the form of insurance premiums, provide liquidity in financial markets, which contributes to the stability and resilience of the economy (Asongu, 2020). Economies of scale are also achieved through the large volumes of transactions carried out by insurance companies, which lowers the cost per unit of products and services.

Insurance also encourages investment, as insurance companies invest in a variety of projects, from real estate to stocks and bonds. This makes it possible to improve infrastructure, modernise industrial facilities, and introduce new technology (Sulemana & Dramani, 2020). Expanding insurance coverage allows more people and businesses to use insurance services, which increases the overall level of risk protection of the economy. Thus, insurance fulfils an important role in guaranteeing economic stability and growth, stimulating the progress of different sectors of the economy, increasing the level of security, and creating conditions for the efficient allocation of resources and investments. According to the CBK, Kosovo insurance companies recorded gross premiums of 146.4 million EUR, an increase of 9.2% year-on-year (Ghetu, 2024). Net profit of insurance companies in 2023 was 13.3 million EUR, significantly higher than 1.3 million EUR from a year earlier.

The assets of insurance firms by the end of December 2023 reached 304.1 million EUR, up 3.5 million EUR from the previous month. The structure of this sector's assets includes deposits with commercial banks (45.8%), securities with other assets (29.4%), and reinsurance (14.2%) (Ghetu, 2024). The total liabilities of insurers reached 304.1 million EUR, of which technical reserves amounted to 198.6 million EUR. Total profit as of the end of December 2023 amounted to 13.3 million EUR. Gross written premiums (GWP) amounted to 146.4 million EUR and ceded premiums amounted to 19.5 million EUR. The insurers' financial income reached 5.1 million EUR. Total expenses, including claims paid, amounted to 70.8 million EUR, and operating expenses to 45.4 million EUR, of which 15.7 million EUR were acquisition costs (Ghetu, 2024). By the end of December 2023, Kosovo insurance companies had sold 1.48 million policies, of which 572,800 were for domestic compulsory motor third-party liability insurance and 503,000 were for border insurance. The total number of claims paid out was 70.6 thousand, of which 41.3 thousand were related to one of the types of motor third party liability insurance contracts.

According to the annual report of the Slovenian reinsurance company Sava (2024) for 2023, the largest insurance companies in the Kosovo market in terms of GWP are insurers owned by the Slovenian insurance group Sava and the Austrian UNIQA (Sava Insurance Group, 2024). Insurance companies owned by the Sava Group, such as Illyria and Illyria Life, are the first in the market, with a position equivalent to 21.7 million EUR. They are the market leader, and their closest competitors are the local subsidiaries of UNIQA Group, Sigal and Sigal Kosova Life, which have the second position in the market, with an equivalent of 21.4 million EUR (Fig. 2). The top five companies also include Scardian, Eurosig and Elsig.

According to the official monthly data of the CBK, in the period from January to December 2023, GWP of Kosovo insurers had an increase by more than 9% year-on-year to 146.5 million EUR. The total amount of claims paid grew by 11.5% to 71.7 million EUR. In 2023, 95.5% of total insurance premiums were accounted for by non-life insurance, and only 4.5% by life insurance. GWP in the non-life segment increased by 9.5% and in the life segment by approximately 5%. The total net profit of local insurers more than tripled over the year, reaching 10.7 million EUR at the end of December 2023, up 7.2 million EUR from 3.5 million EUR a year earlier, according to the CBK (Victor, 2024). These positive trends demonstrate the steady growth of the Kosovo insurance market, the increasing financial strength of insurers and their ability to attract foreign investment. This contributes to the further development of the country's economy and raises the level of financial services available to households and businesses.

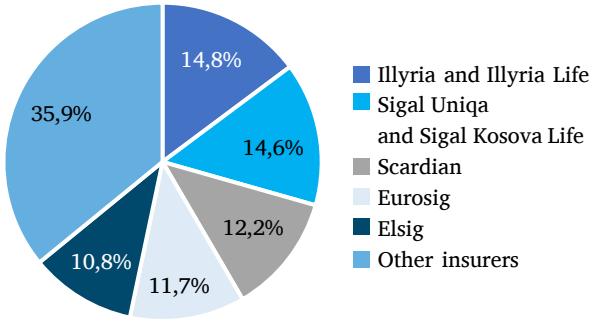

Figure 2. Kosovo's insurance market in 2023
Source: compiled by the authors based on Sava Insurance Group (2024)

One of the main challenges faced by the state regulation of the insurance sector in Kosovo is the lack of maturity of the regulatory framework. The absence of developed legislation and regulations in this area creates significant legal gaps that adversely affect the stability and development of the insurance market. Outdated laws cannot effectively regulate the activities of insurance companies, which leads to problems with ensuring the rights and protecting the interests of policyholders (Dragos *et al.*, 2017). For instance, in Kosovo, one of the main problems in the insurance sector is the lack of a developed voluntary insurance system, especially among the low-income population. This issue has a substantial influence on the entire state of the insurance sector and citizens' wellbeing.

The economic situation in the country is not conducive to the widespread introduction of voluntary insurance (Peleckienė *et al.*, 2019). Many people have limited financial resources and often cannot afford the cost of insurance policies. For many people in the low-income category, the intention is to cover fundamental requirements like food, housing, education, and the expense of insurance appears costly. Low levels of financial literacy are also a significant obstacle to the development of voluntary insurance. Many people simply do not understand how insurance products work and what benefits they can bring (Ruß *et al.*, 2024). The absence of information campaigns and financial literacy programmes leads to a lack of understanding of the importance of insurance and its role in protecting against risks. In addition, the lack of trust in insurance companies is a serious problem. Historical examples of fraud and insurers' failure to fulfil their obligations have created a negative image of insurance services. Citizens fear that their insurance premiums may be wasted or that companies will not pay compensation in the case of an insured occurrence.

The regulatory framework also remains weak, which is not conducive to the development of voluntary insurance. The lack of effective laws and regulations which protect consumer rights and ensure the stability of insurance companies raises concerns about the trustworthiness of insurance products. Another key aspect is a lack of incentives to establish voluntary insurance (Rubio-Misas, 2023). The state does not offer sufficient tax or financial incentives for individuals and businesses to use insurance products more actively. This makes insurance less attractive compared to other expenses. It is worth noting the way of France, which has a wealth of experience in the development of the insurance sector, which can be useful for other countries, including Kosovo. The French insurance market is one of the largest and most developed in Europe, but the country has faced several challenges along the way that have been successfully resolved. One of the main challenges was to ensure the financial stability of insurance companies. In the 1990s, certain French insurance companies faced a liquidity crisis due to poor investment policies and low profitability. To address this problem, the French government has introduced strict regulatory requirements, including higher capital adequacy standards and stricter risk management rules (Carré & Le Maux, 2024). This stabilised the market and increased the reliability of insurance companies.

Another important problem was the operational inefficiency of insurance companies. To address this, several reforms were introduced to increase the transparency and accountability of companies, as well as improve internal control and audit processes (Charpentier *et al.*, 2022). In addition, the French government has intensified efforts to improve the professional level of personnel in the insurance sector through educational programmes and training courses (Clark *et al.*, 2023). France also addressed consumer protection. To this end, clear rules on information transparency have been developed and implemented, requiring insurance companies to provide customers with complete and accurate information about insurance products and services. This increased public confidence in insurance companies and stimulated market growth. France was able to overcome the main problems faced by the insurance industry and create a stable and efficient insurance market employing these measures. This can be useful for Kosovo in shaping domestic strategy for the development and regulation of the insurance sector. To overcome the above problems, Kosovo's state authorities need to take comprehensive measures. First and foremost, the government should ensure that financial literacy education programmes are conducted to help citizens better understand the benefits of insurance. Furthermore, stricter supervision and control over the activities of insurance companies should be introduced to increase their credibility. It is also worth developing incentives for individuals and businesses, such as tax breaks, to encourage them to buy insurance products. It is only through a systematic approach and cooperation between the state, insurance companies and the public that a significant development of voluntary insurance in Kosovo can be achieved.

The need to constantly update the regulatory framework in line with international standards and practices is critical for the stable development of the insurance market. International standards, such as Solvency II in the European Union, provide a framework for assessing and managing risks, ensuring the financial stability of insurance companies and protecting consumers. Their implementation will increase transparency and accountability, as clear rules and standards will facilitate more transparent operations of insurance companies and increase their responsibility to customers. In addition, adequate capital and reserve requirements will help ensure the financial stability of insurance companies, reducing the risk of bankruptcy. In addition, compliance with international standards will facilitate Kosovo's integration into the global insurance market, attract foreign investment and increase the competitiveness of local companies. Thus, a well-developed regulatory framework is a key condition for the successful development of the insurance sector in Kosovo. It provides legal certainty, increases confidence in the insurance market, protects consumer rights and promotes economic growth through financial stability and effective risk management.

Discussion

Improving the state policy and legal regulation of the insurance sector in Kosovo is extremely important for ensuring stable economic development and social protection of the population. One of the main areas for improving public policy is the harmonisation of Kosovo's legislation with European standards. This includes the adaptation of existing laws and the adoption of new regulations to meet the requirements of the European Union. The harmonisation of legislation will not only improve legal regulation but also increase the confidence of foreign investors, which in turn could stimulate the development of the insurance industry. Legislative adaptation involves a thorough analysis of current regulations, identification of gaps and inconsistencies, and development of new laws and regulations that will meet EU standards. This may include the implementation of EU Directives into national legislation, in particular those related to insurance services, consumer protection, financial stability and anti-fraud. The process of harmonisation requires close cooperation with European institutions, an exchange of experience with other countries that have successfully passed this way, and the involvement of experts. Engaging international consultants and participating in EU technical assistance programmes can significantly speed up and facilitate the adaptation process (Bakalo & Makhovka, 2024).

The same opinion is shared by M. Vaduva (2023), who argues that the insurance market is a complex network of interdependent and competitive relations between economic agents, where insurance serves as a means of protection against negative consequences. Several factors are used to assess the growth of the national insurance market, including changes in Gross Written Premiums (GWP), market shares of various insurers, the composition of different insurance classes, and the identification of the leading companies by premium volume, all of which are obtained from the asfromania website. The author concludes that the introduction of European standards is an important step towards Romania's deeper integration with the European Union. This will allow Romania to become part of the single European insurance market, which will open new opportunities for the development of the national economy and improve the living standards of citizens. A similar opinion is shared by N. Kakashvili (2023), who notes that, for instance, in Georgia, life insurance remains unpopular due to the low interest of the population and a small number of insured persons, as there are gaps in the legislation that need to be clarified and

supplemented to ensure greater clarity and stability in the insurance sector, and many citizens have a lack knowledge regarding life insurance. The adaptation of Georgian insurance legislation to European standards will have a comprehensive beneficial effect on the insurance market. It will increase confidence in insurance companies, improve financial stability, expand the broad spectrum of insurance products and services, and integrate with international markets. In addition, the harmonisation of legislation will strengthen cooperation with other EU countries in the area of regulation and supervision of insurance services.

G. Overton and O. Bandt (2022) concluded that low profitability is the main indicator of problems in insurance companies. This underscores the importance of insurers prioritising long-term financial performance. The disparity between the life and non-life insurance sectors is also an important finding. The high importance of bond investments in life insurance indicates the need for a conservative investment approach, while for other types of insurance, operational efficiency is key. Differences between countries, such as a higher response to operational inefficiencies in France and a smaller impact of bond investments in Japan, demonstrate how regional differences and regulatory frameworks influence insurance markets. The preceding section of the current research evaluated France's experience in the insurance business, emphasising its importance in aligning insurance legislation with European norms. This study emphasised the need of using similar methodologies and standards to regulate insurance operations, which are critical for promoting financial stability and the efficiency of the insurance market. The identification of low profitability as a key indicator of problems in insurance companies underscores the importance of introducing standards that promote the financial stability of insurers (Litvinova *et al.*, 2023). European standards, such as Solvency II, already include capital and risk management requirements aimed at maintaining the financial strength of insurance companies. Alignment of legislation with European standards can help reduce the risk of insolvency of insurance companies, which is one of the key topics of the study. Uniform rules and regulations can contribute to greater market transparency and predictability.

The study revealed that the expansion of the insurance industry is critical to fostering economic growth in Kosovo. Insurance, as an integral part of the financial system, serves a number of critical services that contribute to economic stability and growth. Insurance firms make enormous investments, providing long-term resources to governments and the insurance sector. A significant amount of the funds invested by these organisations come from life insurance, which is fundamentally long-term in nature. Insurers have traditionally devoted a significant percentage of their resources to various assets, primarily government bonds, in order to maintain the value of their money, meet their responsibilities to clients, and increase investment returns (Trusova *et al.*, 2020). M. Giuzio and L. Rousová (2019) agree, emphasising the need of a strong investing strategy in ensuring financial stability. Insurance businesses have close relationships with other financial intermediaries and play an important role in delivering long-term funding to the economy. For example, in the eurozone, the insurance industry accounts for more than 40% of investments in government bonds with maturities greater than ten years. Y. Bayar *et al.* (2021) offer an alternative approach, investigating the effect of insurance sector expansion on economic growth using data from 14 post-transition countries in Central and Eastern Europe during a 19-year period from 1998 to 2016. They discovered no evidence of a direct link between life insurance and other forms of insurance and economic development. However, as discussed in the preceding section, both life and other types of insurance have a significant influence on economic growth. Insurance services create a favourable climate for business, providing protection against risks and stimulating investment (Novykova *et al.*, 2023). In addition, insurance can provide stability and confidence in the future for the population, which contributes to consumer activity and economic growth.

Developing countries, such as Kosovo, must face the issues that arise during the transition era. Aside from the obstacles of adaptation, there are considerable challenges in developing legislation, rules, and establishing organisations to regulate insurance activity. Additional hurdles include establishing insurance firms, training employees, introducing new products, and developing public knowledge about the value of insurance. This study revealed a fundamental concern in Kosovo: a low rate of voluntary insurance enrolment, particularly among those with limited resources. According to A. Purcel *et al.* (2023), VHI becomes more popular than obligatory health insurance as a country's financial growth improves. In countries with modern financial systems, high levels of financial knowledge, and great confidence in healthcare services, VHI becomes the favoured option. S.A. Janzen (2020) designed a dynamic theoretical model to evaluate how asset insurance affects poverty and social protection spending in evolving countries, which is both timely and informative. The model makes two different technical assumptions: a standard production technology with a fixed-cost technology and a universally concave production function enable many equilibria. According to the research, establishing an asset insurance market can efficiently reduce both poverty and social protection spending. The authors of the current study agree with previous academics on this topic, recognising its importance in developing countries' policy formulation. Supporting governmental measures, such as giving insurance premium subsidies to low-income and vulnerable households, is a reasonable and important step (Gutium *et al.*, 2023). This will not only attract them to the insurance market but also create mechanisms for risk protection, which will contribute to poverty reduction.

Despite the many challenges associated with the functioning of microinsurance markets, the potential benefits of addressing them are significant. Microinsurance can provide households with the necessary tools to manage risks, which is beneficial to economic stability and growth. The implementation of such programmes can be a decisive factor in the fight against poverty in the long term. Thus, the proposed model and approaches deserve detailed study and implementation, as they can have a significant positive impact on the socio-economic development of developing countries.

Conclusions

The governmental policies and regulatory framework controlling Kosovo's insurance sector are critical for ensuring stability and promoting economic growth. Some progress has been made in this area in recent years, but some significant problems and challenges need to be addressed and resolved.

It is vital to recall that Kosovo's insurance sector is young and still developing. Low competitiveness, a small range of products and services, and a high level of volatility in the industry all limit the sector's potential for expansion. A set of measures is recommended to improve the state policy and legal regulation of the insurance sector in Kosovo. An in-depth analysis of existing laws and regulations is needed to identify their shortcomings and gaps. Based on this analysis, new regulations can be developed, or existing ones amended to improve the state of the insurance industry. Furthermore, it is necessary to ensure effective supervision and control over the activities of insurance companies by the relevant state authorities. This includes conducting periodic audits and inspections and taking appropriate action in the event of violations. It is also necessary to support the development of an insurance culture among the population of Kosovo. Information campaigns and educational programmes can help to raise awareness of the benefits of insurance services and their importance in protecting their interests. To summarise, further improvement of the state policy and legal regulation of the insurance sector in Kosovo is an important task that requires joint efforts from the government, insurance companies and citizens. Stable and efficient development of this important sector of the economy can be achieved only through cooperation and systematic efforts.

Future research possibilities include a number of crucial topics, including the study of how digital technologies are changing the insurance business. This involves investigating the use of blockchain and other innovations to enhance the efficiency of insurance operations. Furthermore, it is worth addressing the level of protection of policyholders' rights in Kosovo, identifying the key problems faced by insurance consumers, and developing new legal instruments to improve the protection of policyholders' rights.

Acknowledgements

None.

Conflict of interest

None.

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Удосконалення державної політики та правового регулювання страхового сектору в Косово

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Анотація. Косово, особливо в контексті європейської інтеграції, потребує вдосконалення політики соціального та державного страхування для забезпечення ефективного функціонування суспільства та захисту його членів від ризиків. Метою дослідження було визначення шляхів удосконалення національної політики та правового регулювання страхової галузі в Косово. Для досягнення цієї мети було проаналізовано нормативно-правові документи та статистичні дані страхових органів Косово. Дослідження стану державної політики та правового регулювання страхового сектору в Косово показало, що сектор стикається з великою кількістю проблем, які необхідно негайно вирішити та вдосконалити. Аналіз показав, що існуюче законодавство не завжди відповідає викликам і потребам страхового ринку в XXI столітті. Потреба в новій нормативній базі стає ще більш нагальною у зв'язку з необхідністю запровадження добровільного страхування для всіх верств населення, що потенційно може забезпечити ширший доступ до страхових послуг та зменшити ризики для фізичних осіб у разі настання непередбачуваних подій. Дослідження також виявило, що однією з важливих проблем є низький рівень страхової культури серед населення. Багато громадян Косова не розуміють переваг страхування або не мають достатньої обізнаності про існуючі страхові продукти та їхні можливості. Вирішення цієї проблеми вимагає проведення широкомасштабних освітніх кампаній і програм, спрямованих на підвищення обізнаності населення про важливість і переваги страхування, а також поширення інформації про наявні страхові продукти та можливості їхнього вибору. Практичне значення цього дослідження полягає в розробці шляхів удосконалення страхового сектору в Косово

Ключові слова: договір про надання послуг; шкода; поліс; регуляторні органи; соціальний захист

UDC 341.645
Doi: 10.32518/sals4.2024.121

Соціально-правові студії. 2024. Т. 7, № 4
Social & Legal Studios. 2024. Vol. 7, No. 4

Issues of limitation of international criminal justice in the modern world

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Abstract. The study examined the problems associated with the International Criminal Court and its current role in the world. The exit of some countries from the African Union and sanctions by the United States of America raises questions about its role from a realistic perspective. This research aimed to investigate the tension between the International Criminal Court's ideological bases and the practical obstacles it encounters in a politicised international world that frequently restricts its efficacy due to state sovereignty, varied legal systems, and political interests. Doctrinal analysis, comparative legal analysis, case law analysis, political-legal analysis, and content analysis were used to implement this goal. The peculiarities of the formation of the International Criminal Court are revealed. It is emphasised that this court, created on an idealistic basis, faces challenges that include the withdrawal of African Union member states, U.S. sanctions, and resistance from countries prioritising national sovereignty and political interests. It is found that conflicts between state parties and the court, as well as problems in the court's governance, emphasise the inconsistency between the ideal concept of the International Criminal Court and the real basis of its work. The importance of a rational return of the International Criminal Court and a more balanced perception of its role in the modern world is highlighted. It is concluded that exaggerating the importance of the court may threaten its future existence, and therefore it is important to consider the realities of contemporary politics in the further development and functioning of the International Criminal Court. Recommendations are developed to improve the efficiency of the court's practice. This study offers practical insights for international legal practitioners, policymakers, and diplomats by emphasising the importance of reconciling national sovereignty and legal systems with International Criminal Court mandates in order to improve cooperation and effectiveness, particularly in politically unstable regions such as Africa and Eastern Europe

Keywords: African Union withdrawal; sanctions; role in modern justice; global policy challenges; idealistic foundations

Introduction

As the first permanent international criminal justice institution in the history of the world, the International Criminal Court (ICC) has been different from previous international legal institutions since its inception. Only sovereign states are allowed to participate in court proceedings, while only individuals who have committed international crimes can be defendants. Even if the purpose of the court is to combat crimes that "shock the conscience of mankind", the court can only exercise supplementary jurisdiction, meaning that the ICC can intervene solely as an alternative when states are unwilling or unable to try perpetrators of international crimes under the Rome Statute on the ICC (2010). The principle of supplementary jurisdiction is the core principle for the exercise of ICC jurisdiction. It is the result of a compromise between ideals and international society and a prerequisite for many countries to join the ICC.

Despite the limited jurisdiction of the court, the court still faces tensions with international society, such as issues of universal jurisdiction of the court, the right of the prosecutor to conduct investigation and so on. Some countries remain apprehensive about joining the Rome Statute, while others have reconsidered their participation. Burundi and the Philippines, for example, have already left the statute, while countries such as Israel and Myanmar have expressed

Suggested Citation

Article's History: Received: 20.08.2024 Revised: 19.11.2024 Accepted: 23.12.2024

Wang, H., & Tatarinov, D. (2024). Issues of limitation of international criminal justice in the modern world. *Social & Legal Studios*, 7(4), 121-131. doi: 10.32518/sals4.2024.121.

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their intention to withdraw from it. The United States, Russia, China, and India are still hesitant to become state parties. These events highlight the persistent conflict between the ICC and some segments of global society, reflecting wider concerns about the court's function and influence in international justice.

ICC President Chile Ebo-Osuji told a conference on the work of the ICC on 2 November 2020 that the court is currently under pressure and threats from some powerful actors in world affairs. Joka Brandt, Permanent Representative of the Netherlands to the UN, said that "the ICC is an important part of the international system of justice and accountability. Nevertheless, this system is currently facing strong political pressure" (Siwen, 2020). In 2023 and 2024, the ICC faced heightened threats and pressure, particularly from Israel and the U.S., after ICC Prosecutor Karim Khan requested arrest warrants for Israeli leaders over alleged war crimes in Gaza (Davies, 2024). These actions prompted sharp political backlash, with threats of retaliation against the Court and its officials. UN experts condemned these threats, warning they undermined international justice. Despite this, 93 ICC member states reaffirmed their "unwavering support" for the Court in June 2024, standing against political interference and reasserting the importance of the ICC's role in ensuring international justice (Vignoli, 2024). In light of this situation, it is necessary to reconsider the reasons for the conflict between the court and international society from a law perspective and try to find a solution.

The ICC faces a range of complex problems, which necessitates in-depth analyses of the peculiarities of its activities. Meanwhile, it is characteristic that recent researchers have not paid enough attention to this problem. L. Mou (2021) investigated China's exclusionary rule for unlawfully obtained evidence and compared it to procedures at the ICC. The study determined that China's approach, motivated by political reasons, restricts the removal of such information, prioritising state control over justice in court proceedings. In contrast, the ICC follows tougher regulations to ensure the integrity of international justice. This comparative research highlights the political forces that shape legal systems across nations. B. Van Schaack (2020) investigated the complicated political landscape surrounding Syria's possible referral to the ICC. The study determined that geopolitical factors, notably the participation of permanent members of the United Nations Security Council, have hampered accountability for violations in Syria. B. Van Schaack (2020) contends that political considerations frequently impede international justice procedures, limiting the ICC's ability to handle serious crimes.

R.J. Mukama (2020) investigates the relationship between universal jurisdiction and the ICC's attempts to attain global criminal justice. The report indicates that, while universal jurisdiction might supplement the ICC's work, it confronts considerable obstacles such as inconsistent state participation and political opposition. R.J. Mukama (2020) emphasises the need for stronger international legal frameworks to increase the effectiveness of universal jurisdiction in addressing impunity. L.T. Chigowe (2020) examined the relationship between the ICC and the UN Security Council and concluded that it is characterised by both cooperation and conflict. The analysis revealed occasions in which the Council's political actions assisted or hampered the ICC's work, raising concerns about the impact of political agendas on international justice. L.T. Chigowe (2020) advocates for reforms to guarantee that the ICC is independent of political pressures.

Z. Geng (2023) explored the issue of selective justice inside the ICC, specifically how the court's emphasis on certain cases over others causes perceptions of prejudice. The research determined that the ICC's selective prosecution is motivated by practical restrictions like as resource limits and geopolitical concerns, but that this has harmed the court's legitimacy in certain regions. L. Zeng (2021) examined the historical relevance of the ICC legislation in establishing current international law. The research found that the ICC is a significant step forward in the international legal order, offering a tool for holding individuals accountable for the most heinous crimes. L. Zeng (2021) emphasised the statute's significance in supporting global peace and stability, but also highlighted the problems created by non-cooperation from major powers.

The study of the conclusions drawn by scholars and the result of their research provides a better understanding of the current status and problems of the court. The purpose of this research is to explore the tension between the ICC idealistic foundations and the practical challenges it faces while operating in a highly politicised international environment where national sovereignty, varying legal systems, and political interests frequently limit its effectiveness. To address this, the research outlines three tasks:

- to analyse the influence of national sovereignty on the ICC's enforcement capacities, focussing on case studies like South Africa's reluctance to arrest Vladimir Putin despite ICC warrants;
- to examine how political factors impact governments' willingness to assist with the ICC, including the US's use of sanctions to hinder investigations;
- to investigate how differing legal traditions and political cultures, especially in non-Western nations, impact worldwide acceptability and implementation of ICC jurisdiction.

Materials and methods

This study used a variety of specialised legal research and analysis methodologies to investigate the obstacles that the ICC encounters in its interactions with national legal systems. Doctrinal analysis was the primary study approach, with an emphasis on interpreting important legal documents that establish the ICC's authority, such as the Rome Statute on the International Criminal Court (2010), which outlines the ICC's jurisdiction, functions, and restrictions. The doctrinal method was also used to examine international treaties, such as the United Nations General Assembly Resolution No. 55/25, "United Nations Convention against Transnational Organised Crime" (2000), and the Treaty on the Prohibition of Nuclear Weapons (2017). The analysis of these legal documents showed the ICC's origins, member states' duties, and obstacles arising from varied levels of commitment to international criminal law.

A comparative legal analysis was used to determine the disparities between national laws and ICC norms, particularly in terms of human rights and the criminal penalty. In this regard, the research examined how Afghanistan's Penal Code (2017), which allows the death sentence, differs from the ICC's prohibition on capital punishment, as specified in Article 77 of the Rome Statute (2010). Brazil's Law No. 13.260 "On Anti-Terrorism" (2016) and Law of Republic of India No. 37 "On Unlawful Activities (Prevention)" (1967), both of which include provisions for long-term

imprisonment and ambiguous definitions of terrorism, were examined to show how national security laws can conflict with the ICC's emphasis on human rights and due process. The study examined the criminal legislation of Afghanistan, Brazil, Colombia, India, the Philippines, and Puerto Rico to identify discrepancies between their national legal systems and the ICC's principles, notably those concerning human rights, accountability, and rehabilitation.

Case law analysis was utilised to examine significant ICC prosecutions, including the conviction of D. Ongwen, a former Lord's Resistance Army commander, for war crimes and crimes against humanity. This case highlighted how the ICC acts in situations where national legal systems may refuse to prosecute. Another case, the acquittal of former Ivory Coast President L. Gbagbo, illustrated the court's acknowledgement of national sovereignty in its decision-making procedures. These instances revealed the complicated mechanics of upholding international justice, particularly when national and international interests overlapped.

Political-legal research was carried out to determine how geopolitical interests affect state cooperation with the ICC. For instance, South Africa's reluctance to arrest Vladimir Putin, despite being a Rome Statute signatory, demonstrated how national security and diplomatic immunity sometimes outweigh ICC demands. The study additionally explored Kenya's successful lobbying within the African Union to prevent the prosecution of President U. Kenyatta and Deputy President W. Ruto, demonstrating how political pressure may impede the court's efforts to prosecute high-ranking officials for crimes against humanity. This investigation focused on the larger political variables that influence the ICC's efficacy.

The content analysis of reports from organisations such as the United Nations (2023) and the World Economic Forum (2023) was employed to offer context for the ICC's strategic activities. For example, the International Criminal Court's (2023a) strategic plans for 2023-2025 were examined to evaluate the court's efforts to strengthen collaboration with member states and civil society. Reports from the Death Penalty Information Centre (2024) were analysed to contrast global trends in death punishment with the ICC's emphasis on rehabilitation rather than retribution, adding another degree of complication to the court's international mission. Using doctrinal, comparative, case law, political-legal, and content analysis methods allowed for a more nuanced analysis of how the ICC navigates the complicated political realities of a world controlled by sovereign countries.

Results

The modern world has witnessed the birth of the ICC as the first permanent international criminal justice institution in the history of mankind. Today, this legal phenomenon raises several important questions and challenges that require deeper study and understanding. The ICC is the result of the realisation of an ideal concept developed under the influence of the world federalism movement, so it inevitably has various conflicts with the real world. The most fundamental conflict among their many is that the basis of its existence is designed by idealists according to a single national legal system, while the real international environment is highly politicised and is a binary legal system.

A prerequisite for the effective functioning of the court is the existence of world government in the international community and the recognition of international criminal law as world law. In actuality, the international community, ruled by sovereign nations with opposing political agendas, is unable to fully embrace the ideas of global federalism. Consequently, the task for the ICC is to bridge the gap between its idealistic foundations and the practical complexity of a highly politicised world. Recent achievements of the ICC highlight its ongoing efforts to address international crimes and uphold justice. A notable development is the conviction of D. Ongwen, a former commander of the Lord's Resistance Army, who was sentenced to 25 years for committing 61 war crimes and crimes against humanity in Northern Uganda (Boddy, 2023). In June 2023, the ICC launched strategic plans for 2023-2025 aimed at enhancing its operational effectiveness and reinforcing its relationships with states and civil society (International Criminal Court, 2023a). This marks a significant effort to adapt to the complex international environment in which the court operates, as it seeks to balance its mandate with the political realities of securing cooperation from states.

First of all, the international community on which the ICC depends is a highly politicised and competitive society. In a competitive international society, it is virtually impossible to establish a world government (United Nations, 2023; World Economic Forum, 2023). This also means that the premise of an international unified legal system does not currently exist either. It is important to note that international criminal law, as represented by the Rome Statute, is not an example of worldwide law and is subject to serious politicisation. Also, world law is closely related to world government. As C. Cowley and N. Padfield (2024) note, the final stage of law development is world law. At the stage of world law, the laws of different countries and all kinds of laws will eventually tend to unify and become laws applicable to the whole world, they will be implemented by the world government, which will lead to the disappearance of the laws of different countries.

In 2024, the world community is still based on sovereign states and a world government does not yet exist. Furthermore, the level of development of the rule of law varies from country to country around the world, and there are also great differences in the legal culture and legal system of different countries (Baturin & Moroz, 2024). Countries' perception of international crime and international criminal law is also full of contradictions, as illustrated by the fact that only 123 states are parties to the Rome Statute (2010). International criminal law does not only refer to the Rome Statute but also includes various treaties on criminal matters developed or recognised by countries.

Notable examples include the United Nations General Assembly Resolution No. 58/4 "United Nations Convention against Corruption" (2003), which addresses corruption in both the public and private sectors, and the United Nations General Assembly Resolution No. 55/25 "United Nations Convention against Transnational Organized Crime" (2000), which aims to combat organised crime across national borders. Furthermore, the Treaty on the Prohibition of Nuclear Weapons (2017) indicates a growing worldwide agreement on concerns concerning weapons of mass destruction and its consequences for global security. These treaties seek to address specific criminal and human rights concerns by providing legal frameworks that supplement the Rome Statute (2010). However, they represent additional political and legal obstacles. Inconsistencies in enforcement and

accountability might result from different countries' promises and interpretations of these agreements. For example, the United Nations General Assembly Resolution No. 57/199 "Optional Protocol to the Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment" (2002) faces implementation challenges due to varying national legal standards and levels of political will among states. Recent reports indicate that countries fail to align their domestic laws with the Convention, leading to inconsistent enforcement (World Court Rules, 2023).

However, there is currently no international criminal law instrument recognised or signed by all countries in the global community. Therefore, international criminal law is not the law of the world. As rightly pointed out by L. Henkin (2020), the ICC is created based on political decisions, reflecting the political proposals of the interstate system. Considering the problems of this court, R.H. Steinberg (2024) notes that in the legislative process of international criminal law, the participants are diplomats, not experts in international criminal law, comparative criminal law, or procedural law. It should also be noted that world criminal law, with the Rome Statute at its core, mainly reflects the legal ideas of the Western world, and its universality is somewhat lacking, making it difficult for the non-Western world to recognise it.

Article 170 of the Penal Code of Afghanistan (2017) allows for the death sentence for certain offences, including murder and terrorism (United Nations Assistance Mission in Afghanistan, 2023). This is in sharp contrast to Article 77 of the Rome Statute (2010), which forbids the application of the death penalty. The ICC prioritises rehabilitation above retribution, which aligns with international human rights principles that oppose capital punishment. The Afghan legal structure takes a punitive approach that contradicts these objectives, prolonging cycles of violence rather than promoting peace. The Death Penalty Information Centre (2024) demonstrates that countries that abolish the death penalty tend to experience lower rates of violent crime, suggesting that punitive measures do not effectively enhance public safety.

Law of Brazil No. 13.260, "On Anti-Terrorism" (2016), has sparked worries about its wide definitions and its abuse against political dissenters. Article 2 defines terrorism in ambiguous words that might include a wide range of actions, including protests. This opposes Article 7 of the Rome Statute (2010), which defines crimes against humanity and emphasises the importance of being explicit when characterising such acts. The potential for misuse of the Anti-Terrorism Law against political dissenters threatens the very foundations of democracy and civil rights in Brazil, revealing a growing trend where national security concerns are prioritised over individual freedoms.

Law of Colombia No. 975 (2005), often known as the Justice and Peace Law, offers lower terms for paramilitary members who demobilise and confess to their crimes. While intended to promote peace, this law may impede accountability for major crimes such as war crimes and crimes against humanity, as defined in Articles 5 and 21 of the Rome Statute (2010). The ICC requires nations to provide responsibility for such offences, implying that Colombia's policy may contradict its international legal obligations. This dilemma raises critical questions about the effectiveness of transitional justice mechanisms. In a legal environment where offenders can negotiate leniency, the message sent to society is one of tolerance towards severe violations, which can further embolden those who commit such acts.

Law of Republic of India No. 37 "On the Unlawful Activities (Prevention)" (1967) in India provides for long-term imprisonment without prosecution and has been criticised for targeting certain populations. Article 9 of the Rome Statute (2010) protects the right to a fair trial and protection from arbitrary arrest. By permitting prolonged detention without trial, the UAPA risks normalising arbitrary detention and undermining the legal safeguards intended to protect individuals from state overreach. The lack of accountability for actions taken under this law raises alarms about the potential for human rights abuses. This legal framework reflects a broader global trend where states increasingly prioritise security over fundamental rights, posing significant challenges to the principles of justice that the ICC advocates. This disparity exposes a fundamental discrepancy between Indian domestic law and international standards established by the ICC.

Republic Act of Philippines No. 11479 (2020), commonly referred to as the Anti-Terrorism Act of 2020, has been criticised in the Philippines for its wide definitions of terrorism and clauses that allow for warrantless arrests. Article 15 of the Rome Statute (2010) emphasises fair trial rights and due process guarantees, which are jeopardised by this law. The Philippine government's stance has resulted in massive human rights breaches, including extrajudicial murders, which clearly contradicts the principles endorsed by the ICC to prevent such crimes.

While Puerto Rico is a US territory, local laws frequently mirror US government policy, which may contradict international conventions. Federal drug regulations sometimes inflict harsh punishments without taking into account mitigating circumstances or rehabilitation attempts (Controlled Substances Act, 2023). This approach defies Article 10 of the ICC Statute, which calls for compassionate treatment and rehabilitation of criminals. Puerto Rican punitive approach perpetuates cycles of criminality and fails to address the underlying social issues contributing to drug-related offenses. The lack of a rehabilitative focus in sentencing indicates a legal culture that prioritises punishment over social reintegration, which ultimately hampers efforts to build a more just society.

The review of criminal legislation in Afghanistan, Brazil, Colombia, India, the Philippines, and Puerto Rico demonstrates major contradictions with the principles set by the Rome Statute (2010). These contradictions go beyond legal differences, emphasising broader socioeconomic issues in which governments frequently prioritise power above justice and responsibility. Each country's approach reflects its own cultural, historical, and political backgrounds, which influence how laws are developed and implemented (Spytska, 2023). However, the ongoing conflicts between local legislation and international norms highlight the critical need for reform. Aligning national frameworks with the ICC principles is critical for encouraging responsibility, defending human rights, and prioritising rehabilitation over retribution. By incorporating the ICC's principles into their legal systems, these countries may help break the cycle of violence and impunity. Only through such efforts can justice be realised, opening up opportunities for a fairer global system that protects fundamental freedoms and advances human rights. The shortcomings in these countries' legal systems highlight the continuous challenges they confront in

promoting accountability and protecting human rights within their diverse historical and political contexts.

The problem of multiple equilibria often arises in the system of construction. M. Eilstrup-Sangiovanni and D. Verdier (2024) explained system construction using the coordination game model. The scholar believed that the distribution of national power can better explain the nature of institutional devices. In general, powerful countries have a strong ability to shape the rules of the social game, and the preferences of the weak are difficult to fully reflect. For example, the Western world played a leading role in the creation of the Rome Statute. During the preparatory phase of the statute, the "like-minded countries", with Canada, Australia, Germany, Finland, and other medium-powered European and American countries in the leading role, almost monopolised all nominations for the presidency of the working group. Furthermore, since there is no world government in the global community, the obligations of state parties to cooperate under the Rome Statute (2010) are not binding. The peculiarity of international criminal justice cases defines the interests to which countries should pay attention when attempting to investigate such offences and punish suspects, namely the impact on internal peace and security and the stability and direction of the political situation. However, when the target of the trial is a government official or even the current president of a country, based on the particularities of status and the representativeness of actions, the offences brought to trial may initially largely reflect the sovereign will of the country. Despite the importance of preventing and punishing international crimes, this value objective cannot override the political preferences of nation-states for national security and stability.

The state and the ICC frequently disagree, primarily on the admissibility of the case and the execution of the arrest warrant. This dilemma is shown by South Africa's unwillingness to arrest V. Putin, who is wanted by the ICC for war crimes (Camut, 2023). South Africa, as a member of the Rome Statute (2010), is legally obligated to execute such orders. Nonetheless, it has expressed reservations about diplomatic immunity and its geopolitical ramifications, showing a preference for national interests above international obligations. Article 27 of the Rome Statute (2010) clearly says that no head of state is immune from prosecution for international crimes. However, countries such as South Africa have used diplomatic immunity as a justification for not prosecuting leaders such as Putin, reflecting wider political issues. South Africa's hesitation to arrest Putin is similar to its earlier unwillingness to imprison Sudan's former president, Omar al-Bashir, despite an ICC warrant (Petit, 2020). This trend shows how political ties within organisations such as the African Union might impact state behaviour regarding ICC commitments. Historically, the AU has pushed its member states to oppose ICC mandates, claiming that such cooperation may jeopardise regional diplomatic efforts.

The ICC's success is primarily dependent on state assistance, particularly in cases involving individuals with power. This dependence highlights the ICC's weaknesses, as it lacks regular enforcement measures to guarantee compliance with its verdicts. The continuous conflict between national sovereignty and international accountability indicates that change may be required to improve the ICC's enforcement powers. Potential reforms might include increasing international pressure on non-compliant governments or adopting more specific procedures for addressing disputes between national interests and global legal duties.

States seek to prevent their nationals or high-level officials from being investigated or prosecuted at the ICC. For example, countries like the United States have used their political weight and influence to stall proceedings. In 2020, the US placed sanctions on ICC personnel, including former prosecutor Fatou Bensouda, to prevent the court from investigating suspected war crimes in Afghanistan. The US also stated that U.S. persons should not be subject to the ICC's jurisdiction (United States imposes…, 2021). Similarly, Kenya used diplomatic pressure within the African Union (AU) to influence other states and block prosecution attempts against President U. Kenyatta and Deputy President W. Ruto during their ICC trials for post-election violence, garnering AU support to defer the cases to avoid regional destabilisation.

Even if the ICC has ordered the detention of a defendant, nation-states may face political obstacles in enforcing such warrants. For example, the arrest order for Russian President Vladimir Putin, issued in March 2023 for war crimes in Ukraine, confronts substantial political obstacles (Alexander, 2023). Russia refuses to recognise the ICC's jurisdiction and has issued threats, making warrant enforcement improbable. From an international law standpoint, this incident underscores the limitations of the ICC's dependence on state cooperation for enforcement. Non-signatory governments, like Russia, are not required to cooperate, and even signatory states face serious diplomatic and political consequences, such as instability or retribution, if they seek to implement the warrant. While the International Criminal Court's legal authority is clear, the actual enforcement of its arrest warrants is severely hampered by geopolitical realities (Symonova, 2024). They may fear the possible consequences for their national security and stability if they execute an arrest warrant. States may employ diplomatic tactics, such as threats of sanctions or pressure on other countries, to protect their populations or accomplish political objectives. A significant example was when US politicians threatened ICC Prosecutor Karim Khan with penalties if arrest warrants were issued for Israeli leaders during the Gaza crisis (Hibbitts, 2024). These diplomatic threats, intended to shield Israeli leaders, demonstrate how powerful governments may hinder the ICC's activities through political and diplomatic pressure.

The Rome Statute is intended to punish the most serious international crimes and to maintain world security, peace, and human well-being, that is, to effectively punish the perpetrators of serious crimes and to prevent the emergence of new international crimes through the trial and punishment of the perpetrators of crimes before the courts, especially the rulers of the countries that committed the offences under the statute. This is done to ensure the security of the entire world community and the well-being of all mankind (Steinberg, 2024). According to this logic, the court management of the global community follows a linear logic, emphasising that there is no peace without justice, i.e., trials help to restore truth, maintain justice, and then restore peace.

However, individuals in each country or international organisation appeal to their own tradition in social life to find solutions that best suit their interests in various disputes and conflicts, and on this basis, in the process of human interaction, a set of rules gradually emerges to suit their development and changes in social life. Take the African Union as an example (due to the African Union's vehement

opposition to the ICC). K.A. Prorok (2020) notes that from the African Union's perspective, for the sake of internal order, the state can moderate the pursuit of personal justice to prevent more serious injustices, so ICC intervention in several African countries based on linear logic is considered "inappropriate". This is especially evident in Uganda, where the ICC's 2005 arrest warrant for Lord's Resistance Army (LRA) leader Joseph Kony hampered the Disarmament, Demobilisation, and Reintegration (DDR) process by discouraging combatants from surrendering under the country's Amnesty Act (International Criminal Court, 2023b). The intervention, intended to bring justice, actually exacerbated the conflict by interrupting settlement talks. A similar situation occurred in the Democratic Republic of the Congo, where the arrest of rebel commander Mathieu Ngudjolo in 2008, after he had been given amnesty as part of a peace agreement, sowed suspicion among former combatants and weakened the fragile truce (Clark, 2021). These incidents demonstrate how, rather than leading to peace, ICC interventions can often aggravate disputes and have more severe repercussions.

It is possible to conclude that since there is no world government and no international criminal code in the global community, the ICC, as an ideal conceptual solution, has inevitably faced many challenges from international society. The inability of state parties to fulfil their obligations to cooperate and the lack of effort in governance are all direct manifestations of the lack of a practical basis for the ideal design of the ICC. Faced with the challenges of international society, the global community must properly position the ICC from a realistic perspective so that it can intelligently fulfil its role in the global community.

In the process of a rational return to international society, the court must be held to this standard – not to deny the role of the court, but also not to exaggerate it. A "degree" must be considered, and that "degree" is "respect for national sovereignty". Since the common interests of the world community are based on national interests, the principle of national sovereignty remains a basic principle of international law and even international criminal law. Despite the importance of human rights, the principle of human rights is not above the principle of sovereignty.

To further appreciate how this balancing of human rights and sovereignty is handled in practice, consider some situations in which the ICC has navigated these principles. In various cases, the court has shown an understanding of the need to respect national sovereignty while carrying out its responsibility to ensure justice for international crimes. For example, in the case of former Ivory Coast president L. Gbagbo, the ICC cleared him of charges connected to post-election violence in 2019 (International Criminal Court, 2021a). The court underlined the significance of due process, recognising that national sovereignty played a crucial part in permitting Ivorian authorities to oversee the case. The court recognised national sovereignty by empowering Ivorian authorities to handle some parts of the case, maintaining a balance between international monitoring and domestic legal systems. Similarly, in the conviction of Bosco Ntaganda, a former Congolese military leader, the ICC took into account the complicated local dynamics in the Democratic Republic of the Congo. Ntaganda was convicted of war crimes and crimes against humanity in 2019, however ICC recognised the role of national courts in prosecuting these crimes (International Criminal Court, 2021b). By asserting its authority only after concluding that local courts were unable or unwilling to act, the ICC honoured the Rome Statute's complementarity principle, which prioritises national legal institutions where reasonable. Even in the pursuit of justice, the court must carefully weigh its duties with the need to respect states' autonomy.

Even those international criminal lawyers who advocate the use of international criminal law to limit and prevent violations by states to protect human rights must recognise that there is a tension between values and expectations universally accepted by different people and national political interests, but international rules of criminal law must evolve within this tension (Steinberg, 2024). As L. Henkin (2020), international organisations promote national cooperation in technology, society, and culture. They will not make "supranational" decisions in the interests of all countries or all people anywhere. As an international organisation without a coercive body, the effective operation of the ICC depends heavily on the cooperation of state parties. To ensure the smooth operation of the court in the future and to fulfil its role, the sovereignty of States parties must be respected to increase their willingness to cooperate.

Thus, although international criminal law can adjust international relations by guiding, assessing or even condemning the behaviour of States, there are many instances where international criminal law is not followed and the effectiveness of international criminal law in restricting the behaviour of States is often questioned. The reason is that the world community is still a political society in which sovereign states are the basic unit, and in its essence, it is a political society. The international relations governed by international criminal law are more political than legal. Therefore, international criminal law and the ICC must consider the highly politicised nature of the world community.

Discussion

There are various approaches to understanding the legal nature of the ICC and the presence or absence of political influence on its activities. For example, F. Mbirigi and P. Niyonizigiye (2024) noted that over the past decades, when there was an institutional development of international criminal law, starting from the 1990s, International Criminal Courts and tribunals, including the ICC, present their mission as apolitical, where only legal aspects are important, and politics is subordinated to law. F. Boehme (2020) described the ICC as apolitical because the Rome Statute binds decision-makers at the ICC and largely prohibits them from taking political considerations into account. The presentation of the ICC, according to L.N. Malu (2019), as explicitly apolitical is intended to reaffirm its credibility and legitimacy.

Although the ICC itself and some scholars consider it a legal institution free from political interference, this view also reveals its weaknesses: it is established based on political will, the crimes under its jurisdiction are linked to politics, and its effective functioning depends on the political will of sovereign states. Therefore, it is difficult to agree with the above position of scholars, given the politicised nature of the global community and its influence on the court's work, as argued in this study. Objectively speaking, the ICC remains an institution influenced by international political forces and has international political influence. The same position is taken by some academic researchers, such as H. Jo *et al.* (2021), who identified that throughout the

history of different conflicts, the main conflicting parties were not always afraid of the ICC, but they were aware and cautious about the political influence of this court, and, in turn, this caution reshaped their behaviour in conflicts and led to institutional changes that increased the level of responsibility in countries.

The effective functioning of the ICC depends on the political will of sovereign states. To date, only 123 states parties have signed the Rome Statute, and several major countries have not ratified it. The ICC is far from being universally recognised and the court itself has no executive body, which also means that the court's judicial actions are heavily dependent on the political will of sovereign states. Many countries co-operate with and refer cases to the ICC not out of a desire for international criminal justice, but to combat opposition forces at home. For example, Rwanda borders Uganda to the north and is exposed to the rebel forces of the Lord's Resistance Army in Uganda. In 2004, the Rwandan government referred the situation of this army on its territory to the ICC. It aimed to use the influence of the ICC to discredit the Lord's Resistance Army and combat its impact. However, after the ICC took the case to force the anti-government organisations to agree to hold peace talks with the government, the Rwandan government promised to pardon the criminal responsibility of the leaders of the anti-government organisations. This consideration of political factors led directly to the conflict between the Rwandan government and the ICC (Clark, 2021).

The reason for the conflict between the ICC and the Rwandan government is not only that the Rwandan government's assurances of criminal pardons for Lord's Resistance Army leaders undermine the credibility of the court, but also that it is difficult to conduct investigations without the support of the Rwandan government. The court's prosecutor is therefore often influenced by political factors in deciding whether to investigate. The most important influence is that the prosecutor must consider whether the investigation can win support from the countries involved (Voitenko, 2023). When the court cannot gain support from states or international organisations, its work is hampered.

ICC judicial actions also have a certain political impact on the global community, sometimes even negative. For example, the ICC intervention in Uganda in 2004 affected peace talks between the government and the Lord's Resistance Army, which exacerbated the conflict (Schomerus, 2021). The situation in Uganda reflects the tension between the principles of restorative justice in Africa and the repressive justice of the ICC. The issue of criminal accountability is a legal issue, but in practice, it becomes a political issue. Political factors not only directly affect the degree of co-operation of the countries concerned, but also directly affect the work of the ICC and the development of the peace process. L.G. Iommi (2020) supports this point of view, highlighting that political pressures from member states or politicians can influence the ICC's decision to accept certain cases and initiate investigations. This may include refusal to consider cases where the culpability of certain individuals may cause diplomatic or political disputes. The influence of political factors on the work of the ICC is also pointed out by S.L. Ochs (2021), drawing attention to the fact that for this purpose states use propaganda through the media. Thus, science repeatedly notes the influence of politics on the work and decision-making of the ICC.

Thus, the world community must have a clear understanding of the court because the court is not only a judicial institution operating under the Rome Statute, but also an international institution operating under various political factors, and its influence and actions go far beyond the legal sphere. Therefore, in the future functioning of the ICC, not only legal factors but also political factors need to be considered when considering whether and how to intervene. Otherwise, the court may face strong resistance from the states subject to its jurisdiction. Each country has different priorities in choosing justice and peace (Abdrasulov *et al.*, 2024). The ICC must therefore recognise the characteristics of the binary legal system of the global community and rationally understand the limitations of the application of international criminal law.

As a rule, the court will naturally play a role in international relations, but objectively speaking, the ICC's role is very limited. International criminal law is not world law. According to C. Geertz (2015), the law is local knowledge, and the concept of "local" refers not only to space, time, class, and various issues but also to link the local understanding of what happened with the local imagination of what might have happened. This view rightly emphasises the importance of considering differences in culture, ideology and legal traditions when considering the role of the ICC. Due to the significant differences in world systems, ideologies, and legal concepts among countries around the world, it is difficult to form a supranational international criminal code. Even if the provisions of Article 13 of the Rome Statute (2010) grant the ICC powers similar to universal jurisdiction, the international community often resists the court's intervention because of its uniform logic of governance and choice of values.

Furthermore, the ICC and national criminal law belong to two different systems, and the application of international criminal law is limited to national boundaries and can only be used as a complement to national criminal law. International criminal law is a variety of treaties or customs related to criminal matters signed or recognised by countries. From a historical perspective, international criminal law is just one branch of national criminal law. International criminal law only binds a member state after explicitly recognising it, which means that the law ends with national borders. Modern international relations are primarily political relations between states as the main subject of both international law and international politics is the state, and the state in its essence is a political entity (Martsenko & Lukasevych-Krutnyk, 2024). Because of its intrinsic nature, international criminal law can only play a secondary role in the international community and cannot be compared to national criminal law. In this context, M.Z. Oner (2021) rightly noted that the principle of complementarity is a formula created by the founders of the ICC who sought to balance the conflicting interests of international justice and state sovereignty.

Some scholars hope that the ICC will apply a direct system of enforcement. For example, K. Soler (2019) pointed out that the lack of enforcement powers is a serious limitation that paralyses the functions of the ICC. However, at the diplomatic conference in Rome, the views of different countries reflected the international society that national sovereignty must be respected (Prorok, 2020). This means that some countries do not want the ICC to have direct enforcement powers to avoid interference in their internal affairs. This situation highlights the complexity of the issue and the need to consider different perspectives in the design

and application of international instruments such as the ICC, as well as the impossibility of making a direct enforcement system a reality today.

The need to respect national sovereignty is also the reason why the Rome Statute finally compromises with international society and establishes the principle of supplementary jurisdiction. The principle of supplementary jurisdiction prioritises the jurisdiction of national courts, while the ICC is only complementary to national courts. Once a state with jurisdiction begins or investigates or prosecution of a situation, the ICC cannot exercise its jurisdiction. The principle of supplementary jurisdiction, on the one hand, encourages national courts to assume a role in punishing the perpetrators of international crimes; on the other hand, it encourages States Parties to improve their national judicial system and establish a cooperation mechanism based on national criminal jurisdiction and supplemented by international criminal jurisdiction to eliminate impunity in the international criminal sphere. For example, L.N. Sadat (2023), notes that the complementary jurisdiction of the ICC is recognised by states because of the need for courts that can perform acts that are not possible under the national legal system. This approach also notes the importance of the ICC in combating impunity in the international criminal sphere but focuses more on the role of national courts than on the role of international mechanisms.

Emphasising the complementary jurisdiction of the ICC does not mean excluding its jurisdiction over international crimes but is based on realities. On the one hand, the principle of supplementary jurisdiction can encourage state parties to take the initiative in judicial action and reduce fears of ICC interference with judicial sovereignty; on the other hand, as an external pressure, the ICC can effectively encourage active action by states parties and also achieve the ICC's goal of punishing crimes. However, it should be noted that the principle of supplementary jurisdiction essentially rejects the supranational character of the ICC. The court is only a complement to national courts, not a substitute for them, and the preservation of national sovereignty remains a prerequisite for the exercise of ICC jurisdiction. State initiative in judicial action may indeed make judicial action by the ICC more difficult to some extent, but the basis of the dual legal system of the world community is an undeniable fact. It is reckless to try to break this paradigm, which will also provoke opposition from state parties.

Conclusions

The ICC faces many challenges related to the international society, including the absence of a world government and a common international criminal code. The interaction between the ICC and States Parties is complicated by political interests, especially in the area of national security. International criminal law and the ICC should be viewed in the light of the politicised world community, where sovereign states play the greatest role. Different countries have different priorities for justice and peace, and the ICC must address this diversity and the limitations of the application of international criminal law.

Influenced by the global federalism movement, the ICC is an ideal conceptual solution developed by idealists under a single national system of law. However, real society is highly politicised, and functions based on a dual legal system. Therefore, the implementation of an idealistic single concept in real society is doomed to difficulties. The ICC must recognise that the state has always been the dominant motive of the national movement and has always had priority in international law and that the state in its essence is a political entity and the dual coexistence of national criminal law and international criminal law is represented in the international community. Therefore, the ICC must realise its political nature, the principle of supplementary jurisdiction and its subsidiary function. If the ICC deviates from realistic foundations and over-extends its role, conflicts between the international community and the ICC will only increase and the acceptance of the court by the international community will diminish.

The analysis of specific cases and national legislation in the Global South, such as South Africa's refusal to arrest Putin over diplomatic immunity concerns or Kenya's opposition to ICC proceedings against President U. Kenyatta, demonstrates how political interests frequently undermine the ICC's enforcement of international criminal law. National laws, such as Afghanistan's Penal Code, which allows the death sentence, and Colombia's Justice and Peace Law, which grants leniency to paramilitary members, highlight the difficulties of reconciling local legal systems with the ICC's goals. These cases show how the ICC must manage a complicated web of political and legal realities, especially in places where sovereign goals frequently clash with international responsibilities.

The ICC should continue to cooperate with state parties and seek dialogue to resolve differences and improve cooperation. It is important to find a balance between criminal aspects and political interests, considering the realities of the global community. The right approach to the complementary jurisdiction of the ICC can encourage proactive action by state parties and increase the effectiveness of the ICC in punishing crimes. Prospects for further research may include examining the influence of political factors on ICC decisions and assessing their implications for international justice.

Acknowledgements

None.

Conflict of interest

None.

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Питання обмеження міжнародного кримінального правосуддя в сучасному світі

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Анотація. У дослідженні розглянуто проблеми, пов'язані з Міжнародним кримінальним судом та його сучасною роллю у світі. Вихід деяких країн з Африканського Союзу та санкції з боку Сполучених Штатів Америки ставлять питання про його роль з реалістичної точки зору. Це дослідження мало на меті вивчити суперечності між ідеологічними засадами Міжнародного кримінального суду та практичними перешкодами, з якими він стикається в політизованому міжнародному світі, що часто обмежує його ефективність через державний суверенітет, різноманітні правові системи та політичні інтереси. Для досягнення цієї мети було використано доктринальний аналіз, порівняльно-правовий аналіз, аналіз судової практики, політико-правовий аналіз та контент-аналіз. Розкрито особливості становлення Міжнародного кримінального суду. Підкреслено, що цей суд, створений на ідеалістичних засадах, стикається з викликами, серед яких вихід держав-членів Африканського Союзу, санкції США, опір країн, які ставлять на перше місце національний суверенітет і політичні інтереси. З'ясовано, що конфлікти між державами-учасницями та судом, а також проблеми в управлінні судом підкреслюють невідповідність між ідеальною концепцією Міжнародного кримінального суду та реальною основою його роботи. Підкреслюється важливість раціонального повернення Міжнародного кримінального суду та більш збалансованого сприйняття його ролі в сучасному світі. Зроблено висновок, що перебільшення значення суду може загрожувати його подальшому існуванню, а тому важливо враховувати реалії сучасної політики у його подальшому розвитку та функціонуванні. Розроблено рекомендації, спрямовані на підвищення ефективності практики суду. У дослідженні надано науково-практичну інформацію для юристів-міжнародників, політиків та дипломатів, підкреслено важливість узгодження національного суверенітету та правових систем з мандатами Міжнародного кримінального суду з метою покращення співпраці та ефективності, особливо в політично нестабільних регіонах, таких як Африка та Східна Європа

Ключові слова: вихід Африканського Союзу; санкції; роль у сучасному правосудді; глобальні політичні виклики; ідеалістичні засади

UDC 347.426.6:355.01
Doi: 10.32518/sals4.2024.132

Соціально-правові студії. 2024. Т. 7, № 4
Social & Legal Studios. 2024. Vol. 7, No. 4

Compensation for moral and material damage caused by military actions

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Abstract. The study focused on evaluating the current legal mechanisms regulating compensation for war-inflicted damage, particularly within Ukraine. An analysis is conducted on national and international legal instruments addressing compensation for destroyed property, human rights violations, and environmental damage, alongside proposed improvements to these mechanisms. The purpose of the study was to examine the effectiveness of existing approaches and develop recommendations for their enhancement in the context of modern challenges. The findings indicated that national compensation mechanisms face limitations, especially for individuals whose property is located in temporarily occupied territories. Existing legislation allows for the submission of information regarding damaged or destroyed property but does not provide a sufficiently transparent or effective mechanism for obtaining compensation. It is also noted that individuals residing in territories under Ukrainian control have better access to compensation mechanisms; however, challenges remain due to the lack of a unified approach to damage assessment. Recommendations included the introduction of a unified damage recording mechanism, the establishment of a state fund for preliminary payments, and the adoption of international practices in collective lawsuits, particularly as implemented in the US and EU. In addition, the importance of better integration of international standards of reparation into the Ukrainian legal system was emphasised, in particular in the areas of compensation for environmental damage and human rights violations. The results highlighted the need to improve legislation to ensure fair and effective reparations for war victims, as well as the role of international law in this process

Keywords: compensation mechanisms; transparency of legal processes; damage assessment; collective lawsuits; aggressor accountability

Suggested Citation

Article's History: Received: 29.08.2024 Revised: 23.11.2024 Accepted: 23.12.2024

Yanyshen, V., Isaiev, A., Korobtsova, N., & Puchkovska, I. (2024). Compensation for moral and material damage caused by military actions. *Social & Legal Studios*, 7(4), 132-145. doi: 10.32518/sals4.2024.132.

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Introduction

The war in Ukraine, which was unleashed by Russia in 2014 and escalated into a full-scale invasion in 2022, has caused widespread destruction of residential and critical infrastructure, and numerous human casualties among the civilian population. The Russian armed forces continue to carry out indiscriminate attacks on civilian objects, including residential buildings, hospitals, schools, and other critical infrastructure, jeopardising the lives and well-being of millions of citizens. According to official data from the United Nations (UN), by mid-2024, over 33,000 civilian casualties have been recorded, including the dead and the injured (Human Rights Watch, 2024). According to the analytical team of the Kyiv School of Economics (2024a), compiled within the framework of the "Russia Will Pay" project, the damages caused by the war to Ukrainian infrastructure reached nearly USD 160 billion as of January 2024, including the damages caused by the destruction of the Kakhovka Hydroelectric Power Station in June 2023. The Kyiv School of Economics indicates that approximately 250,000 residential buildings, 212,000 light vehicles, and 16,000 units of municipal transport were damaged or completely destroyed. Nearly 4,000 educational institutions, 1,300 healthcare facilities, and 430 private and state enterprises were affected. Around USD 60 billion in damage was inflicted on Ukraine's environment, including harm from shelling, contamination of territories, and the destruction of ecosystems. Thus, it becomes clear why the issue of compensation for damages caused to civilians as a result of military actions has become particularly urgent (Biliaiev *et al.*, 2023).

The constant destruction of infrastructure and significant economic losses make compensation for damages essential for justice and the country's recovery. Current Ukrainian legislation contains mechanisms for compensating damages, but their implementation faces difficulties. These difficulties are described in the study by N. Mamchenko (2023), who analysed the problems of contemporary Ukrainian legislation regarding compensation mechanisms for destroyed property as a result of the Russian aggression. M. Padalka (2022) discusses the problems of protecting the civilian population in Ukraine. Most of these arise due to systematic violations of international humanitarian law by Russia, especially due to ignoring rules for the protection of civilians during wartime. The author asserts that one of the main problems is insufficiently effective international mechanisms that should punish war crimes. It is also worth mentioning the paper by B. Karnaukh (2022), which analyses the decision of the Supreme Court of Ukraine regarding the possibility for the Russian Federation to invoke state immunity in civil lawsuits filed by the victims of the war between Russia and Ukraine, and focuses on how this could affect future claims for compensation for war-related damages.

V.V. Vapniarchuk *et al.* (2019) explored how to protect property rights in court, particularly when it comes to compensation for damaged or destroyed property due to military actions. In the paper by K. Klyuchka and E. Karmannyi (2017), issues related to compensation for damages caused to civilians during military actions in eastern Ukraine are highlighted, such as the lack of effective compensation mechanisms, the emergence of legal difficulties in determining the responsible party for the damages (particularly due to the difficulty in proving the involvement of specific military formations in the destruction of civilian infrastructure), the country's limited resources for compensation payments, and the fact that Ukrainian legislation is not fully adapted to the conditions of martial law, particularly regarding compensation for civilian damages. This creates legal gaps that complicate the process of obtaining compensation. O. Zaitsev *et al.* (2023) analyse the legal mechanisms and approaches to compensating for non-material damage, focusing on international experience and Ukrainian practice, also addressing specific problems that arise in defining and calculating non-material damage, as well as the challenges of its compensation in the case of military actions.

These studies show that the main aspects related to compensation for damages caused by military actions have been examined. However, the authors of these papers do not propose a comprehensive approach to the issue of compensation, which would include both material and non-material damage, considering how these mechanisms work in practice during war. Furthermore, the mentioned studies lack a detailed analysis of the cooperation between international and national compensation mechanisms and examples of the practical application of existing tort law norms.

The purpose of the study is to analyse the legal mechanisms for compensating damage caused by war, with a focus on Ukraine's experience during active warfare. The main tasks include analysing current Ukrainian legislation and exploring the potential use of international experience to ensure reliable protection for war victims.

Materials and methods

The study aimed to explore the legal aspects of compensation for damages caused by gross human rights violations during armed conflicts. This study was based on the analysis of the Ukrainian legal framework, the Constitution of Ukraine (1996), the Civil Code of Ukraine (2003), Ukrainian laws and Cabinet of Ministers resolutions, as well as international legal acts such as the Geneva Conventions for the Protection of War Victims (1949), the European Convention on Human Rights (1950), the statutes of international tribunals like the Rome Statute of the International Criminal Court (2010), etc. The primary materials for this study include Ukrainian legal regulations alongside international legal instruments governing state responsibility for human rights violations. Specifically, these include UN documents, resolutions, and reports from international organisations such as Human Rights Watch (2024) and the Kyiv School of Economics (2024b), which offered a clear depiction of the material losses sustained by Ukraine between February 2022 and January 2024, underscoring the need for further analysis and enhancement of Ukraine's legislative framework regarding the implementation of compensation mechanisms for war-related damages. The decisions of international courts regarding compensation for damages are analysed separately, including those of the European Court of Human Rights related to conflicts in Bosnia, Kosovo, Iraq, Croatia, the former Yugoslavia, and other conflict zones. In particular, special attention is given to cases that addressed the issue of collective responsibility and the possibility for states to provide compensation to the victims.

The analysis is conducted based on legal doctrines regulating state responsibility for serious human rights violations. The research methodology involved analysing existing legal norms and principles regarding compensation for

damages. For each of the international documents, their practical applicability in real conflicts is examined, including the legal mechanisms that could be used to protect the rights of victims. The study employed a comparative methodology to explore various approaches to compensation for damages across different legal systems. This included comparing international standards, particularly the recommendations of the UN and the European Court of Human Rights, with national compensation mechanisms. The adaptation of these standards by the US and European countries (Bosnia and Herzegovina, Croatia) is considered, especially in the context of recent armed conflicts in Ukraine, Iraq, and Syria.

The study included an examination of international decisions regarding reparations mechanisms for victims of armed conflicts. The key international examples referenced in the analysis include: decisions of the European Court of Human Rights concerning conflicts in Bosnia, Kosovo, Iraq, Croatia, and the former Yugoslavia; reparations mechanisms in Croatia (after the 1991-1995 war, Croatia introduced legislative measures to compensate for destroyed housing and property, but the prolonged court process highlighted the importance of automated payment systems, which could also be applied in Ukraine). Examples of funds for compensating damages caused by armed conflict, financed by international organisations (UN, EU, International Criminal Court), are also examined. A comparison is made between international practices regarding reparations and national mechanisms implemented in specific countries, particularly Ukraine, Bosnia and Herzegovina, where international decisions had been applied. Legal documents and reports from international organisations are analysed to assess the effectiveness of existing compensation mechanisms. The study focused on how international reparations standards could be adapted to contemporary armed conflicts, using the example of the war in Ukraine (since 2014), and what gaps exist in their implementation. Gaps in the current (2022-2024) Ukrainian legislation are also identified, followed by proposals for mechanisms to overcome these shortcomings and corresponding recommendations.

Results

In the context of war, the concept of damage encompasses a wide range of material, physical, and moral losses inflicted on civilians and infrastructure. According to Ukrainian civil law, damage can be classified as “property” and “non-property” (Hudii, 2023). “Property damage” includes direct losses caused to the property of individuals and legal entities, such as the destruction of buildings, enterprises, and damage to infrastructure (e.g., electricity networks). Documentary evidence of the damage is crucial in these cases to obtain compensation provided by national legislation and international norms. For example, the Geneva Conventions (1949) and their additional protocols establish international standards for the protection of civilians during armed conflicts, which serve as the basis for establishing the right to compensation (Best *et al.*, 2023). “Non-property damage” covers violations of rights such as the right to life, physical integrity, and mental health. Compensation for such damage is provided not only by Ukrainian law but also by international legal acts, including the European Convention on Human Rights (1950). The Constitution of Ukraine (1996) also protects the right of every citizen to life and health (Articles 3 and 27), providing grounds for legal action to seek compensation for damages caused by military actions. Notably, due to numerous violations of civil rights during the war, Ukrainian courts often invoke the immunity of the aggressor state when making decisions on compensation for victims. Furthermore, in many cases, the creation of special funds for payments with the support of international partners is planned (Maurer *et al.*, 2023).

Thus, in the context of war, damage in civil law encompasses both property and non-property losses, for which compensation mechanisms exist under both national and international laws. War damage has several distinct characteristics compared to other types of damage, such as domestic, technogenic, or environmental. Table 1 presents the main differences and features of war damage in comparison to other types of damage in civil law.

Table 1. Key differences and features of war damage in comparison to other types of damage in civil law

Criterion	War damage	Other types of damage (domestic, technogenic, environmental)
Source of damage	Military actions: use of weapons, bombings, artillery strikes, mines, etc.	Technogenic disasters, environmental disasters, natural disasters, domestic incidents
Scale of destruction	Can be both mass and individual destruction and losses. Widespread large-scale destruction of infrastructure, buildings, enterprises, often of national importance	Usually limited scale (individual buildings, enterprises), but large-scale destruction can also occur (e.g., in cases of accidents at the Chernobyl Nuclear Power Plant)
Type of victims	Individual and mass casualties among the civilian population, violations of human rights (right to life, health, etc.)	Can be both mass and individual victims
Legal regulation	International humanitarian law, in particular, the Geneva Conventions, and national legislation (Constitution, Civil Code of Ukraine, etc.), including war crimes law	National regulations (in particular, the Civil Code of Ukraine), also provisions of international law may be applied
Compensation for damages	Difficulty in determining defendants and compensation mechanisms; possibility of creating special funds, international reparations. Both national and international regulations are used	Standard compensation procedures according to civil and administrative law. Usually operates through national norms, but international compensation may be applied (e.g., in cases of technogenic disasters)
Types of losses	Property, moral, and physical damage inflicted on both individuals and society in general	Property, moral, and physical damage, depending on the scale and causes

Table 1, Continued

Criterion	War damage	Other types of damage (domestic, technogenic, environmental)
Difficulties of proof	Considerable difficulties due to the chaotic nature and scale of events; the need for documenting violations during active military operations, instability of the war situation, difficulty in collecting evidence	Relatively easier to prove in stable conditions (except for large accidents)

Source: compiled by the authors based on J. Gledhill (2022)

War damage has its own characteristics, as it arises as a result of military operations and is often accompanied by widespread violations of human rights and international humanitarian law, such as indiscriminate attacks on civilian objects (Solis, 2021). Unlike other types of damage, war damage can cover significant territories, including the destruction of infrastructure, residential buildings, and industrial facilities. Such actions have a profound impact on the country's economy and its population. War damage is regulated not only by national legislation but also by international treaties, such as the Geneva Conventions for the Protection of War Victims (1949). This creates difficulties in establishing responsibility and compensation mechanisms.

An overview of Ukrainian legislation concerning compensation for damages caused by war is particularly important in the context of the conflict with Russia. Due to the military actions, Ukrainians face substantial material and moral losses that require legal regulation. Ukrainian laws provide mechanisms for the protection of the rights of victims and compensation for damages, which are based on both national and international legal acts.

Key laws relating to compensation for war damage include the Constitution of Ukraine (1996), which protects the right to life and property. In particular, Articles 3 and 27 guarantee everyone the right to protect their life and property, which provides grounds for compensation for damages caused by war. The Civil Code of Ukraine (2003) defines mechanisms for the compensation of property and non-property damage. Articles 1166 and 1167 regulate compensation for property and moral damages, while Articles 1173-1175 require the state to compensate for damages caused by its bodies, including during wartime. The Law of Ukraine No. 389-VIII "On the Legal Regime of Martial Law" (2015) establishes rules for actions during martial law, the protection of civilians and property, and also provides for compensation mechanisms for damages caused by war. It is worth mentioning the Resolution of the Cabinet of Ministers of Ukraine No. 947 "On Approval of the Procedure for Providing and Determining the Amount of Financial Assistance to Victims of Emergency Situations and the Amount of Financial Compensation to Victims Whose Residential Houses (Apartments) were Destroyed as a Result of a Military Emergency Caused by the Armed Aggression of the Russian Federation" (2013), which provides financial assistance to victims of military emergencies, including for destroyed housing. However, it does not cover internally displaced persons (IDPs) and only applies to those remaining in areas controlled by Ukraine.

In 2017, the State Programme for the Reconstruction of Eastern Ukraine was approved, which included the construction of housing for IDPs, but only for 240 houses (Resolution of the…, 2017). In 2020, a new procedure for compensation payments was adopted, but due to the pandemic, the budget was reduced to UAH 40 million, which complicated the payments (Resolution of the…, 2020). Resolution of the Cabinet of Ministers of Ukraine No. 326 "On Approval of the Procedure for Determining Damage and Losses Caused to Ukraine as a Result of the Armed Aggression of the Russian Federation" (2022) established the procedure for assessing the damage to the housing stock, and in 2023, the Law of Ukraine No. 2923-IX (2023) was adopted. However, this excludes compensation for damage prior to this date, which creates inequality for those affected earlier. Resolution of the Cabinet of Ministers of Ukraine No. 380 (2022) defines the procedure for submitting reports about destroyed or damaged property, including damages before 2022, but this only relates to the submission of information, not the receipt of compensation.

To this list of national laws, the Law of Ukraine No. 638-IV "On Combating Terrorism" (2003) can be added, which provides for compensation for damages to those affected by terrorist acts, which may sometimes be linked to war. The Law of Ukraine No. 1706-VII "On Ensuring the Rights and Freedoms of Internally Displaced Persons" (2015) protects the rights of IDPs, including compensation for lost housing or property due to hostilities or occupation. There are also other laws and resolutions that regulate damage compensation for various groups of victims. For example, the Law of Ukraine No. 1023-XII "On Protection of Consumer Rights" (1991) covers cases where damage is caused by the destruction of goods or services during the war. The Law of Ukraine No. 1192-XIV "On Humanitarian Aid" (1999) regulates the provision and distribution of humanitarian aid among the affected. There are also laws related to the Deposit Guarantee Fund for individuals, which guarantees compensation in case of loss of deposits due to the conflict. The Law of Ukraine No. 1207-VII "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine" (2014) protects the rights of citizens in occupied territories, including compensation for damage to property and life. The Law of Ukraine No. 2011-XII "On Social and Legal Protection of Servicemen and Members of Their Families" (1991) provides for compensation for military personnel who were injured or killed as a result of military actions.

International humanitarian law, including the Geneva Conventions for the Protection of War Victims (1949) and its protocols, is an integral part of Ukrainian legislation and safeguards the rights of civilians during wartime. These documents provide grounds for compensation for damages both at the national and international levels. In addition to the Geneva Conventions, Ukraine is subject to other international agreements governing the protection of civilians and the payment of reparations. The European Court of Human

Rights plays a crucial role in protecting the rights of Ukrainians. The International Covenant on Civil and Political Rights (1966), ratified by Ukraine, protects the right to life and security during wartime, and the UN Human Rights Committee considers complaints about violations, including property-related issues. In the context of war, violations of the right to life (Article 2 of the European Convention on Human Rights (1950)) may serve as grounds for legal claims in cases of war crimes or attacks on civilian objects. Ukraine is also a party to the International Covenant on Economic, Social and Cultural Rights (1966), which guarantees the right to an adequate standard of living (food, clothing, housing) and establishes rules for compensation for destroyed housing or violations of these rights caused by war. Furthermore, Ukraine has signed the Rome Statute of the International Criminal Court (2010) (ratified in August 2024), enabling investigations into war crimes, including property destruction and violence against civilians.

It is also important to mention the Convention Relating to the Status of Refugees (1951), which protects individuals forced to leave Ukraine due to the war, granting them international protection and assistance. The Convention on the Rights of the Child (1989) protects children affected by war, ensuring their right to special protection and compensation for losses related to housing or health. The International Convention for the Protection of All Persons from Enforced Disappearance (2010) provides that victims of enforced disappearances or their relatives are entitled to compensation. The Convention on the Rights of Persons with Disabilities (2006) stipulates compensation for the loss of health or property during wartime. In addition, international documents such as the Guiding Principles on Internal Displacement (1998) ensure the protection of the rights of those forced to leave their homes due to war, including the right to compensation for lost housing. International law significantly influences Ukrainian legislation, integrating international standards and norms regarding reparations for war-induced damages.

Numerous sources document the extent of war-related damage in Ukraine. For instance, according to a report by Human Rights Watch (2024), more than 9,600 civilians were killed and 17,500 injured between 2022 and 2023, with millions forced to relocate or leave the country entirely. The destruction of the Kakhovka Hydroelectric Power Plant in the Kherson region resulted in numerous human and animal deaths, significant property losses, and environmental damage. Grain storage facilities and critical ports were shelled, leading to adverse consequences for Ukrainians and people worldwide. Due to extensive landmines, agricultural lands were lost, rendering farming activities impossible. Both cultural heritage sites and technical equipment were destroyed, damaged, looted, or stolen. Beyond material losses, the Ukrainian people have faced torture, forced displacement, sexual violence, killings, persecution, inhumane treatment, and other crimes.

It is also pertinent to reference the Report on Direct Damage to Infrastructure from Destruction Caused by Russia's Military Aggression Against Ukraine as of Early 2024 (Kyiv School of…, 2024b), which provides a financial assessment of the damage sustained by Ukraine during the years 2022-2024 of the war (Fig. 1).

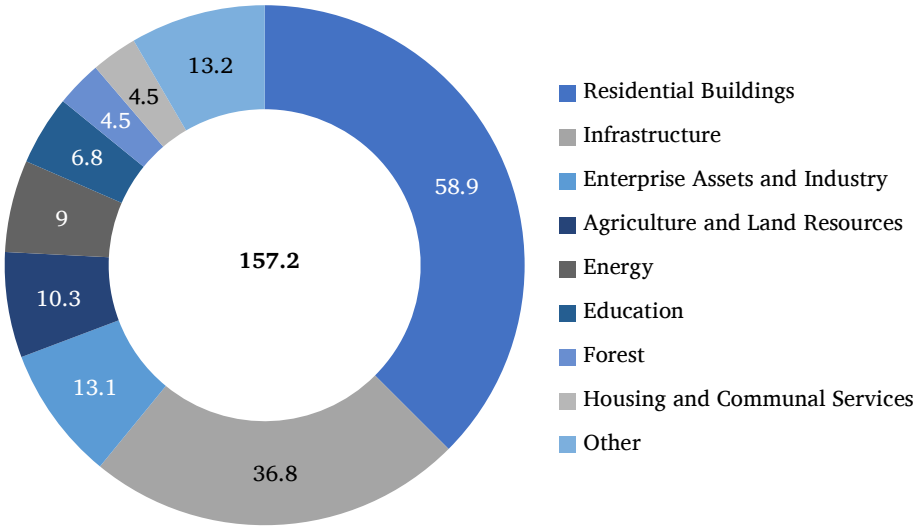

Figure 1. Direct damages from destruction and damage by sectors, USD billion
Source: Kyiv School of Economics (2024b)

The war in Ukraine, initiated by Russia, has caused enormous damage to the civilian population and the country's economy. In particular, the destruction of residential buildings, infrastructure, businesses, and the loss of life and health of millions of people, necessitates legal regulation for compensation. Compensation for harm caused by hostilities is regulated both by Ukrainian law and international agreements, which help to protect those affected.

Ukrainian legislation provides several avenues for compensation, including provisions in the Constitution, the Civil Code, specific laws such as those on martial law and internally displaced persons, and dedicated funds. Simultaneously, international law plays a noteworthy role, including the Geneva Conventions for the Protection of War Victims (1949), the European Convention on Human Rights (1950), and other international agreements. The right to compensation is available to civilians, businesses, institutions, and military personnel, including members of Ukraine's Defence Forces. According to national and international legislation, civilians affected by the war have the right to compensation.

This right is enshrined in the Constitution of Ukraine (1996) (Article 27 – the right to life) and the Civil Code of Ukraine (2003) (Article 1166 – compensation for material damage; Article 1167 – compensation for moral damage). International law also protects civilians through the Geneva Conventions (1949) and the European Convention on Human Rights (1950), enabling individuals to appeal to the European Court of Human Rights in cases of rights violations.

Legal entities, such as businesses and institutions, also have the right to compensation for damages caused by the war. According to the Civil Code of Ukraine (2003) (Articles 1173-1175), the state is liable for harm caused by its organs, including during military actions. Businesses can claim compensation for destroyed property, losses due to halted operations, or damage to infrastructure. From 24 September 2024, a government resolution introduced a new scale for compensation expenses for military casualties or injuries, setting amounts at 750 subsistence minimums for fatalities and between 400 and 250 subsistence minimums depending on the degree of disability incurred (Convention Relating to…, 1951). Meanwhile, legislation is continually updated to simplify procedures and regulate the compensation amounts for deceased Armed Forces personnel for their families (Resolution of the…, 2022; Resolution of the…, 2024).

There is a certain legally defined procedure regarding who can be held responsible for compensating damages. Under international law, an aggressor state conducting military actions on the territory of another state may be required to compensate those affected (Chapman & Ahmed, 2021). In the case of Ukraine, Russia, as the aggressor state, may be obliged to pay reparations or compensation for the damage caused. This could be achieved through international legal proceedings or reparations agreements after the cessation of hostilities. In addition, the Ukrainian state is actively developing mechanisms to compensate its citizens for damages. For instance, there are special funds for reimbursing losses caused by military actions. These funds may be replenished through contributions from international partners or state resources, and subsequently through reparations from Russia. This model is used to compensate for destroyed housing and other infrastructure. Some international organisations, such as the UN or the EU, may provide assistance through grants, humanitarian aid, or other forms of funding to cover damages. This may include both humanitarian aid for displaced persons and funds for infrastructure restoration.

It is important to distinguish between different types of damage. Material damage includes the destruction or damage of residential buildings, infrastructure, communications, industrial facilities, and so on. The Civil Code of Ukraine (2003) (Article 1166) guarantees compensation for property losses caused by unlawful actions, including military actions. A crucial condition is the documentary evidence of damage, which is often challenging to obtain due to ongoing hostilities. Moral damage includes suffering, the loss of loved ones, and psychological trauma caused by the war. Article 1167 provides for compensation for moral damage, which is vital for affected individuals who have lost relatives or suffered severe psychological trauma due to military actions. Physical damage includes injuries, wounds, or disabilities resulting from hostilities. This type of damage is subject to compensation under special laws that regulate the protection of the rights of affected persons. For example, legislation provides for social payments to military personnel and civilians who were injured or disabled during the war.

Compensation for war-related damages is an important right for citizens and businesses in Ukraine, yet its implementation faces several challenges. Due to Russia's aggression and ongoing hostilities, there are legal and practical difficulties that affect the effectiveness of compensation processes. One of the main issues is the recording and proving of damages (Ferstman & Rosenberg, 2020). Hostilities often prevent victims from promptly documenting destruction or other losses, complicating legal proceedings. The destruction of documents due to bombings or forced migration makes evidence collection even more difficult. Furthermore, instability in conflict areas does not always allow authorities responsible for documenting damages to operate effectively (Kulyk, 2022). The lack of official records or expert evaluations reduces the chances of obtaining compensation through the courts.

Another issue lies in the fact that Ukraine currently lacks an operational mechanism to obtain reparations from Russia as the aggressor state. At the international level, there are no effective mechanisms for the enforcement of reparations from an aggressor state, and this process can take years (Maurer *et al.*, 2023). For instance, after the war in Bosnia, which lasted from 1992 to 1995, victims of war crimes, including those subjected to sexual violence, waited a long time for reparations. Some received compensation only more than 20 years after the end of the war. This was due to protracted legal proceedings, financial constraints, and the complexity of proving violations (Ferstman & Rosenberg, 2020). A further example is Kuwait. Following Iraq's invasion of Kuwait, the UN established the Compensation Commission to reimburse Kuwait for its damages. However, the reparations process was prolonged: final payments were only completed in 2022, more than 30 years after the conflict. During this period, Iraq paid Kuwait approximately USD 52 billion, but the payments were slow due to economic and political challenges (Lerner & Heinrichs, 2024). Most victims are likely to receive compensation only after the war ends and international decisions are made, leaving many feeling a sense of injustice. Although Ukraine plans to create funds for such payments, these funds are insufficient to cover all needs. The experience of other countries, such as Bosnia and Herzegovina, demonstrates that the compensation process can be very complex and heavily dependent on decisions by international courts, such as the International Court of Justice.

Ukraine, currently at war, faces severe financial difficulties. State resources are focused on defence and meeting the basic needs of the population, which limits the ability to provide compensation for damages through state funds. Many victims are unable to receive full compensation, even if their rights are recognised. Olha Stupak, a judge of the Supreme Court of Ukraine, noted that without the support of international partners, Ukraine cannot independently ensure all compensation payments (Olga Stupak spoke…, 2021).

Another legal obstacle is the issue of Russia's jurisdictional immunity, which means Ukrainian courts cannot hold the aggressor state accountable for damages. While Ukrainian courts attempt to find ways to circumvent this issue, including through international litigation, this remains a challenge, as the decisions of national courts have limited authority on the international stage.

Ukraine is also dealing with a large number of IDPs who were forced to leave their homes due to hostilities. Compensation for lost property or housing for these individuals is problematic due to legal and procedural difficulties. The lack of clear procedures and delays in bureaucratic processes hinder the timely receipt of payments. Furthermore, the insufficient funding of state programmes for IDPs complicates the realisation of the right to compensation. As a result, many IDPs remain without housing and are unable to receive compensation for their lost property. This contributes to social inequality and deepens the crisis faced by displaced persons, who are unable to restore their standard of living (Stefanyshyn, 2024).

Despite the existence of various laws, such as the Constitution of Ukraine (1996), the Civil Code of Ukraine (2003), and special acts, the absence of a unified coordinating body or a single legislative mechanism for compensating damages during wartime complicates the process. Each victim is forced to resolve compensation issues independently, leading to inequality in access to justice and financial resources. The lack of a standardised procedure or centralised body to oversee the compensation process creates chaos within the system.

Notably, the Civil Code of Ukraine (2003) provides for the compensation of moral damages; however, there are no clear procedures or criteria for assessing and compensating such damages in wartime. This creates gaps in safeguarding the rights of affected individuals who have lost loved ones, sustained injuries, or suffered psychological trauma. The absence of detailed regulations regarding the compensation of moral damages complicates their receipt, as each case is considered individually and depends on the subjective assessment of the courts. This results in unequal approaches to compensation payments and can lead to situations where victims receive either insufficient compensation or none at all.

For example, following the war of 1992-1995, Bosnia and Herzegovina faced prolonged challenges in compensating affected individuals. One of the key challenges was providing compensation to victims of war crimes, including sexual violence (Begicevic, 2024). Many women who were victims of rape during the war waited years for justice. In 2016, amendments to the law allowed victims to receive free legal assistance to file claims for compensation (Compensation to war…, 2021). However, this process is extremely slow and depends on the ability of the judicial system and state authorities to effectively implement decisions. For instance, one victim was able to obtain compensation only 20 years after the crime was committed.

In the context of the Iraq war, the approach to compensation included *ex gratia* payments by the American military (van de Put, 2023). These payments were provided to civilians affected by the actions of the US armed forces. The main categories of payments were “condolence payments” for civilian deaths or injuries and “battle damage payments” for material damages caused by military actions. However, these payments were limited and did not cover all damages. Most victims did not receive compensation, particularly in regions where American forces did not conduct ground operations, which drew criticism for the perceived unfairness of these payments (McKenzie, 2020).

Following the war of 1991-1995 in Croatia, the issue of compensating damages also arose. Most destroyed homes and businesses belonged to private individuals who demanded compensation. In 2003, the Law of the Republic of Croatia No. 117/03 (2003) was adopted, allowing victims to file claims against the state for compensation of damages. Nevertheless, as in Bosnia, the process of obtaining compensation was lengthy and complicated. Moreover, the legal framework did not always account for all types of damages, including moral damages, which resulted in uneven compensation for different groups of victims.

Thus, these countries have demonstrated different approaches to compensating war damages, yet all face similar challenges – prolonged judicial processes, limited resources, and difficulties in implementing compensation decisions. In the context of war, Ukraine faces numerous challenges regarding the compensation for damages inflicted on civilians and businesses. There is a need to improve national legislation and practices concerning the reparation of damages, and international experience can serve as a valuable source for this. Below, specific examples that could be adapted in Ukraine are examined.

Implementation of a unified compensation mechanism (the experience of Bosnia and Herzegovina). In Bosnia and Herzegovina, which endured a conflict in the 1990s, victims receive assistance through specific laws providing for compensation for moral and physical damages (Greenstein, 2023). An important component of this mechanism is the provision of free legal assistance to victims. An amendment to the law on free legal aid, adopted in 2016, ensures access for victims to legal consultations and support in obtaining compensation. This reduces barriers to justice for affected individuals. Ukraine could adapt this approach by creating special state programmes to provide free legal aid, which would facilitate the filing of claims and improve the effectiveness of protecting victims’ rights.

Ex gratia payment programmes (the experience of Iraq). In the years following the Iraq conflict, the US government introduced an *ex gratia* payment programme aimed at compensating damages to civilians. These payments were divided into three main categories: for death, material damages, and the loss of individuals who supported coalition forces. While this programme had shortcomings, its experience could be adapted for Ukraine to provide quick compensation to those affected by military actions without the need for lengthy judicial proceedings. Ukraine could implement a similar national-level programme to enable prompt compensation payments to victims for destroyed property and the loss of loved ones.

Reparative mechanisms (the experience of Croatia). After the 1991-1995 war, Croatia adopted a series of laws that allowed victims to file claims against the state for damage compensation. The legislation provided for compensation for destroyed housing and property, although these processes were often protracted and required lengthy judicial proceedings. One possible solution to improve the Ukrainian system would be the establishment of special reparation funds, which could cover part of the damages even before court proceedings conclude. For Ukraine, automation of payment processes through state funds could serve as a useful model, helping to avoid delays and ensuring equitable access to compensation.

Infrastructure reconstruction programmes (experience of Afghanistan and Iraq). During post-conflict reconstruction in Afghanistan and Iraq, the Commander’s Emergency Response Program was implemented, providing for the rapid allocation of funds to restore vital infrastructure destroyed

during hostilities (Silverman, 2020; Lawson & Morgenstern, 2020). This programme enabled the swift restoration of schools, hospitals, and other facilities, contributing to the stabilisation of regions. For Ukraine, such an approach could be applied to expedite the repair of damaged facilities, ensuring the basic needs of the population in critical social sectors. The establishment of a similar programme for the reconstruction of destroyed infrastructure could attract international investments and reduce the burden on the national budget.

Introduction of international justice standards (experience of international tribunals). Ukraine could also draw on the international experience of tribunals such as the International Criminal Tribunal for the former Yugoslavia (ICTY), which addressed cases of war crimes (Stahn *et al.*, 2020). Judicial decisions made by international tribunals could be utilised to improve Ukraine's national legislation and ensure fair justice for victims. Moreover, international standards for victim protection used in such tribunals could be implemented at the national level to ensure all victims have access to justice. For instance, international justice standards introduced in the ICTY can be applied nationally to uphold fairness in the context of victim and witness protection. The ICTY established a comprehensive system for protecting witnesses and victims, particularly in cases involving sexual violence during the war. Witnesses were allowed to testify anonymously, and the tribunal provided psychological support to victims. This enabled many victims to participate in judicial processes and secure justice without fear of reprisals. Furthermore, the ICTY determined that war crimes could be prosecuted on an individual basis, regardless of rank, enabling accountability not only for direct perpetrators but also for commanders and political leaders. This created a legal precedent that Ukraine could adopt to hold individuals accountable at all levels of command. The ICTY also introduced procedures that allowed victims of war crimes to claim compensation, even within the framework of criminal proceedings. Ukraine could apply this experience to introduce mechanisms enabling victims to seek compensation through national courts without enduring lengthy civil procedures.

A centralised system for recording and documenting damages has already been established. The assessment of direct physical damage within the framework of the National Recovery Council of Ukraine is conducted by an analytical team from the Kyiv School of Economics in collaboration with several ministries: the Ministry for Communities and Territories Development, the Ministry of Infrastructure, the Ministry of Health, under the coordination of the Ministry of Reintegration of Temporarily Occupied Territories, with the involvement of the National Bank and other relevant institutions (Draft Recovery Plan…, 2022). The working group "Audit of War Damage" regularly publishes reports for public access. This group is tasked with creating a foundation to ensure fair compensation for affected individuals, providing a clear mechanism for documenting destruction and losses, and enabling the government and international partners to better monitor the utilisation of resources for reparations. Nevertheless, the application is rather complex and not always comprehensible to ordinary citizens. It also fails to account for moral damages and losses to property located in occupied territories, which represents a significant drawback and requires substantial revision.

It would also be appropriate to introduce a mechanism for preliminary payments (advances). For the prompt support of affected persons, particularly IDPs, a system of preliminary payments should be implemented. This would provide temporary financial assistance while the primary compensation application is under consideration. For example, such payments could cover urgent expenses for housing or medical treatment. The mechanism could be based on the experience of *ex gratia* payments used in other countries. In addition, it is necessary to reform the compensation system for IDPs to make it more transparent and accessible. This could include simplifying the application procedures, introducing digital platforms to track the status of claims, and expanding opportunities to obtain temporary housing or other forms of assistance.

Another important area could involve drafting legislation on class action lawsuits (Fowler, 2023). Ukraine should develop laws that allow for the filing of class action lawsuits by groups of affected individuals. This would enable a large number of citizens to approach the court collectively, thereby reducing the financial burden on each individual and expediting the compensation process. Such an approach is used in the United States and other countries to address complex cases involving large groups of victims.

The war causes severe damage not only to human lives and infrastructure but also to Ukraine's natural environment, as noted by numerous researchers, economists, ecologists, and medical professionals (Pereira *et al.*, 2022; Rawtani *et al.*, 2022; Saxena, 2024). Hostilities can lead to soil, water, and air pollution, as well as the destruction of ecosystems. For instance, explosions, the use of chemical weapons, or fuel significantly increase harmful emissions into the atmosphere, contributing to climate change (Zibtsev *et al.*, 2024). Such actions affect the health of people living in conflict zones, disrupt their access to clean water and resources, and may result in long-term changes to ecosystems. This creates grounds for filing claims for damages not only on behalf of the state but also by private individuals directly affected by these environmental catastrophes (Hartmane *et al.*, 2024).

Collaboration with international courts and tribunals and the involvement of international experts in legislative development should not be overlooked. Ukraine must engage more actively with the International Criminal Court and other tribunals to hold the aggressor state accountable. This also entails establishing national legal mechanisms to simplify the process of filing claims with international courts and providing legal assistance to affected individuals for submitting such claims. Ukraine can also benefit from the support of international experts in developing new legislative initiatives. This may involve inviting specialists from countries with experience in post-conflict reparations (e.g., Bosnia and Herzegovina, Croatia, Iraq) to create effective legal mechanisms in Ukraine. Moreover, attention should be given to precedents for aligning Ukraine's legal framework with EU standards, which are necessary for the country's full integration into the global legal space. As a precedent, Serbia's example, as described and analysed in the paper by M. Kostić and S. Orlović (2020), could be utilised.

It is also important to note that consideration must be given not only to the damage that is evident and documented during the period of active hostilities. Ukraine's climate and other natural conditions (e.g., changes to landscapes, flora, and fauna due to the destruction of the Kakhovka Dam) are significantly altered due to the war and the material damage caused. These changes may have far-reaching

and long-lasting negative consequences in all spheres of the country's existence, particularly for its citizens, including mental and physical losses. The study by E. Calliari *et al.* (2020) emphasised the challenges of defining what constitutes loss and damage in such cases. It also explored why the political and economic interests of countries may hinder consensus on compensation mechanisms and what solutions could be proposed to address this issue. These aspects must also be considered.

The application of international experience, the development of new compensation mechanisms, and the engagement of international assistance could significantly enhance the efficiency of Ukraine's compensation system. This would not only facilitate a more rapid response to the needs of those affected but also ensure fair compensation for all categories of citizens impacted by the war.

Discussion

This study repeatedly discussed the issue of compensation for non-material damage, particularly the psychological trauma inflicted by war. One of the primary issues here is that Ukrainian legislation is more focused on material compensation, such as for destroyed property, and is much less equipped to address the psychological consequences of war. Non-material damage, including psychological trauma, may encompass post-traumatic stress disorder, depression, anxiety disorders, and other serious mental health consequences experienced by war victims. International standards for compensating non-material damage, particularly the provisions of the European Convention on Human Rights (1950), require states to ensure full compensation, including for moral damage (Spytska, 2024). However, in practice, compensation mechanisms are often limited and fail to encompass all victims.

This study highlights that, although legislation includes mechanisms for compensation for moral damages, the process of filing claims and receiving redress remains complex and insufficiently transparent. The study specifically examines international experience in compensating non-material damages, particularly through collective lawsuits. Such an approach could also be applied in Ukraine to assist individuals suffering from mental disorders as a result of the war. Collective lawsuits enable a large number of victims to submit joint claims, reducing financial costs and expediting the compensation process. In the United States and the European Union, collective lawsuits are frequently used to claim compensation for moral damages in cases of mass human rights violations (Baturin & Moroz, 2024).

Thus, to improve compensation for non-material damage in Ukraine, it is necessary to enhance legal mechanisms and adopt international experience, particularly concerning compensation for psychological trauma. This conclusion is supported by the findings of S. Solomon and Y. Bayer (2023), who investigated how military actions affect the mental health of civilian populations and why it is crucial to differentiate psychological damage based on socio-economic factors. The paper emphasised the importance of legal regulation and compensation for psychological trauma caused by war, considering diverse conditions and inequalities among the population. The primary focus is on how the legal system can provide fair compensation to various groups of victims, considering socio-economic factors that influence their vulnerability to trauma. Currently, Ukraine lacks effective mechanisms for assessing the severity of psychological injuries and determining appropriate compensation.

The study also addressed the issue of shared responsibility, where multiple states or other international actors may be held accountable for damage caused by joint actions or omissions. This approach is particularly important in the context of modern armed conflicts, where responsibility for war crimes or human rights violations may rest not only with a single state but also with several parties to the conflict or international coalitions. The study underscored that shared responsibility involves not only the individual obligations of states but also the collective responsibility of international organisations and coalitions for compensating damage caused by their joint actions. This may include states participating in military operations and international organisations providing support during conflicts. For example, in cases of joint military actions or coordinated assistance, responsibility for violations of international law may be distributed among all participants involved.

An important aspect is the potential creation of international funds to compensate for damages caused by military actions. Such funds could be financed by individual states as well as international organisations such as the United Nations, the European Union, or the International Criminal Court. The study explores the possibility of integrating these funds into the compensation system for victims, which would ensure effective redress for war-related damages. In addition, the study analyses judicial precedents and international rulings where shared responsibility plays a key role. Notably, such mechanisms are already applied in international law, particularly in cases of genocide and mass human rights violations, where multiple states jointly bear responsibility for the consequences of their actions or inactions. Thus, this study suggests considering shared responsibility as an important mechanism in dealing with the compensation for damage, which can provide greater justice and effectiveness in restoring the rights of victims of military operations. These conclusions align with observations described by A. Nollkaemper *et al.* (2020), who examined shared responsibility in international law, focusing on situations where the actions of multiple subjects of international law lead to violations of international obligations, and how this impacts accountability. The paper addressed issues related to the distribution of responsibility among states, international organisations, and other actors, formulating a mechanism closer to what is recommended in this study than to the practices currently existing in Ukraine. It is also worth noting that A. Nollkaemper *et al.* (2020) defined another phenomenon that is entirely absent from Ukrainian legislation (though its application could yield quite effective results), namely "responsibility for inaction", examples of which already exist in the precedents of the current Russo-Ukrainian war.

This study also pays attention to the difficulties associated with holding Russia, as the aggressor state, accountable for the damage caused by the war. One of the primary legal obstacles is jurisdictional immunity, often invoked by the Russian Federation, which precludes holding a state accountable for war crimes or claiming compensation by citing the principle of state sovereignty immunity in national courts (Semenenko *et al.*, 2023). This approach complicates compensating civilian victims, as national courts have limited influence at the international level. This is further complicated

by the complex nature of international law and the need for recognition of national court decisions by other states. The likelihood of Russia acknowledging any such decisions is minimal, further impeding efforts to hold it accountable.

Thus, the most crucial issue in the context of examining mechanisms for compensating damages caused by war (in other words, by Russia as the aggressor state) is the pursuit of achieving these reparations and compensations. Meanwhile, as M. Paparinskis (2020) emphasised, the establishment and implementation of compensation mechanisms must necessarily consider the so-called "punitive compensation", which involves the obligation to determine what level of compensation would become unacceptable and harmful for the state violating international law. M. Paparinskis (2020) criticised the idea of compensation that could severely undermine the economic stability of the offending state and proposed alternative approaches to addressing state liability. The author focused on how international law should ensure a balance between compensation for violations and the ability of the offending state to continue its existence without excessive financial pressure, which, in the case of the Russian-Ukrainian war initiated by the aggressor, appears to condone violators of international law and should in no way fall on Ukraine or its citizens as plaintiffs in cases seeking compensation for inflicted harm. It can be unequivocally concluded that in the current process of improving mechanisms for compensating damages caused by warfare, Ukraine should in no way accept the proposals expressed by M. Paparinskis (2020) and proponents of his concept. This and the aforementioned studies are fundamentally at odds.

O.O. Táíwò (2022) examined the issue of reparations from an innovative perspective and suggests viewing them not only as compensation for past wrongs but also as a means of addressing modern global problems. O.O. Táíwò (2022) also incorporates the concept of collective responsibility as an effective mechanism for both compensating inflicted harm and resolving many contemporary crises (including preventing repeated aggression after the end of a military conflict), a perspective that cannot be disagreed with. F. Lambrecht (2024) argues that when determining reparations and compensation for damage caused during military actions, it is essential to focus not only on accounting for existing negative consequences but also on calculating future obligations to victims and their descendants (since certain inflicted damages may have long-term or hidden consequences that will manifest only over time). Moreover, the study by N.S. Sylla *et al.* (2024) covered contemporary opportunities to mitigate the limitations imposed on the reparations system by the capitalist and "pro-humanist" structure of the world.

Thus, the study underscored the importance of revising approaches to compensating non-material damage, particularly psychological trauma caused by war. One of the key conclusions is that the Ukrainian legal system requires improvement in its mechanisms for compensation, including borrowing international experience in the field of class actions. This would simplify access to compensation for a large number of victims and reduce the financial burden on individuals. The study also highlighted the role of international organisations and coalitions in the distributed responsibility for the consequences of armed conflicts, which would allow for more effective protection of victims' rights.

Conclusions

This study provided an in-depth examination of the issues related to compensating damage caused by military actions, specifically material and non-material damage resulting from armed conflict. The limitations of national compensation mechanisms in Ukraine were analysed, including the lack of a unified and systematic approach to recording and assessing damage. The primary difficulties arise from challenges in documenting losses and from the aggressor state, Russia, invoking sovereign immunity, which complicates filing claims in national courts. It was noted that this hinders the compensation for victims, leaving them without adequate redress. In this context, the study emphasised the need for improvement in both national and international legal mechanisms.

At the international level, the role of courts such as the European Court of Human Rights (ECHR) and the International Criminal Court (ICC) was examined as tools for ensuring justice in war-related cases. Using the example of the ECHR, the study analysed how international tribunals contribute to the protection of victims' rights and holding states accountable. However, it was emphasised that holding states like Russia accountable is extraordinarily lengthy and fraught with political and legal complexities. Even when using international mechanisms, victims are forced to wait years or even decades for compensation, as evidenced by the cases of war crimes in the Balkans.

Furthermore, the study highlighted the necessity of simplifying the process of filing class actions, as this would expedite consideration and reduce the financial burden on affected individuals. In particular, class actions can serve as an effective tool in cases of widespread rights violations, allowing victims to unite and strengthen their claims. In addition, the study explored the potential for integrating international funds to provide financial coverage for compensation in cases where the aggressor state refuses to take responsibility for the harm caused. Such a model holds substantial potential, as it would not only facilitate access to compensation but also expedite the restitution process, which is especially critical for affected communities.

Thus, the study demonstrates that the existing compensation mechanisms are insufficient to address war-related damages. Implementing international justice standards at the national level could improve the situation, ensuring victims receive fair and timely payments. The problematic aspects of such implementation represent a promising area for further exploration.

Acknowledgements

None.

Conflict of interest

None.

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Відшкодування моральної та матеріальної шкоди, завданої воєнними діями

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Анотація. В дослідженні було оцінено поточний стан правових механізмів, які регулюють відшкодування шкоди, завданої війною, зокрема на території України. Здійснено аналіз національних та міжнародних правових інструментів, що стосуються компенсації за зруйноване майно, порушення прав людини та екологічні збитки, а також запропоновані шляхи вдосконалення цих механізмів. Основна мета роботи полягала у вивчення ефективності наявних підходів і розробка рекомендацій щодо їх поліпшення у контексті сучасних викликів. Результати дослідження показали, що національні механізми компенсації мають значні обмеження, особливо для тих осіб, чиє майно знаходиться на тимчасово окупованих територіях. Чинне законодавство передбачає можливість подання інформації про пошкоджене або зруйноване майно, але не забезпечує достатньо прозорого та ефективного механізму для отримання компенсацій. Також зафіксовано, що постраждалі особи, які проживають на контрольованих Україною територіях, мають кращий доступ до компенсаційних механізмів, проте й тут виникають труднощі через відсутність єдиного підходу до оцінки збитків. Рекомендовано запровадити єдиний механізм фіксації збитків, створення державного фонду для попередніх виплат та впровадження міжнародного досвіду колективних позовів, зокрема, як це реалізовано в США та ЄС. Крім того, наголошено на важливості кращої інтеграції міжнародних стандартів відшкодування в українську правову систему, зокрема в питаннях компенсацій за екологічні збитки та порушення прав людини. Результати вказали на необхідність удосконалення законодавства для забезпечення справедливого та ефективного відшкодування шкоди постраждалим від війни, а також на роль міжнародного права у цьому процесі

Ключові слова: механізми компенсації завданої шкоди; прозорість правових механізмів; оцінка збитків; колективні позови; відповідальність агресора

UDC 342.7
Doi: 10.32518/sals4.2024.146

Соціально-правові студії. 2024. Т. 7, № 4
Social & Legal Studios. 2024. Vol. 7, No. 4

Right to a fair trial under Article 6 of the ECHR: The balance between efficiency and fairness in European criminal law

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Abstract. The purpose of this study was to critically assess the mechanisms that allow reaching an adequate correlation between the effectiveness of trials and their consistency with the standards of fairness set out in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The study, using formal legal, hermeneutical, and comparative methods, analysed the differences in the implementation of fair trial principles in European countries and developed recommendations for harmonising national systems with international legal criteria. The findings of this study demonstrated the diversity of approaches to striking a balance between efficiency and fairness in court proceedings in countries such as Germany, France, Poland, Italy, and Albania. Specifically, it was found that the judicial systems of France and Poland, by giving preference to expedited consideration of cases, may negatively affect the assurance of rights of accused persons. At the same time, Germany, Italy, and Albania focus on comprehensive review of cases, which guarantees fairness but delays proceedings, which affects the overall efficiency of justice. A review of the practices of the European Court of Human Rights showed that it often focuses on remedying rights violations, but rarely includes suggestions for improving the mechanisms for ensuring balance. Based on the study of court decisions, recommendations were developed to clarify the criteria for achieving an adequate balance between efficiency and fairness in court proceedings. These recommendations included specifying the standards by which the speed of case processing is determined without compromising efficiency. The findings obtained suggest the need to improve legal mechanisms to achieve an effective balance between the speed of case consideration and fair trial, which will contribute to the improvement of justice in European jurisdictions

Keywords: procedural guarantees; impartiality; reasonable time; prosecution; adversarial proceedings; presumption of innocence

Introduction

The European legal system is constantly facing the challenge of balancing the efficiency of judicial proceedings with the principles of justice. The growing number of applications to the European Court of Human Rights (ECtHR) regarding violations of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (1950) suggests the need for a thorough review and modernisation of existing judicial procedures. Modern technologies and globalisation processes introduce new challenges for judicial systems, requiring a review and adaptation of conventional approaches to court management. Maintaining and enhancing public trust in the judiciary is a key aspect of strengthening democracy in European countries. Thus, identifying ways to optimise court procedures that allow maintaining the high quality of justice without compromising the principles of fairness is important both to guarantee the proper protection of individual rights and to strengthen public confidence in the legal system. However, in the context of investigating the legal methods of ensuring an effective and fair trial, there are problems that require further research.

Notably, European countries interpret the principles of Article 6 of the ECHR (1950) differently due to distinctions in legal systems and cultural traditions. In Germany, the main emphasis is placed on equality of arms and protection

Suggested Citation **Article's History**: Received: 10.09.2024 Revised: 18.11.2024 Accepted: 23.12.2024

Cerekja, B., & Mucollari, O. (2024). Right to a fair trial under Article 6 of the ECHR: The balance between efficiency and fairness in European criminal law. *Social & Legal Studios*, 7(4), 146-156. doi: 10.32518/sals4.2024.146.

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of the procedural rights of the accused, providing them with access to evidence and the possibility of a full defence (Court Constitution Act, 1950). France, for its part, focuses on strict adherence to procedures and publicity of trials (Code of Criminal Procedure, 1958). Italy interprets the principles of Article 6 through the lens of a thorough and detailed examination of cases, providing the accused with maximum guarantees of defence, which can sometimes affect the length of the proceedings (Law of Italy No. 354, 1975). This diversity of approaches complicates the creation of a single set of criteria for assessing whether national practices are in line with European standards. Other researchers have noted this problem in their studies. A. Samartzis (2021) criticises approaches to the balance between efficiency and fairness in criminal law, noting that different jurisdictions apply different methods of assessing fairness, which leads to differences in ensuring a single standard. H. Davis (2021) analyses the guarantees of fair trial within the framework of general principles, noting that distinct approaches to the interpretation of legal norms in national jurisdictions lead to heterogeneous application of standards. In support of this, the researcher points out that in Spain, courts strictly observe the right to publicity of the trial, while in Romania, closed hearings are common; in Portugal, courts try to avoid delays, while in Serbia, delays are common, which may violate the right to a fair trial (Davis, 2021). Important findings can be found in the study by H. Morão and R.T. da Silva (2023). The researchers emphasise that critical and interdisciplinary analysis of justice in appellate cases reveals certain shortcomings. The existing mechanisms of control over the implementation of the standards of Article 6 of the ECHR (1950) do not always effectively implement European norms. Despite the valuable findings of the researchers, the question of how specific national legal traditions and cultural contexts affect the interpretation of fair trial standards and what adaptations may be necessary to ensure harmony between national systems and European norms stays unresolved.

Another challenge is adapting judicial systems to modern challenges, such as modern technologies, globalisation, and new forms of communication (Podoprigora *et al.*, 2019). These challenges require updating the legal mechanisms to ensure fair consideration of cases in the new environment. The study of R. Perlingeiro (2024) confirms this conclusion. The researcher notes that globalisation and the latest communication technologies create new challenges for legal protection and implementation of effective legal mechanisms, which requires improvement of legal instruments and international cooperation. N.T.T. Trang *et al.* (2024) emphasise that the use of AI (artificial intelligence) systems in criminal justice potentially increases efficiency, but also jeopardises the principles of due process, including transparency and the right to defence. Thus, the researchers call for the creation of updated legal norms to ensure the fair use of technology. A. Paduch (2021) analyses the consequences of the epidemiological crisis for the right to a fair trial, noting that the rapid introduction of videoconferencing and other remote forms of legal proceedings has revealed substantial shortcomings in ensuring confidentiality and efficiency of the process. Despite the researchers' detailed analysis of the current challenges, the issues of the impact of technological inequality on access to justice and the integration of new legal mechanisms, including transnational criminal cases, which require national justice systems to cooperate more closely with international organisations and courts, stay unresolved. The integration of European fair trial standards into national legal systems also faces a series of legal and practical challenges. These problems include legal conflicts between national and European norms, difficulties in adapting to local legal traditions, lack of political will or resistance from the authorities, lack of resources for reforming the judiciary, unpreparedness of the legal infrastructure for the implementation of new standards, and socio-cultural differences that may limit the effectiveness of European norms in a concrete national context. Therefore, harmonisation requires not only changes in laws, but also an active dialogue between national and European authorities, as well as monitoring the effectiveness of the implementation of standards in practice. P. Hirvelä and S. Heikkilä (2021), analysing the practice of application of Article 6 of the ECHR (1950), emphasises that effective integration of European norms requires constant monitoring and adjustment of law enforcement practice to avoid legal conflicts. D. Bosinceanu (2021) emphasises the significance of close cooperation between European and national institutions for the successful implementation of fair trial standards. R. Clayton and H. Tomlinson (2021) examine the difficulties of integrating European fair trial standards into national legal systems, emphasising the importance of flexible application of these standards depending on concrete legal traditions and circumstances. However, despite the detailed analysis of the integration of European standards, the researchers did not sufficiently address the issues of practical implementation of these standards in countries with substantially distinct legal systems, as well as the mechanisms for adapting national systems to the rapidly changing conditions of modern justice.

Thus, considering a series of unresolved issues, specifically in terms of the balance between efficiency and fairness in European criminal law, the purpose of the present study was to identify the key challenges and obstacles to striking this balance, as well as to formulate proposals for improving law enforcement practice and harmonising national approaches with European standards. To fulfil this purpose, several main tasks were to be completed: analysis of the principles of Article 6 of the ECHR (1950); study of the implementation of these principles, as well as the balance between efficiency and fairness in various European jurisdictions; identification of problems arising in the implementation of fair trial guarantees; development of recommendations for optimising national legal systems and their harmonisation with European standards.

Materials and methods

The study was based on two key methodological approaches: formal legal and hermeneutical, which were used to investigate the principles of fair trial. When considering the provisions of Article 6 of the ECHR (1950), the formal legal method helped to examine the text of the Article as part of the general legal mechanism guaranteeing the proper administration of justice. This method was used to structure the key provisions of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, including guarantees of defence, equality of arms, publicity of the trial, and reasonable time. The analysis of each of these elements helped to identify how they function in a unified legal system and how their interaction contributes to the achievement of the goals of impartial justice. The

application of this approach helped to identify potential contradictions and gaps in legal regulation, which requires further improvement of legal norms.

A considerable part of the study was devoted to the analysis of the ECtHR judgements on the interpretation and implementation of the Convention. The study selected key precedents that had a substantial impact on the development of the ECtHR practice, as they have established important criteria for the interpretation of Article 6 of the ECHR, which confirms their relevance and significance for the formation of legal standards in Europe. Specifically, the study analysed Case of Ugulava v. Georgia (No. 2) (2024), Case of Jann-Zwicker and Jann v. Switzerland (2024), Case of Riepan v. Austria (2000), Case of Snijders v. The Netherlands (2024), Case of Heaney and McGuinness v. Ireland (2000), Case of Kamasinski v. Austria. (1989), where the court considered aspects relating to guarantees of defence, equality of arms, publicity of trials, and reasonable time limits for consideration of cases. This helped to systematise the ECtHR's approaches to interpreting these aspects and identify the key criteria used by the court in analysing the consistency of national judicial systems with European norms. Furthermore, the study identified patterns in the ECtHR practice and summarised the conclusions that may be useful for national courts in ensuring guarantees of due process.

The hermeneutical method helped to analyse the interpretation of the principles set out in Article 6 of the ECHR (1950) in various European countries, including Germany, France, Poland, Italy, and Albania. This approach contributed to an understanding of how historical traditions, social conditions, and national legal cultures influence the interpretation and application of fair trial principles in each country. The hermeneutic method was used to analyse cases where national court decisions were contradictory or distinct from European standards. This approach helped not only to identify different approaches to the interpretation of the principles of fair trial, but also to understand the reasons for these differences. The differences identified helped to formulate recommendations for improving national legal systems and harmonising them with European standards.

A comparative method was used to investigate the observance of the principles of a fair trial and the balance between efficiency and fairness in different European jurisdictions. This method was used to analyse the implementation of Article 6 of the ECHR (1950) in Germany, France, Poland, Italy, and Albania, including the study of legislative acts, namely the Court Constitution Act (1950), the Code of Criminal Procedure (1958), the Act of Criminal Procedure Code (1997), the Law of Italy No. 354 "Rules of the Criminal Executive System and the Procedure for Execution of Deprivation of Liberty and Restriction of Liberty" (1975), and the Criminal Procedure Code of the Republic of Albania (1999). The comparative analysis showed differences in approaches to the implementation of fair trial principles, as well as difficulties encountered in different jurisdictions in achieving a balance between efficiency and fairness in court proceedings. This approach also helped to identify best practices and challenges faced by different countries, which helped to propose ways to harmonise enforcement in the European context. Thus, the application of the comparative approach contributed to a detailed analysis of the implementation of European fair trial standards in national systems, as well as to the identification of measures that should be taken to optimise this process.

Results

The principles of fair trial ensure that the fundamental freedoms of every person in a state governed by the rule of law are guaranteed. They ensure that everyone facing criminal charges can be heard by an objective and impartial court. A fair trial includes publicity, reasonable time limits, the right to defence, procedural equality, and the presumption of innocence (Lubis, 2023.). These principles ensure transparency, objectivity, and impartiality of the judicial process, which increases public confidence in the judicial system and the state as a whole. The guarantee of a fair trial is the primary mechanism for preventing abuse of power and ensuring that justice is delivered to high standards.

Article 6 of the ECHR (1950) sets out the fundamental principles that ensure fairness in judicial proceedings, including in criminal law. These include the independence and impartiality of the court, which are fundamental principles for ensuring fair justice. Independence can be interpreted as the absence of influence from other branches of government, from pressure from individuals or groups. This ensures that a legitimate court decision is made without any external interference. The impartiality of the court implies that judges must consider each case objectively, apart from not having a biased attitude towards the case or its participants and avoiding conflicts of interest (Komiti, 2023).

In the Case of Ugulava v. Georgia (No. 2) (2024), the ECtHR clearly stated that the principle of court independence was violated due to pressure from the executive branch, which affected the objectivity of the case. The Court emphasised that the procedure relating to the applicant's detention was unlawful, as decisions were made without proper judicial control. Furthermore, it was found that the applicant was unable to exercise their right to an effective defence due to unreasonable delays and lack of access to an impartial court. The ECtHR also noted that these circumstances violated the principle of impartiality, as judges dependent on political influence could not consider the case objectively. Thus, this position of the ECtHR underlines the critical significance of judicial independence for ensuring a fair trial, confirming that a violation of these principles constitutes a grave violation of Article 6 of the ECHR.

Another prominent aspect is to ensure that the case is considered within a reasonable time. The trial should be conducted without unreasonable delays that could violate the interests of the parties to the trial. Delays in the trial are interpreted as a violation of the defendant's guarantees, especially when the delay affects access to evidence or the possibility of an effective defence (Šalčius & Herke, 2023). Ensuring reasonable time also implies that courts should have sufficient resources and effective procedural mechanisms to resolve cases swiftly and efficiently, while maintaining a prominent standard of fairness. In the Case of Jann-Zwicker and Jann v. Switzerland (2024), the ECtHR considered the issue of reasonable time for consideration of the case, emphasising that delays in proceedings may affect the right to a fair trial. The Court noted that in this case, the length of the proceedings, which exceeded the acceptable time limits, negatively affected the applicants' ability to effectively defend their interests. The ECtHR found that a delay in the trial not only called into question the observance of the principle of fairness, but could also impede access to evidence, which was critical for the proper preparation of the defence (Case of Jann-Zwicker and Jann v. Switzerland, 2024).

The principle of public hearing, which is a key element of Article 6 of the ECHR (1950), is of great importance for ensuring transparent judicial proceedings. The public hearing means that representatives of the media and citizens can attend the hearings, which ensures public control over the administration of justice (Jain *et al.*, 2022). In its judgement in Case of Riepan v. Austria (2000), the ECtHR stressed that the publicity of the trial protects the defendant from secret justice, which may be outside the public's control. Such openness helps to maintain public confidence in the courts, as transparency of the judicial process ensures that decisions are made following the law and without outside influence. At the same time, Article 6 of the ECHR (1950) mandates certain exceptions that allow closing a trial or part of it to the public. Such restrictions may be imposed to ensure public safety, national interests, and the protection of the privacy of persons involved in the proceedings. Such exemptions should be substantiated and used only when strictly necessary, emphasising the balance between publicity and the protection of other important interests.

Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms also includes the principle of procedural equality, which ensures that all participants in the judicial process have equal rights and opportunities to present their positions. This provision is interpreted as a guarantee of equal access to evidence and witnesses, as well as the possibility of challenging the evidence against them, and that neither party has an advantage due to procedural restrictions (Omkar, 2017). The right to legal assistance is particularly important. This right includes the possibility to choose a defence counsel or to receive free legal aid in cases where the accused cannot afford it financially. The ECtHR, considering the case of Case of Snijders v. The Netherlands (2024), emphasised that limited access to a lawyer and insufficient time to prepare for the trial substantially affect a person's ability to represent their position. Furthermore, the Court emphasised that the violation of the right to legal assistance is a serious restriction that violates the principles of equality between the parties, as one of the parties gains an advantage due to the procedural restrictions of the other. This decision demonstrates that to ensure the fairness of the judicial process, it is essential to ensure the implementation of the principle of equality of arms, including equal opportunities for defence and access to effective legal aid.

One of the fundamental principles of justice is the presumption of innocence. This principle mandates that a person is presumed innocent until proven guilty in a lawful judicial process (Whelan, 2023). This principle is critical to ensuring a fair trial, as an accusation should not automatically imply guilt. According to this principle, the burden of proof lies with the prosecution, which must provide convincing evidence of guilt following the procedures established by law. The presumption of innocence protects a person from unfounded accusations and ensures that all doubts are interpreted in favour of the accused. It also requires that the trial be structured to give the accused a meaningful opportunity to defend themselves, including providing time and opportunity to prepare their defence. Effective defence involves access to all the necessary case materials, the ability to collect and present evidence, and to interact with a lawyer who can provide qualified legal assistance.

In the Case of Heaney and McGuinness v. Ireland (2000), the ECtHR found a violation of the presumption of innocence when the accused were required to provide information under threat of punishment. In this situation, persons taken into custody on suspicion of involvement in extremist activities were obliged under Irish law to provide information to investigators under the threat of criminal liability for refusal to cooperate. The ECtHR found that such an obligation violated the principles of due process, namely Article 6 of the ECHR (1950). The Court emphasised that the use of evidence obtained under duress seriously undermines the guarantees of protection, including the right of a person not to incriminate themselves and not to confess guilt. It also undermines the fairness of the judicial process, as the presumption of innocence is a key element that ensures that the burden of proof is not placed on the defendant.

It is also important to mention the right to translation and interpretation. This right is crucial for ensuring fairness, as the language barrier should not prevent the right to a fair trial. The provision of translation of all case files and translation of court hearings ensures that the accused fully understands the nature of the charges, the nature of the trial, and can defend their rights (Szijártó, 2023). This right is particularly important in cases where the language barrier may affect the defendant's ability to defend themselves effectively. In the Case of Kamasinski v. Austria (1989), the ECtHR ruled that the principles of fair trial guarantee the possibility of receiving information about the prosecution in an understandable language, as well as the provision of translation during the trial in case of a language barrier.

Thus, the relevant provisions of the European Convention define a standard of fairness that includes legal guarantees to ensure a balance between the efficiency of the judicial process and the fairness of its results, which is critical to ensuring confidence in the legal system and the rule of law. Between 1959 and 2022, the ECtHR recorded a considerable number of violations of fair trial guarantees in a series of European countries (Fig. 1).

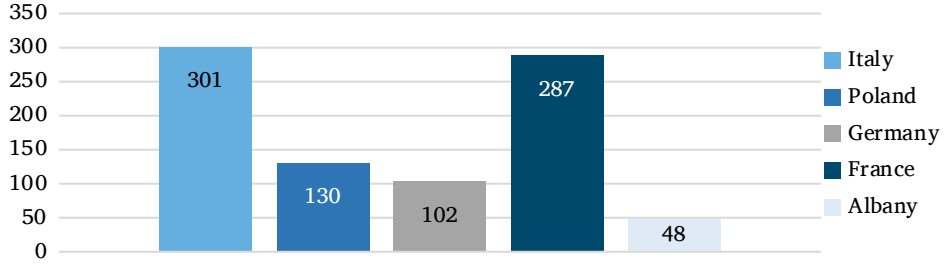

Figure 1. Number of violations of Article 6 of the ECHR in European countries (1959-2022)
Source: compiled by the authors based on Violations by Article and by State (2022)

The analysis of statistical data highlights the existence of critical problems in the justice systems of European countries that may affect public confidence in the courts and human rights. The largest number of violations is observed in Italy, which suggests systemic problems in the justice system that need to be addressed. France also has significant indicators related to deficiencies in the provision of legal safeguards. Poland, Germany, and Albania have a lower number of violations, but these figures still point to serious challenges in adapting to ECtHR standards. These data underline the need for a comprehensive approach to reforming European judicial systems.

The study revealed substantial distinctions in approaches to the implementation of the principles of due process in different countries. Thus, in Germany, the Court Constitution Act (1950) establishes the foundations of the judicial system and regulates the procedural aspects of court proceedings. One of the problematic provisions is § 26 of the Act, which regulates the recusal of judges and guarantees of their impartiality, as well as § 198 of the Act, which requires the implementation of the principle of "reasonable time". Problems with these provisions arise when, in practice, the desire for swift trials leads to a violation of the parties' guarantees of adequate defence, which directly contradicts fair trial standards (Liu, 2023). This problem was identified by the ECtHR in the case of Case of Buchholz v. Germany (1981), where the applicant's rights were not respected due to the delay in the trial. The defendant claimed that the standards of fair trial were not met due to the lengthy consideration of his administrative case. The ECtHR recognised that the delay in the trial, which lasted about 4 years, was contrary to the principle of fairness of the trial, which requires that cases be heard within a "reasonable time". This case illustrates that even with formal compliance with national legislation, situations may arise in practice where the length of a trial violates European fair trial standards.

In the Case of Pélissier And Sassi v. France (1999), the ECtHR found France guilty of violating fair trial standards because the French court did not provide the accused with sufficient information about the nature of the charges, which limited their ability to prepare a defence. In this case, the individuals were initially charged with one offence, but during the trial, the qualification of their actions was changed to a graver offence without prior notice. As a result, they lost the opportunity to properly prepare for a defence against the added charges. This situation became possible due to the application of Article 388 of the Code of Criminal Procedure (1958), which allows changing the qualification of a crime during the trial. However, this provision proved to be controversial in terms of compliance with the European standards set out in Article 6 of the ECHR (1950). This provision does not ensure that a person is properly informed of changes in the charges and does not provide sufficient time to prepare a defence. The ECtHR stressed that changing the classification of a crime without proper warning to the accused violates the principles of due process, as the accused is entitled to be informed in time about the nature of the charges to ensure an effective defence. This case highlights the problem faced by the French judicial system: the desire for swift trials leads to a restriction of the right to defence and, consequently, a violation of the right to a fair trial (Porret, 2024). The Constitution of the Republic of Poland (1997) proclaims guarantees of a fair and open trial by an independent court. However, in practice, there are problems with the exercise of this right, especially regarding the guarantee of equality of arms in court proceedings. One of the prominent issues is the restriction of access to case files for the accused, which jeopardises their right to defence. In the case of Matyjek v. Poland, it was found that Polish legislation, namely Article 156 of the Act of Criminal Procedure Code (1997), allowed the court to restrict the accused's access to certain evidence and case files under the pretext of protecting state security or other public interests (Matyjek v. Poland, 2007). This restriction created a significant inequality between the parties to the trial, as the person could not get acquainted with all the evidence used in the prosecution and properly prepare their defence. The ECtHR noted that the restriction of access to the case file violated the principle of equality of arms prescirbed in the Convention. The Court emphasised that to follow the principles of due process, a person must be provided with the opportunity to review all the evidence in the case, especially those used against them (Szwed, 2023). This is necessary to ensure that the accused can effectively take part in the trial, challenge the prosecution's evidence, and express their position on the same terms as the prosecution.

One of the key cases against Italy is Domenichini v. Italy (1996), which concerns the violation of the right to an effective defence. The ECtHR considered a situation where the Italian authorities intercepted and recorded telephone conversations between the accused and his defence counsel during the criminal trial. The court found such actions to be a violation of the standards of Article 6 of the ECHR (1950), as the right to confidentiality of communication with a lawyer is one of the main aspects of due process guarantees. Furthermore, in the context of this case, the issue of censorship of correspondence with a lawyer was raised. The ECtHR stressed that the confidentiality of communication between a defence lawyer and a client is a key guarantee of the effectiveness of the defence, and its violation may adversely affect the ability of a lawyer to properly perform their duties. Any restrictions or checks on correspondence may undermine the trust between the defendant and counsel, as well as adversely affect the quality of preparation for the defence (di Paolo, 2024). Thus, the censorship of correspondence between the lawyer and the accused, mandated in the Law of Italy No. 354 (1975), was found to be incompatible with the principles of Article 6 of the ECHR (1950).

Albania also faces certain challenges in the context of ensuring due process of law, as identified in the practice of the ECtHR. In the judgement in Case of Berhani v. Albania (2010), the Court found that the Albanian courts had violated the requirements of Article 6 of the ECHR (1950) regarding a fair trial. The ECtHR concluded that the court decisions were not properly substantiated, and the testimony of key witnesses was not properly verified in court. The court drew particular attention to the fact that the defendant was deprived of the opportunity to challenge the testimony of witnesses who were not present at the court hearings, and their testimony was not thoroughly examined. Moreover, the national courts did not pay sufficient attention to the contradictions and lack of convincing evidence that could justify the applicant's conviction (Bode & Peppo, 2022). Based on these facts, the ECtHR found that such proceedings violated the requirements of fairness. Thus, a comparative analysis of the ECtHR cases against Germany, France, Poland, Italy, and Albania revealed substantial differences in the application of

the principles of due process. Despite the formal compliance with national legal requirements, in practice there are considerable problems relating to both the procedural aspects of the trial and the rights of the accused. Cases involving excessive delays, violations of defence guarantees, censorship of lawyers' communications, and other shortcomings highlight the need to reform national justice systems to ensure their harmonisation with European standards. Based on the identified problems, a series of concrete measures were formulated to improve national legal systems (Table 1).

Table 1. Recommended measures to optimise the efficiency and fairness of national judicial systems in line with European standards

Area	Concrete measures	Ways of implementation
Strengthening guarantees of judicial independence	➨ Establishment of independent commissions for the selection of judges. ➨ Assurance that decisions of the commissions are published and can be appealed. ➨ Involvement of independent judicial associations or international experts in reviewing cases of dismissal of judges. ➨ Improvement of disciplinary procedures, assurance of their publicity and the validity of decisions. ➨ Introduction of programmes to protect judges and their families from physical threats and pressure.	➨ Introduction of special criteria for the selection of judges that accommodate not only professional but also ethical standards. ➨ Introduction of a mechanism for appealing against decisions of commissions on the selection or dismissal of judges, with the possibility of appeal to higher authorities, including independent judicial associations. ➨ Introduction of open hearings in disciplinary cases of judges with mandatory publication of decisions and detailed substantiations to ensure transparency and public trust. ➨ Development and funding of physical protection programmes for judges and their families in cases of threats to their life or health, with the possibility of confidential support.
Assurance of equal access to evidence for the parties	➨ Reform of criminal procedure rules. ➨ Strengthening of the protection of the right to question witnesses.	➨ Amendment of the legislation to require automatic provision of copies of all case files to the accused immediately after they are received by the court, with clear deadlines for appealing. ➨ Introduction of the defence's right to additional questioning of prosecution witnesses.
Improvement of access to legal aid	➨ Expansion of opportunities to provide free legal assistance by increasing funding for state legal aid programmes. ➨ Improvement of the system of distribution of lawyers. ➨ Improvement of the training of lawyers.	➨ Establishment of state centres for free legal assistance, where every accused person can choose a lawyer, receive counselling and defence, regardless of their place of residence or financial status. ➨ Organisation of mandatory advanced training courses for lawyers, with access to the latest research and defence techniques, which will ensure a prominent level of legal services.
Improvement of procedural rules to reduce the duration of trials	➨ Introduction of mandatory procedural deadlines for each stage of the court process. ➨ Optimisation of procedures by simplifying and eliminating bureaucratic obstacles.	➨ Implementation of an electronic document filing system and automated court scheduling to reduce waiting times and eliminate delays caused by paperwork.
Implementation of a comprehensive system of supervision and analysis of court performance	➨ Establishment of independent bodies to monitor compliance with legal norms and analyse judicial practice. ➨ Publication and accountability of monitoring results to the public.	➨ Introduction of mandatory reports on the work of courts, which will be available to the public, with an analysis of violations and recommendations for their correction.

Source: created by the author of this study based on Case of Buchholz v. Germany (1981); Case of Pélissier And Sassi v. France (1999); Matyjek v. Poland (2007); Domenichini v. Italy (1996); Case of Berhani v. Albania (2010)

Strengthening guarantees of judicial independence. To ensure judicial independence and protect judges from undue influence, several concrete measures should be introduced. Firstly, convening independent commissions for the selection of judges, comprising judges, the legal community, and civil society organisations, will ensure transparency and objectivity of the process. Publication of the decisions of the commissions and the possibility of appealing them should be introduced, which will increase confidence in the selection of judges. Secondly, to protect judges from unsubstantiated dismissal, independent judicial associations or international experts should be involved in reviewing such cases, which would reduce the risk of political pressure. Furthermore, disciplinary procedures should be improved to ensure that they are public and that decisions are substantiated. It is also important to establish independent monitoring bodies to regularly evaluate the performance of judges and publish reports, which will help reduce corruption and increase accountability. Programmes should be put in place to protect judges and their families from physical threats and pressure to ensure their safety and impartiality in decision-making. These measures will ensure greater independence of the judiciary, increase its transparency and help strengthen public confidence in the judiciary.

Assurance of equal access to evidence for the parties. To implement this aspect, it is necessary to initiate an update of procedural legislation, which will include amendments to national regulations to ensure equality between the prosecution and the defence in access to all case files. This means that the accused should be given the same access to evidence as the prosecution. It is also important to ensure transparent procedures that make it impossible to conceal or delay the provision of defence materials. It is vital to strengthen the guarantees of the right to examine witnesses by ensuring

that the defence has the same opportunities as the prosecutor to call and examine prosecution witnesses. This includes equal rights to call their witnesses, as well as equal opportunities to challenge the evidence against them. Such a reform of the procedural law will help to create a balanced process where each party has equal opportunities to present and defend its positions.

Improvement of access to legal aid. First and foremost, it is necessary to expand the possibilities for providing free legal assistance to guarantee access to quality legal services for all persons who cannot afford to pay for a lawyer. This requires an increase in funding for state legal aid programmes, which will allow more competent lawyers to be involved in the provision of free legal services. It is equally important to optimise the mechanism for appointing defence lawyers to ensure that defendants are assigned to counsel promptly and impartially, especially in complex or urgent cases. Apart from financial and organisational aspects, it is necessary to improve the training of lawyers representing defendants. This includes regular professional development, access to up-to-date legal resources and databases, and participation in professional trainings to ensure that lawyers can perform their duties effectively.

Improvement of the procedural rules to reduce the length of court proceedings is a key measure to improve the efficiency of justice. Legislation should prescribe mandatory procedural deadlines for all stages of the proceedings, from investigation, submission of evidence, to the trial and judgement. This will impose an obligation on the courts to adhere to the established deadlines, which will considerably reduce the number of unjustified delays and ensure prompt consideration of cases. Existing procedural procedures should be optimised by reviewing them to simplify and eliminate unnecessary bureaucratic obstacles that slow the judicial process down. A crucial step is the introduction of electronic court proceedings, which will allow for faster document exchange, automation of routine processes, and reduction of paperwork. The introduction of latest technologies, such as videoconferencing for procedural interrogation or the submission of evidence in digital format, will also help accelerate trials while maintaining high standards of fairness (Kovalchuk *et al.*, 2024). Such changes will not only reduce the burden on the judicial system but will also ensure prompt access to justice for each party to the proceedings.

The introduction of a comprehensive system of supervision and analysis of the performance of the courts is necessary to ensure its compliance with European standards and to increase public confidence in justice. Independent bodies should be established with the authority to regularly analyse court practice, including compliance with the legal norms enshrined in Article 6 of the ECHR (1950). These bodies should be able to monitor trials, identify shortcomings, and provide recommendations for improving the judicial system. The results of this monitoring should be made public and accountable, specifically through regular publication of reports accessible to the public. Such measures will contribute to greater transparency of judicial proceedings and strengthen public oversight of the implementation of legal norms. As a result, this will strengthen the rule of law and increase public confidence in the judiciary.

Thus, the implementation of the recommended changes will comprehensively improve the functioning of the judicial systems at the national level, enhancing their efficiency and impartiality. This will eliminate key problems, such as unequal access to evidence, delays in proceedings, and insufficient independence of the judiciary. The implementation of these measures will also help national judicial systems to meet high European standards. Increasing the transparency and accountability of judicial processes will stimulate the development of a legal culture where the principles of justice and equality before the law are inviolable, which will ultimately strengthen the legal system and democratic institutions in society.

Discussion

The analysis of the findings confirmed that violations of Article 6 of the ECHR (1950), which guarantees the right to an impartial trial, are increasingly common in European countries. This trend suggests the need for further modernisation of the judiciary within certain states. To strengthen public confidence in the judiciary and ensure proper protection of human rights, it is crucial to improve the efficiency of the judiciary and ensure its compliance with European standards.

First of all, the analysis of Article 6 of the ECHR (1950) confirmed its significance as a key guarantee of due process. The analysis of the ECtHR practices suggested that the concept of fair trial is multifaceted and combines such elements as independence and impartiality of the court, publicity of the process, reasonable time limits for consideration, equality of parties, and presumption of innocence. These principles underlie an objective and impartial judicial process, while guaranteeing the protection of the interests of defendants. These conclusions are supported by the findings by other researchers. P. Lemmens (2014) analysed the various elements of a fair trial. The researcher focused on the autonomy of the judiciary as a determining factor in ensuring impartiality in case consideration. It should be agreed that the independence of the judiciary guarantees the impartiality of judicial proceedings and protects judges from the influence of the executive or legislative branches, which is the basis of democratic justice. P. Lemmens (2014) also considered the universality of fair trial guarantees, arguing that these principles should be applied equally in all states that have signed the ECHR (1950), regardless of their legal and cultural contexts. However, one can only partially agree with this statement. Admittedly, judicial independence is a fundamental element of justice and the rule of law, without which an impartial trial cannot be guaranteed (Kubarieva, 2023).

However, the critical point is to emphasise the universality of Article 6, as different states have their legal traditions and contexts that may affect the interpretation and implementation of fairness guarantees. However, this does not mean that the standards of Article 6 of the ECHR (1950) should not be integrated into national legal systems. Each country that has signed the ECHR (1950) must adapt these standards to its own legal system, considering local legal traditions and cultural characteristics. J. Vuille *et al.* (2017) focused on the significance of the evidence base in criminal proceedings and its impact on ensuring a fair trial. The researchers argue that evidence, if presented improperly or unreliably, can substantially change the course of a trial, which can violate the guarantee of the presumption of innocence and the objectivity of the trial. Furthermore, the significance of establishing strict standards for the

admission of such evidence was emphasised to avoid mistakes or misinterpretation that could lead to unjust convictions (Lemmens, 2014). One should agree with this position, as unreliable evidence can truly undermine the objectivity of court proceedings, which is a direct violation of the rights of the accused. N. Vogiatzis (2021) examined the right to translation and interpretation and noted the gradual evolution of this right in the ECtHR's practices. The researcher emphasised that the lack of proper translation can considerably complicate a person's participation in the process, which contradicts the guarantee of procedural equality.

The analysis showed that despite the general European standards of fair trial mandated in Article 6 of the ECHR (1950), their practical implementation varies considerably depending on the specifics of the legal systems of individual states. The analysed cases against Germany, France, Poland, Italy, and Albania revealed problems with excessive delays, restrictions on defence rights, lack of judicial independence, and non-compliance with procedural equality guarantees. This demonstrates the need for a more thorough consideration of local contexts when implementing European standards to ensure the effectiveness of justice. Analysing cases related to violations of Article 6 of the ECHR (1950), J. Mumford *et al.* (2024) found that the main problems of violation of fair trial standards are excessive delays and restrictions on access to legal protection. The researchers attributed this to administrative difficulties in national systems, such as insufficient numbers of judges, judicial workloads, and insufficient procedural training of judges, which leads to misapplication of the law or procedural errors. It is worth supporting the authors' position, since administrative obstacles can truly affect the efficiency of court proceedings and the observance of the rights of the parties. S. Schmahl (2021) emphasised that violations of procedural rights, such as equality of arms and access to a lawyer, are a systemic problem in many countries, often caused by insufficient legal culture. One can only partially agree with this opinion, as it is an oversimplification to reduce the problem to legal culture alone. Often, the causes of violations are institutional or systemic, including insufficient funding of the judiciary, corruption, or imperfect legislation (Khablo & Svoboda, 2024). Therefore, extensive institutional and structural reforms are also needed to effectively address these issues. L. Chanturia (2023) argued that the lack of an effective remedy is a key problem that leads to systematic violations of Article 6 of the Convention. The researcher noted that shortcomings in national legal mechanisms, including insufficient access to effective legal assistance, limit the ability of the accused to defend their interests. This includes the lack of the possibility to appeal promptly, limited access to evidence or lawyers, and a lack of proper verification of charges. This conclusion can be considered reasonable, as it clearly indicates systemic weaknesses that often lead to violations of the principle of due process. However, the problem may lie not only in legal aspects, but also in political and economic factors that affect the work of the judiciary (Spytska, 2023).

Based on the judicial practice of different countries and the identified problems of non-compliance with the principles of Article 6 of the ECHR (1950), recommendations for improving national legal systems were developed. These recommendations include measures to strengthen the autonomy of the judiciary, guarantee equal access to evidence for the parties, improve the legal aid system, reduce the time for court proceedings, and introduce a system for monitoring the effectiveness of trials. Implementation of the proposed amendments will help to align national judicial systems with European standards and improve the quality of judicial proceedings.

Notably, some researchers also focus on measures to improve national judicial systems. M. Allena and F. Goisis (2020) explored the concept of "full jurisdiction" in the light of the requirements of Article 6 of the ECHR (1950) and focused on the need to ensure effective legal protection of fundamental rights. The researchers emphasise the significance of strengthening the independence of the judiciary, which should be protected from external pressure from the executive and legislative branches. Furthermore, M. Allena and F. Goisis (2020) recommended improving control over the implementation of court decisions to ensure their factual implementation and compliance. It is worth agreeing with the researchers' position on expanding the competence of courts in matters related to fundamental rights to ensure full judicial protection by national courts. M. Leloup and L. Spieker (2024) emphasised the importance of avoiding legal vacuums arising from contradictions between national law and European standards. They proposed to harmonise national legislation with EU law and emphasised the need to recognise the priority of EU law over internal legislation in the EU Member States. In the researchers' opinion, this will ensure greater consistency of court decisions and effective implementation of European legal standards at the national level. Undoubtedly, harmonisation of legislation will help to avoid contradictions between the rules, which is especially important in fair trial. This will increase legal predictability and stability in national systems. However, excessive primacy of EU law may lead to a loss of national legal sovereignty, as each country has its legal traditions that may not entirely follow European standards (Mikhnevych *et al.*, 2023).

M. Andenas and E. Bjorge (2013) addressed the significance of implementing ECtHR judgements into national legal systems. The researchers argued that the effective implementation of the rights under the Convention depends on how national courts integrate ECtHR judgements into their jurisprudence. This process not only contributes to the harmonisation of national systems with European standards, but also helps to create a unified practice of ensuring fundamental rights on the European continent. It is worth supporting the conclusions of M. Andenas and E. Bjorge (2013), as it really allows to ensure consistency of law enforcement, protection of citizens from violations at the level of national courts and increases the efficiency of national legal systems.

Thus, the study of the results obtained showed the need to improve national legal systems to ensure compliance with European law. Although Article 6 of the ECHR (1950) sets out general standards of due process, such as independence of the judiciary, equality of arms, and reasonable time limits for the consideration of cases, their implementation varies substantially from state to state depending on national legal systems and cultural contexts. The proposed measures to harmonise national legal systems with European standards, including strengthening the autonomy of the judiciary, improving access to evidence and legal assistance, and integrating ECtHR judgements into national law, are critical to increasing the efficiency and transparency of justice in European countries.

Conclusions

The analysis of the principle of fair trial, as defined by Article 6 of the European Convention on Human Rights, highlighted the importance of ensuring the basic principles of justice, including the autonomy and objectivity of the judiciary, procedural equality, presumption of innocence, publicity of the process, and prompt resolution of court cases.

The analysis of court cases revealed significant issues in the implementation of fair trial guarantees across several European countries. The findings highlight systemic problems in countries like Italy and France, where violations such as delays in proceedings and inadequate legal safeguards have undermined the fairness of trials. Poland and Germany, on the other hand, have difficulties with judicial independence and procedural equality even though their national laws are formally followed. These problems show that although there may be legislative frameworks in place, their actual application frequently falls short of European standards, pointing to the necessity of extensive judicial changes to increase the court system's effectiveness, openness, and equity. The study emphasises how crucial it is to close these disparities in order to preserve the values of justice and equality and boost public trust in the legal system.

The study identified the key challenges faced by European countries in ensuring fair trial guarantees. The qualitative indicators of the study point to systemic violations, including delays in the consideration of cases, limited access of the accused to the case file, inequality of the parties in the process, and insufficient independence of the judiciary from political influence. Statistical data confirmed a considerable number of violations of Article 6 of the European Convention on Human Rights in countries such as Italy, France, Poland, Germany, and Albania. These countries face substantial challenges in ensuring judicial independence, timely trials, and equal access to legal aid, which undermine the fairness of their judicial systems. The study highlights that, although national laws may theoretically uphold the right to a fair trial, practical issues such as procedural delays, restrictions on evidence access, and lack of impartiality often lead to violations of these rights. These findings underline the need for comprehensive judicial reforms, including strengthening the independence of judges, improving access to legal representation, and implementing measures to expedite court proceedings. The study of the balance between efficiency and fairness in European criminal law indicates the significance of defining mandatory time limits for each stage of court proceedings, simplifying procedures, and using electronic justice, which will help to reduce the time for consideration of cases.

Further research should focus on developing effective tools for monitoring the judiciary, analysing the effectiveness of reforms, and their adaptation to the national conditions of each country, which will help to strengthen the compliance of national legal systems with the ECHR standards.

Acknowledgements

None.

Conflict of interest

None.

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Право на справедливий суд за статтею 6 ЄКПЛ: Баланс між ефективністю та справедливістю в європейському кримінальному праві

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Анотація. Метою цього дослідження була критична оцінка механізмів, які дозволяють досягти адекватного співвідношення між ефективністю судових процесів та їх відповідністю стандартам справедливості, викладеним у статті 6 Конвенції про захист прав людини і основоположних свобод. За допомогою формально-юридичного, герменевтичного та порівняльного методів було проаналізовано відмінності в реалізації принципів справедливого судового розгляду в європейських країнах та розроблено рекомендації щодо гармонізації національних систем з міжнародно-правовими критеріями. Результати дослідження продемонстрували різноманітність підходів до досягнення балансу між ефективністю та справедливістю в судочинстві в таких країнах, як Німеччина, Франція, Польща, Італія та Албанія. Зокрема, було виявлено, що судові системи Франції та Польщі, надаючи перевагу прискореному розгляду справ, можуть негативно впливати на забезпечення прав обвинувачених. Водночас Німеччина, Італія та Албанія зосереджуються на всебічному розгляді справ, що гарантує справедливість, але затягує розгляд, що впливає на загальну ефективність правосуддя. Аналіз практики Європейського суду з прав людини показав, що вона часто зосереджена на усуненні порушень прав, але рідко містить пропозиції щодо вдосконалення механізмів забезпечення балансу. На основі вивчення судових рішень були розроблені рекомендації щодо уточнення критеріїв досягнення належного балансу між ефективністю та справедливістю в судовому провадженні. Ці рекомендації передбачають уточнення стандартів, за якими визначається швидкість розгляду справ без шкоди для ефективності. Отримані висновки свідчать про необхідність удосконалення правових механізмів досягнення ефективного балансу між швидкістю розгляду справ та справедливістю судового розгляду, що сприятиме вдосконаленню правосуддя в європейських юрисдикціях

Ключові слова: процесуальні гарантії; неупередженість; розумні строки; обвинувачення; змагальність; презумпція невинуватості

UDC 343.9
Doi: 10.32518/sals4.2024.157

Соціально-правові студії. 2024. Т. 7, № 4
Social & Legal Studios. 2024. Vol. 7, No. 4

Legislative measures to combat domestic violence: A comparison of European and Asian countries

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Abstract. The purpose of this study was to determine the effectiveness of legislative initiatives to combat domestic violence in different cultural contexts. The study covered 10 countries: five European (Germany, France, the United Kingdom, Sweden, Spain) and five Asian (Japan, India, Turkey, Kazakhstan, Mongolia). The study included an analysis of the legislation of the respective countries, and an assessment of the effectiveness of innovative legal approaches. The study revealed substantial regional differences in the effectiveness of legislative measures. European countries have demonstrated a higher level of implementation of comprehensive protection mechanisms. The most effective were electronic monitoring of offenders in Sweden, which led to a significant reduction in the number of violations of restraining orders; the Telephone Grave Danger urgent response system in France, which provided rapid protection for high-risk victims; and specialised courts in Spain, which expedited the processing of domestic violence cases. In Asia, the greatest progress was seen in the implementation of rehabilitation programmes for perpetrators in Mongolia, which reduced recidivism rates, and the expansion of the legal definition of domestic violence in India to include economic and psychological violence. An analysis of expert assessments revealed that cultural barriers stay a considerable challenge to effective implementation of legislation in Central Asian countries, where only 10% of domestic violence cases are prosecuted. The study showed that the effectiveness of legislative measures depends heavily on their practical implementation, availability of relevant

Suggested Citation

Article's History: Received: 22.08.2024 Revised: 21.11.2024 Accepted: 23.12.2024

Erdenebolor, E., Gantumur, G., Khishigmunkh, O.,Enkhbayar, B., & Miller, A. (2024). Legislative measures to combat domestic violence: A comparison of European and Asian countries. *Social & Legal Studios*, 7(4), 157-169. doi: 10.32518/sals4.2024.157.

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resources and public support. The findings provide a valuable basis for further improvement of legislative measures to combat domestic violence and the development of more effective victim protection mechanisms, considering the specifics of distinct national contexts

Keywords: legal mechanisms; victims; cultural barriers; prevention; gender equality; social support

Introduction

Domestic violence is still one of the most acute social problems of modern time, requiring a comprehensive approach and effective legislative measures to overcome it. The phenomenon of domestic violence is deeply rooted in social, cultural, and economic factors that vary from region to region and country to country. Investigation of this topic is critical to developing effective strategies to combat domestic violence in distinct cultural and legal contexts, especially considering the rise in domestic violence during global crises such as the COVID-19 pandemic. Comparison of European and Asian experience allows pinpointing the most effective legislative practices and mechanisms for their adaptation to different socio-cultural conditions, which is key to bridging the gap between progressive legislation and its effective implementation.

The study by C.M. Chinkin and L. Gormley (2023) examine the development of international legal approaches to violence against women in the context of the Convention on the Elimination of All Forms of Discrimination against Women. The results show that General Recommendation No. 19 has become a key instrument for including this issue in the scope of international human rights law, and General Recommendation No. 35 has updated approaches, taking into account social changes and providing additional guidance to states on how to eliminate gender-based violence against women. At the same time, according to L. Golovko *et al.* (2021), analyse effective practices of combating domestic violence in Eastern European countries during the COVID-19 pandemic, in particular in the Czech Republic, Slovakia, and Poland. The results show significant progress in these countries in combating this phenomenon, which makes their experience relevant for implementation in other countries.

M. Yoshihama *et al.* (2020) have discussed this issue more extensively. Researchers investigated gender-based violence in the Asia-Pacific region. The study highlighted the need to adapt legislative measures to crisis situations and the significance of proactive detection of violence. However, according to L.M. Stevens *et al.* (2024), even in countries with progressive legislation, there are problems with its practical implementation, especially at the level of law enforcement and the judiciary. Z. Juraev (2022) study focused on Central Asia and highlighted the complexity of the problem of domestic violence in the region and the need for a comprehensive approach to addressing it. The researcher emphasised the significance of creating a clear statistical base on domestic violence, which is currently lacking in Central Asian countries. Author also highlighted the need for an interdisciplinary approach that would include sociology, feminist geography, economics, and psychology to better understand and effectively address gender inequality and violence in the region.

It is worth mentioning the study by A.L. Dennis (2021), which analyses the evolution of approaches to the criminalisation of domestic violence in the United States. Although this study does not directly address Europe or Asia, it provides a valuable methodological framework for comparative analysis. Specifically, the researcher found that in the United States, approaches have evolved from civil and regulatory to criminal. This analysis can serve as a starting point for exploring similar trends in European and Asian countries, considering their unique legal and cultural contexts.

L. Ryspay (2024) studied the problems of domestic violence among immigrant women in the United States, identifying the complex interplay of cultural, social and legal factors that affect the dynamics of violence in these communities. The paper emphasizes the need to take into account the specific barriers faced by immigrant women in the United States, such as language and cultural differences, difficulties in navigating the country's legal and medical systems, lack of confidential and culturally competent interpreters, and fear of deportation, when developing legislative measures and policies to combat domestic violence. The analysis by S. Wallace *et al.* (2019) pointed to the need to develop comprehensive strategies that combine legislative changes with large-scale educational and social programmes. As noted by M. Htun and F.R. Jensenius (2021), show that feminist pressure in the 1990s and 2000s led to significant reforms in legislation to prevent and punish violence against women (VAW). However, even in countries with progressive laws, activists face challenges in ensuring that citizens comply with the law, enforcing it, and allocating sufficient resources for social support services. The study demonstrates variations in approaches to addressing intimate partner violence and sexual harassment.-The purpose of the present study was to identify the most effective legal mechanisms for combating domestic violence by comparing legislative measures in Europe and Asia. To fulfil the purpose of this study, the tasks were set as follows:

1) to conduct a comparative analysis of the legislative frameworks and legal mechanisms for combating domestic violence in selected European and Asian countries, identifying key differences and commonalities;

2) to investigate the impact of cultural, social, and economic factors on the effectiveness of legislative measures in different regional contexts;

3) to evaluate the effectiveness of innovative legal approaches and mechanisms in the field of protection of victims of domestic violence and preventive measures applied in the countries under study.

Materials and methods

To achieve the research objective, a comprehensive methodology combining qualitative and quantitative methods of analysis was applied. The study covered a sample of 10 countries: five European (Germany, France, the United Kingdom, Sweden, Spain) and five Asian (Japan, India, Turkey, Kazakhstan, Mongolia). The countries were selected based on three criteria: geographical location, level of economic development, and cultural diversity. The data on these countries were used for additional contextual analysis and comparison with the main sample, which contributed to a more complete understanding of the problem under study.

The study analysed 15 key legislative acts, including the Law of Germany No. 3513 "On Civil Law Protection Against Acts of Violence and Stalking" (2001) and the Criminal Code of Germany (1871), Law of France No. 2010-769 "On Violence Specifically Against Women, Violence Within Couples and the Impact of Such Violence on Children" (2010), Law of France No. 2014-873 "For Real Equality Between Women and Men" (2014) and Law of France No. 2020-936 "To Protect Victims of Domestic Violence" (2020), Domestic Abuse Act (2021), Law of Sweden No. 688 "On Restraining Orders" (1988) and Law of Sweden No. 393 "Amending the Criminal Code" (1998), Organic Law of Spain No. 1/2004 "On Comprehensive Protection Measures against Gender Violence" (2004), Law of Japan No. 31 "On the Prevention of Spousal Violence and the Protection of Victims" (2001), Protection of Women from Domestic Violence Act (2005), Law of Turkey No. 6284 "On Protecting Family and Preventing Violence Against Women" (2012), Law of the Republic of Kazakhstan No. 214-IV "Concerning Prevention of Domestic Violence" (2009) and Law of Mongolia "On Fighting Domestic Violence" (2016). To systematise and analyse legislative acts, a content analysis method was employed using NVivo 12 software, which helped to identify key elements of legal mechanisms to combat domestic violence in each of the countries under study. A table of comparative analysis of legislative mechanisms for combating domestic violence in Europe and Asia was created.

The effectiveness of legislative measures was assessed by a set of criteria presented in the comparative table for European and Asian countries. The analysis was based on statistical data on the number of applications and consideration of concrete innovative legal mechanisms, such as electronic monitoring of offenders, urgent injunctions, and specialised courts. Particular attention was paid to investigating the impact of cultural, social, and economic factors on the practical implementation of legislative measures in various countries, as well as analysing court practice to assess the effectiveness of the implemented mechanisms.

Results

Comparative analysis of the legislative framework and legal mechanisms for combating domestic violence. The study focuses on the comparison of legislative approaches to combating domestic violence in different countries, in particular, on the example of Germany and France. Germany and France tend to expand the legislative framework and strengthen the mechanisms for protecting victims of domestic violence. This trend has been observed since the mid-2010s. This is particularly due to the adoption of new laws that improve victim protection procedures, as well as the implementation of the Istanbul Convention (2021). Law of Germany No. 3513 "On Civil Law Protection Against Acts of Violence and Stalking" (2001) establishes clear mechanisms for protecting victims, including the possibility of evicting the perpetrator from the shared accommodation and prohibiting them from approaching the victim. A prominent aspect of this law is its application not only in cases of physical violence, but also in cases of threats and harassment. The amendments to the Criminal Code of Germany (1871), specifically the introduction of Article 238 "Stalking", further increased liability for crimes related to domestic violence. In France, legislative changes introduced by Law of France No. 2010-769 "On Violence Specifically Against Women, Violence Within Couples and the Impact of Such Violence on Children" (2010) and Law of France No. 2014-873 "For Real Equality Between Women and Men" (2014) substantially expanded the definition of domestic violence to include psychological violence and strengthened the protection of victims. An innovative measure was the introduction of the Telephone Grave Danger (TGD) programme, which allows victims to quickly call for help. Law of France No. 2020-936 "To Protect Victims of Domestic Violence" (2020) introduced additional protection measures, including electronic monitoring of persons accused of domestic violence. A more detailed overview of legislative mechanisms for combating domestic violence in different European and Asian countries is presented in Table 1.

Table 1. Systematisation of legislative mechanisms for combating domestic violence in Europe and Asia

Country	Key legislative acts	Definition of domestic violence	Innovative security measures	Specific features of law enforcement	Problems and challenges
Germany	Law of Germany No. 3513 (2001); Criminal Code of Germany	Includes stalking as a form of domestic violence (Criminal Code, Section 238)	Temporary removal of the abuser from the home (Section 2, Law of Germany No. 3513 (2001))	Specialised police units for domestic violence (Section 3, paragraph 1 of the Law of Germany No. 3513 (2001))	Low level of appeals to the courts due to fear of retaliation
France	Law of France No. 2010-769 (2010); Law of France No. 2020-936 (2020)	Expanded definition to include psychological and economic violence (Article 1, Law of France No. 2010-769 (2010))	"Téléphone Grave Danger" – an urgent notification system for victims (Article 41-3-1, Law of France No. 2020-936 (2020))	Possibility to evict the perpetrator and preserve the victim's right to housing (Article 515-11, Law of France No. 2010-769 (2010))	Need for better coordination between different services and institutions
United Kingdom	Domestic Abuse Act	Includes economic violence (Section 1(3))	Prohibition of cross-examination of victims by perpetrators in court (Section 65)	Introduction of the position of the Commissioner for Domestic Violence (Section 4)	Difficulties in proving "controlling behaviour"
Sweden	Law of Sweden No. 688 (1988); Law of Sweden No. 393 (1998)	Treats repeated acts of violence as a single offence (Chapter 4, Section 4a, Law of Sweden No. 393 (1998))	Electronic monitoring of violators of restraining orders (Section 2a, Law of Sweden No. 688 (1988))	Mandatory response to domestic violence calls (Section 3, Law of Sweden No. 393 (1998))	High level of latency of violence in immigrant communities

Table 1, Continued

Country	Key legislative acts	Definition of domestic violence	Innovative security measures	Specific features of law enforcement	Problems and challenges
Spain	Organic Law of Spain No. 1/2004 (2004)	Includes the concept of "gender-based violence" (Article 1)	Specialised courts for violence against women (Article 43)	Rapid response to requests for protection orders (Article 62)	Regional differences in the implementation of legislation
Japan	Law of Japan No. 31 (2001)	Focus on physical violence (Article 1)	Counselling centres for victims in each prefecture (Article 3)	Possibility of issuing urgent protection orders (Article 10)	Cultural barriers to seeking help
India	Protection of Women from Domestic Violence Act (2005)	Includes the concept of "dowry violence" (Section 3(b))	Appointment of "protection officers" to assist victims (Section 8)	The right of women to live in a joint home (Section 17)	Low level of awareness of the law in rural areas
Turkey	Law of Turkey No. 6284 (2012)	Includes threats and psychological pressure (Article 2)	Possibility of changing identity for victims in extreme cases (Article 4)	Preventive measures without evidence of violence (Article 5)	Withdrawal from the Istanbul Convention (2021)
Kazakhstan	Law of the Republic of Kazakhstan No. 214-IV (2009)	Includes physical, psychological, and sexual violence (Article 4)	Preventive conversations as a preventive measure (Article 19)	Domestic violence is considered an offence (Article 15)	Lack of specialised shelters in many regions
Mongolia	Law of Mongolia "On Fighting Domestic Violence" (2016)	Includes physical, sexual, psychological violence (Article 6.1)	Rehabilitation programmes for perpetrators (Article 29)	Establishment of an inter-agency coordination council (Article 18)	Limited resources to implement the law in rural areas

Source: created by the authors

The analysis of the data presented in Table 1 allows identifying key trends and specific features of legislative regulation of domestic violence in different countries. Specifically, most countries are expanding the definition of domestic violence to include not only physical but also psychological, economic, and sexual violence. Innovative protection measures, such as electronic monitoring of perpetrators in Sweden and France or the Téléphone Grave Danger emergency alert system in France, demonstrate the commitment of states to enhancing the safety of victims. At the same time, the table highlights a series of challenges faced by countries in terms of enforcement, including cultural barriers in Japan and India, regional differences in Spain, and lack of resources in Kazakhstan and Mongolia.

The UK, Sweden, and Spain demonstrate progressive approaches to legislative regulation of domestic violence (Yara *et al.*, 2023). The UK Domestic Abuse Act (2021) for the first time provided a legal definition of domestic violence, including economic violence and controlling behaviour. The creation of the Domestic Violence Commissioner and the introduction of Domestic Violence Protection Orders are important innovations in the UK's domestic violence system. Sweden, known for its progressive approach, adopted the Law of Sweden No. 393 "Amending the Criminal Code" (1998), which recognised repeated acts of violence against women by their partners as a separate, grave crime. Organic Law of Spain No. 1/2004 "On Comprehensive Protection Measures against Gender Violence" (2004) established a comprehensive approach to combating domestic violence, including the creation of specialised courts and an emphasis on preventive measures such as compulsory education on gender equality.

The Asian countries included in the analysis demonstrate a variety of approaches to legislative regulation of domestic violence. The Law of Japan No. 31 "On the Prevention of Spousal Violence and the Protection of Victims" (2001), as amended, focuses mainly on physical and psychological violence, but has a limited definition of sexual violence in the context of marital relationships. In India, Protection of Women from Domestic Violence Act (2005) provided a broad definition of domestic violence, including physical, sexual, verbal, emotional, and economic violence, and introduced the innovative institution of "protection officers". The Law of Turkey No. 6284 "On Protecting Family and Preventing Violence Against Women" (2012) mandates a wide range of protective measures, including the possibility of applying preventive measures without the need to prove violence. Kazakhstan and Mongolia have made gradual advances in developing legislation to address domestic violence, although their approaches are often limited by traditional attitudes and resource constraints.

In Kazakhstan, legislation to combat domestic violence has gradually evolved in response to local socio-cultural characteristics. The Law of the Republic of Kazakhstan No. 214-IV "Concerning Prevention of Domestic Violence" (2009) was an important step in the legal regulation of this problem. The law is aimed at preventing domestic violence, but its implementation often faces limited resources and traditional perceptions of family relationships. Challenges include insufficient funding for social services, limited access to victim assistance, and the influence of conservative attitudes on the effectiveness of legislative mechanisms (Ryskaliyev *et al.*, 2019).

In Mongolia, the fight against domestic violence has also been gradual, with the key piece of legislation being the Law of Mongolia "On Fighting Domestic Violence" (2016). This law recognizes domestic violence as an offense and provides for measures to protect victims and punish perpetrators. At the same time, implementation of the law faces challenges due to limited resources, insufficient training of law enforcement agencies and strong traditional norms that may prevent victims from seeking help. Nevertheless, the adoption of the law marks an important step towards protecting the rights of victims of violence.

The Law of Japan No. 31 "On the Prevention of Spousal Violence and the Protection of Victims" (2001) is an important step in the fight against domestic violence, but its effectiveness remains limited due to a number of structural and

procedural shortcomings. The law provides for the possibility of obtaining restraining orders to protect victims of violence, which is a significant achievement in the context of the Japanese legal system. However, the application of these orders often faces problems of proving acts of violence. This is due to both insufficient training of law enforcement agencies to deal with cases of domestic violence and the lack of clear evidence collection protocols, which creates legal gaps in the process of protecting victims (Htun & Jensenius, 2020).

The realization of the right to protection among immigrant women in Japan is particularly difficult. The lack of confidential and culturally competent services for immigrant women is a significant barrier to accessing protection. In particular, language barriers make it difficult for them to report violence and seek legal assistance, while cultural stereotypes and social isolation further increase the vulnerability of this group. In addition, the lack of specialized interpreters and counselors who not only speak the language but also understand the cultural characteristics of the communities means that victims are often left out of the support system.

The impact of cultural, social, and economic factors on the legislative measures. Cultural barriers in Central Asia are still a major challenge to the effective implementation of legislation. In Kyrgyzstan, despite the existence of a progressive Law of Kyrgyz Republic No. 63 "On Protection and Defense Against Domestic Violence" (2017), its practical implementation faces substantial obstacles. Statistics from the Clooney Foundation for Justice show that only 10% of domestic violence cases result in criminal prosecutions (Kyrgyzstan court violated…, 2021). Furthermore, systematic violations of the rights of women survivors of domestic violence are a serious problem, as courts often do not consider previous history of abuse when considering cases of self-defence (Spytska, 2023). Such shortcomings in the legal system significantly limit victims' access to justice and increase the risk of repeat crimes against them. In Uzbekistan, despite the adoption of the Law of Uzbekistan No. LRU-561 "On Protection of Women from Harassment and Abuse" (2019), the economic dependence of victims stays a critical factor that hinders its effective implementation. According to official figures provided in the Senate, law enforcement agencies received more than 72,000 complaints of harassment and violence against women and girls in 2021-2022. Of these, 85% of incidents occurred in families (There has been…, 2023).

The reliance on informal social structures plays a significant role in how victims of domestic violence seek help. For example, in Japan, despite the progressive provisions of the Law of Japan No. 31 "On the Prevention of Spousal Violence and the Protection of Victims" (2001), which includes restraining orders and the establishment of counseling centres, the traditional system of social ties can both facilitate and hinder access to formal support. On the one hand, victims often turn to extended family members and close-knit community networks for initial assistance, which can provide immediate emotional or material support. On the other hand, these same social structures can perpetuate stigma, discourage public disclosure, and reinforce the cultural norm of keeping family matters private. This duality highlights the complexity of integrating formal support systems into societies with deeply rooted traditions and social expectations. Studies show that a considerable proportion of victims first seek support from extended family members and only then from official institutions (Ryspay, 2024). In turn, legislative initiatives in European countries also demonstrate a more comprehensive approach to the problem.

Cultural, social and economic factors have a significant impact on the development and implementation of domestic violence legislation. Successful examples, such as the integration of crisis centers in Sweden or innovative technological solutions in France, demonstrate how legislative initiatives can be adapted to the specific needs of a society. At the same time, the challenges in Central Asia and Japan emphasize the need to overcome cultural barriers and ensure the economic independence of victims. A comprehensive approach to combating domestic violence should take these factors into account to increase the effectiveness of victim protection and violence prevention.

Effectiveness of innovative legal approaches and mechanisms in the field of protection of victims of domestic violence and preventive measures. In the context of global efforts to combat domestic violence, it is of particular relevance to assess the effectiveness of innovative legal approaches and mechanisms aimed at protecting victims and preventing recurrence of violence. This part of the study focused on the analysis of two selected innovative initiatives implemented in various jurisdictions to identify the most promising practices and assess their potential for adaptation in other national contexts. The initiatives reviewed represent a wide range of approaches: from technological solutions, such as electronic monitoring of restraining order violators in Sweden, to institutional changes, such as the creation of specialised courts for violence against women in Spain.

The system of electronic monitoring of violators of restraining orders, introduced in Sweden under the amendments to the Law of Sweden No. 688 "On Restraining Orders" (1988), is an innovative approach to ensuring the safety of victims of domestic violence. The system, which uses GPS trackers to monitor the location of individuals who violate the restraining order around the clock, has shown promising potential to prevent recurrences of violence. The effectiveness of restraining orders as a tool for protecting victims of domestic violence can be assessed on the basis of court statistics, reports from governmental and international organizations, and scientific research. Research shows that the success of restraining orders depends on a number of factors, including the quality of law enforcement practice, the level of public awareness of the possibility of obtaining such orders, and the willingness of government agencies to enforce them. For example, in many countries where restraining orders are used, positive results are achieved only if they are strictly monitored and sanctions are imposed on violators (Tymoshenko & Makarenko, 2022). In the case of Japan, the existence of legal provisions on restraining orders in Law No. 31 on the Prevention of Spousal Violence and Protection of Victims (2001) is a significant step, but their effectiveness is limited by practical difficulties. As noted by M. Htun and F.R. Jensenius (2020), difficulties in proving violence and insufficient training of law enforcement agencies create barriers to the proper application of such measures.

The French TGD initiative, introduced by the Law of France No. 2014-873 "For Real Equality Between Women and Men" (2014) on real equality between women and men, is an innovative approach to providing immediate protection to victims of domestic violence who are at elevated risk of repeated attack. The essence of this mechanism is to provide victims with a special mobile device with an

emergency call button, which allows them to instantly contact law enforcement agencies in case of a threat. In the Decision of the French Court of Cassation No. 22-80.19 (2023), the court upheld the verdict of the Court of Appeal on the conviction of a person for domestic violence and violation of a restraining order, emphasizing the importance of protective mechanisms for victims. This decision demonstrates not only the legal significance of restraining orders, but also their role in ensuring effective legal protection and justice for victims. The system of restraining orders has a significant preventive effect. The mere existence of such a decision or related mechanisms, such as electronic monitoring or immediate law enforcement response, can be a deterrent to potential offenders. Research from other countries, such as France, indicates that victims who have received restraining orders feel more secure and their psychological well-being improves due to the knowledge that there is a mechanism in place to provide quick protection (Chinkin & Gormley, 2023).

Analysis of court practice and reports of governmental organizations shows a positive impact of this program on the protection of victims of domestic violence. In particular, the Decision of the French Court of Cassation No. 22-80.19 (2023) confirms the importance of protective mechanisms for victims, emphasizing the importance of TGDs in ensuring their safety. Experts note that the availability of such devices has a significant preventive effect, as potential offenders are aware of the increased risk of an immediate response from law enforcement agencies (Bonnet *et al.*, 2023). Although specific statistics are still to be collected and analysed, the available data indicate a positive impact of the TGD initiative on improving the safety of victims of domestic violence in France.

The introduction of specialised courts for violence against women in Spain, according to the Organic Law of Spain No. 1/2004 "On Comprehensive Protection Measures against Gender Violence" (2004), is an example of a systematic approach to addressing domestic violence at the institutional level. These courts, with exclusive jurisdiction over cases of gender-based violence, provide a specialised approach and rapid response to such cases. The absence of a direct analysis of the functioning of specialized courts on violence against women in Spain in this article can be compensated for by referring to available statistics and research. According to the General Council of the Judiciary of Spain, in 2017, the courts received more than 166,000 complaints about gender-based violence, which is 16% more than in 2016 (Tens of thousands of…, 2018). This demonstrates the growing trust of victims in the judicial system and the increased awareness of the population about the possibilities of legal protection. Spain is one of the first countries to recognize violence against women as a national problem and to implement gender legal reforms, including same-sex marriage (Trillo-Rodriguez & Flores-Ruiz, 2023). This emphasizes the state's systemic approach to combating gender-based violence at the institutional level.

The mandatory rehabilitation programmes for perpetrators introduced in Mongolia under the amendments to the Law of Mongolia "On Fighting Domestic Violence" (2016) represent an innovative approach to changing perpetrators' behaviour and preventing recurrence of violence. These programmes, which combine psychological work with elements of legal education, show considerable potential for preventing the recurrence of domestic violence. The analysis of law enforcement practice confirms this in Decision of the Supreme Court pf Mongolia No. 2024/HSHT/10 (2024), the Mongolian court recognised the insufficiency of punitive measures alone, emphasising the need for behavioural correction through rehabilitation programmes to effectively prevent repeat offences. Moreover, Decision of the Supreme Court of Mongolia No. 202 (2020) demonstrated a concrete positive outcome of this approach, where the successful completion of a rehabilitation programme led to a marked improvement in family relations and a reduced risk of recidivism. The effectiveness of this approach largely depends on the quality of the programmes developed, the qualifications of the professionals who deliver them, and the readiness of the offenders themselves to change their behaviour. According to data provided by the Government of Mongolia in a report to the UN, the number of reported cases of domestic violence decreased from 1,449 in 2016 to 1,070 in 2018 (Report of Mongolia…, 2019). In addition, in the first nine months of 2014, police received 543 reports of domestic violence, almost double the 284 cases in the same period in 2013. These data indicate an increase in public awareness and improved reporting mechanisms following the adoption of the law. At the same time, in 2015, 1,356 cases of domestic violence were reported, a 26% increase compared to the previous year. This may indicate an increase in trust in law enforcement and the willingness of victims to report violence.

The legal prohibition of cross-examination of victims by perpetrators in court, introduced in the UK under the Domestic Abuse Act (2021), is an example of an innovative approach to protecting victims from re-traumatisation during the trial. This initiative is aimed at ensuring fairer justice and creating conditions in which victims feel safer when giving evidence. The Domestic Abuse Act 2021 introduced a prohibition on the cross-examination of victims by their alleged abusers in family and civil courts in England and Wales (Domestic abusers barred…, 2022). This measure aims to protect victims from the trauma of being directly questioned by their perpetrators during legal proceedings. While specific statistical data on the immediate impact of this provision is limited due to its recent implementation, the broader context of domestic abuse in England and Wales provides insight into the challenges addressed by the Act. According to the Office for National Statistics, an estimated 2.1 million adults aged 16 years and over experienced domestic abuse in the year ending March 2023, equating to a prevalence rate of 4.4%. The prohibition of direct cross-examination is expected to contribute to a more supportive environment for victims, encouraging them to participate in legal proceedings without fear of intimidation. This aligns with the Act's broader objectives to provide comprehensive support and protection for victims of domestic abuse (The number of cases…, 2024).

The data analysis also shows that urgent restraining orders are relatively well implemented in both regions, reflecting the global recognition of the significance of this tool for immediate victim protection. The largest regional disparity is observed in the development of specialised courts: while in Spain this indicator reaches its maximum value, reflecting a systematic approach to solving the problem at the institutional level, in Asian countries it is still at a rather low level, which may indicate the need to strengthen judicial specialisation in domestic violence cases in this region

(Garcia-Hombrados & Martínez Matute, 2021). The situation in South Korea is particularly noteworthy. It demonstrates the most balanced approach among Asian countries, with consistently high scores in most parameters (Ryspay, 2024). This may be due to its active policy of modernising legislation in the field of human rights protection and combating domestic violence.

Recommendations for improving legislative measures to combat domestic violence. Unification of the legislative definition of domestic violence, considering account the most progressive approaches, specifically, following the example of the Law of Germany No. 3513 "On Civil Law Protection Against Acts of Violence and Stalking" (2001), which covers not only physical violence but also psychological pressure and harassment, is of paramount importance. The law covers not only physical violence, but also psychological pressure and harassment, which allows for the diversity of violence in modern society. This approach is supported by research in social psychology and criminology, which indicates that psychological violence and harassment can have as serious consequences for the victim as physical violence. According to the European Institute for Gender Equality (2023), about 35% of women who have experienced psychological violence face long-term emotional and physical consequences. The inclusion of these forms of violence in the legal definition allows victims to receive legal and social support, and contributes to more effective prevention of recurrence. German law provides for civil remedies, such as restraining orders and eviction of the aggressor from the shared housing. This creates conditions for a prompt response to cases of violence and reduces the risk of conflict escalation. The successful implementation of this approach in Germany can serve as an example for other countries seeking to improve their domestic violence legislation.

Therewith, it is crucial to ensure that national criminal legislation is in line with the expanded definition of domestic violence, as was done in Germany by amending the Criminal Code of Germany (1871) (Article 238). Such a comprehensive approach to defining domestic violence should be accompanied by the development of clear criteria for identifying different forms of violence and the establishment of corresponding sanctions that consider the degree of social danger of each form of violent behaviour.

In the area of implementing technological solutions to protect victims of domestic violence, it is recommended to consider adapting the Swedish system of electronic monitoring of violators of restraining orders and the French TGD programme, considering the specifics of the national context and available resources. For countries with limited financial resources, it may be advisable to introduce such systems in stages, starting with pilot projects in regions with the highest rates of domestic violence. A prominent aspect is the development of a regulatory framework for the application of technological solutions, which should include clear criteria for electronic monitoring, procedures for judicial control over their application, mechanisms for protecting personal data, and liability for violation of the established rules. The Swedish experience shows that the effectiveness of such systems largely depends on their integration into the overall system of combating domestic violence and the existence of protocols for interagency cooperation in responding to signals of violations of the restraining order (Belur *et al.*, 2020).

In terms of institutional support for combating domestic violence, Spain's experience of establishing specialised courts for violence against women under Organic Law of Spain No. 1/2004 "On Comprehensive Protection Measures against Gender Violence" (2004) demonstrates the effectiveness of a specialised approach to dealing with domestic violence cases. However, considering the different legal systems and resource capacities of countries, a differentiated approach to institutional specialisation may be recommended. In countries with a developed judicial system, it is advisable to create separate specialised courts, while in countries with limited resources, it may be more suitable to create specialised units within existing courts or to provide specialised training for judges. A key element should be the introduction of procedural safeguards to protect victims during court proceedings, including the prohibition of cross-examination of victims by perpetrators, as prescribed in the UK Domestic Abuse Act (2021), and the possibility of giving evidence via video conference.

Prevention of repeated cases of domestic violence requires a systematic approach, which should include the introduction of mandatory rehabilitation programmes for perpetrators, following the example of the Law of Mongolia "On Fighting Domestic Violence" (2016). The development of such programmes should be based on scientifically sound methods and consider international experience in their implementation. An essential aspect is to legislate for mandatory rehabilitation programmes as part of legal liability for domestic violence, establishing mechanisms to monitor attendance at programmes and evaluate their effectiveness. The experience of India, where the Protection of Women from Domestic Violence Act (2005) makes provision for the possibility of referring offenders for counselling, shows the need to ensure a sufficient number of qualified professionals to implement such programmes and to create a system of accreditation.

In the context of victim protection, the Turkish experience of implementing the system of urgent protection orders under the Law of Turkey No. 6284 "On Protecting Family and Preventing Violence Against Women" (2012), which mandates a rapid response to the threat of violence, deserves special attention. When adapting this mechanism, it is important to strike a balance between the need for rapid protection of the victim and the procedural rights of the person against whom the order is issued. It is recommended to develop detailed protocols for assessing the risks that should be considered when deciding whether to issue an urgent protective order, establishing clear terms of their validity and mechanisms for judicial review. Furthermore, it is important to ensure that protective orders are actually enforced by establishing effective sanctions for their violation and creating a system for monitoring their compliance.

Discussion

The study of the legislative frameworks and legal mechanisms for combating domestic violence in various jurisdictions revealed major differences in approaches and the effectiveness of their implementation, which is conditioned by cultural, social, and economic factors. The results of the analysis demonstrate a general trend towards broadening the definition of domestic violence and strengthening victim protection mechanisms, which is consistent with the findings of M.L. Krook (2019), who notes a global trend towards

a more comprehensive understanding of domestic violence in legislative initiatives. This trend reflects a growing awareness of the complexity and multidimensionality of the problem of domestic violence, which requires a more nuanced and comprehensive approach to legislative regulation. At the same time, the substantial differences in the pace and scale of legislative changes between European and Asian countries confirm the observations of M. Htun and F.R. Jensenius (2020) on the impact of regional characteristics on the formation of domestic violence policy. These discrepancies can be explained not only by differences in legal systems and resources, but also by underlying cultural and social factors that influence the perception of domestic violence and society's readiness for change in this area.

The analysis of the effectiveness of innovative legal approaches, such as electronic monitoring of restraining order violators in Sweden and the TGD programme in France, demonstrates their considerable potential to prevent recurrence of violence. These results correlate with the findings of J. Belur *et al.* (2020), who, based on an analysis of Swedish experience, noted a drastic decrease in the recurrence of domestic violence after the introduction of an electronic monitoring system. The effectiveness of such technological solutions is not limited to the direct prevention of repeated cases of violence, but also has a considerable psychological impact, creating a sense of constant surveillance among potential perpetrators and increasing their responsibility for their actions. Comparable positive results for the French TGD programme are supported by a study by F. Bonnet *et al.* (2023), which found a significant reduction in the rate of repeated offenses among users of the system. This elevated performance rate demonstrates the potential of technology solutions to provide immediate protection to victims at high risk of repeated attack. However, according to C. Barlow *et al.* (2020), the effectiveness of these technological solutions largely depends on the development of infrastructure and the readiness of law enforcement agencies to respond quickly. This dependence points to the need for a comprehensive approach to implementing such innovations, which would include not only technical aspects, but also relevant training and the development of effective response protocols.

The study paid special attention to the analysis of the impact of cultural, social, and economic factors on the effectiveness of the implementation of legislative measures. The differences identified between Eastern European and Central Asian countries in overcoming traditional patriarchal norms are consistent with the findings of L. Gilbert *et al.* (2015), who note the major impact of cultural barriers on the effectiveness of domestic violence legislation in Central Asia. These cultural barriers can manifest themselves in the form of deeply ingrained gender stereotypes, traditional family values that may prevent the recognition of domestic violence, and social pressure to keep victims silent about their experiences. At the same time, positive trends in Eastern European countries, including an increase in the number of reports of domestic violence after the adoption of relevant legislation, confirm the observations of I. Permanyer and A. Gomez-Casillas (2020) about the gradual change in public perception of the problem of domestic violence in the region. This change demonstrates the effectiveness of legislative initiatives in shaping new social norms and raising public awareness of the inadmissibility of domestic violence.

The results of a study on the effectiveness of specialised courts for violence against women in Spain demonstrate their positive impact on ensuring faster and fairer justice in domestic violence cases. These findings are in line with the study by J. Garcia-Hombrados and M. Martínez Matute (2021), who, based on an analysis of the Spanish experience, note the increased efficiency of judicial proceedings in domestic violence cases in specialised courts. The specialisation of judges and court staff in gender-based violence contributes to a better insight into the specifics of such cases, which allows for more informed and fair decisions. However, it is vital to consider the comments made by A.R. Gover *et al.* (2021) regarding the need for continuous improvement of the work of such courts and further specialisation of judges to ensure the most effective protection of victims. This observation underlines the dynamic nature of the problem of domestic violence and the need for the judicial system to constantly adapt to new challenges in this area.

An analysis of the effectiveness of mandatory rehabilitation programmes for perpetrators implemented in Mongolia revealed their potential to prevent the recurrence of domestic violence. These results correlate with the findings of A.J. Velonis *et al.* (2020), who, based on a meta-analysis of the effectiveness of programmes for offenders in different countries, note their positive impact on reducing the rate of repeated offenses. The effectiveness of such programmes is not limited to reducing recidivism rates, but also includes deeper changes in the behaviour and attitudes of perpetrators towards domestic violence. At the same time, it is important to consider L. Satyen *et al.* (2022) warning about the need to adapt such programmes to the cultural context and ensure that they are in line with international best practices. This caveat highlights the significance of considering local circumstances when designing and implementing rehabilitation programmes, as well as the need for ongoing monitoring and evaluation of their effectiveness.

The study found major differences in the availability of legal protection mechanisms between the EU and other regions. The developed system of free legal aid in EU countries, specifically in Germany and France, demonstrates its effectiveness in ensuring access to justice for victims of domestic violence (Vartyletska & Shapovalova, 2024). These observations are confirmed by V. Teremetskyi *et al.* (2021), who analysed the impact of access to legal aid on the effectiveness of protection of victims of domestic violence in European countries. The availability of free legal aid not only enables victims to defend their rights in court, but also contributes to their emotional support and informs them about available protection mechanisms. Moreover, the identified problems with access to justice in Central Asian countries, particularly in Kyrgyzstan, are consistent with the findings of S. Childress *et al.* (2023) that there is a need to strengthen legal protection mechanisms for victims in the region. These problems may be related not only to limited resources, but also to a lack of awareness of their rights and available protection mechanisms, which underscores the significance of public education and legal awareness.

Particular attention was paid to the analysis of innovative legislative initiatives, such as the prohibition of cross-examination of victims by offenders in court in the UK. Although a full-scale evaluation of the impact of this initiative has not yet been conducted due to its relative

newness, expert assessments indicate its potential to increase the willingness of victims to testify in court. These preliminary findings are in line with the study by L. Bates and M. Hester (2020), who note the positive impact of such measures on the psychological state of victims during the trial. Prohibiting the cross-examination of victims by perpetrators can significantly reduce the stress and re-traumatisation of victims during court proceedings, which can improve the quality of their testimony and contribute to a fairer trial. However, it is important to consider R. Killean *et al.* (2021) warning about the need to strike a balance between the protection of victims and the right of the accused to a fair trial. This highlights the complexity of the task facing legislators and the judiciary in ensuring justice for all parties to the process.

The research findings also highlight the significance of a comprehensive approach to combating domestic violence, which combines legislative changes with the development of social infrastructure to support victims. This observation is in line with the findings of S. Weil *et al.* (2018), who, based on a comparative analysis of domestic violence policies in European countries, note the effectiveness of integrated approaches that combine legal, social, and educational measures. This comprehensive approach helps not only to respond to cases of violence, but also to work on its prevention by changing social attitudes and raising awareness of the problem of domestic violence. Specifically, the identified problems with the implementation of legislative initiatives in countries with limited resources confirm the observation of J. Usta *et al.* (2021) on the need to consider economic factors when developing strategies to combat domestic violence. This observation highlights the significance of adapting international practices to the local context and finding innovative solutions that would allow for effective response to domestic violence in resource-limited settings.

The analysis of the impact of the COVID-19 pandemic on the effectiveness of legislative mechanisms to combat domestic violence, although not the main focus of this study, revealed vital trends that are consistent with the findings of A. Peterman *et al.* (2020) regarding the exacerbation of the problem of domestic violence in the context of lockdowns and the need to adapt legal mechanisms to new challenges. These observations highlight the necessity of a flexible legal framework and the ability to adapt quickly to crises. The pandemic has exposed the shortcomings of existing systems for responding to domestic violence and highlighted the need to develop new approaches that would accommodate the possibility of analogous crises in the future (Apakhayev *et al.*, 2024). The findings of the study on the role of informal social structures in supporting victims of domestic violence, especially in Asian countries, are consistent with the findings of K. Tekkas Kerman and P. Betrus (2020), who note the significance of considering the specific cultural features when developing strategies to combat domestic violence. The researchers note the need to adapt international practices to the local context and the importance of involving non-governmental organizations and local communities in the implementation of legislative initiatives.

Overall, the study demonstrated the complexity and multidimensionality of the problem of legislative regulation of combating domestic violence. The identified trends and innovative approaches underline the need for continuous improvement of the legislative framework and mechanisms for their implementation, considering the cultural, social, and economic characteristics of each country. The findings of the present study can serve as a basis for further development of international standards in the field of combating domestic violence and development of recommendations for improving national legislation. At the same time, the identified differences in the effectiveness of the implementation of legislative measures in different countries suggest the need for further research into the factors that influence the successful implementation of legal mechanisms for the protection of victims and prevention of domestic violence.

Conclusions

Based on the analysis of legislative approaches to combating domestic violence in different countries, several key conclusions can be drawn. Most of the countries included in the study are gradually expanding the definition of domestic violence to include not only physical but also psychological, economic, and sexual violence. This comprehensive approach contributes to greater inclusiveness and precision in addressing the multifaceted nature of violence, acknowledging the diverse forms of abuse that victims may experience. Furthermore, the integration of gender-specific dimensions into legislative frameworks enhances the applicability of laws to real-life scenarios.

Innovative victim protection measures, such as the electronic monitoring system for perpetrators in Sweden or the emergency call program “Téléphone Grave Danger” in France, show significant potential to increase victim safety and prevent the recurrence of violence. These measures not only act as deterrents but also provide victims with a sense of security and immediate support. However, their effectiveness largely depends on proper implementation, adequate resource allocation, and seamless inter-institutional coordination. Addressing gaps in training law enforcement officers and ensuring the availability of technological infrastructure remain critical factors for success. The role of specialized courts, such as those in Spain, is a compelling example of a systematic approach to addressing cases of gender-based violence. These courts not only expedite legal proceedings but also offer a victim-centered judicial environment, ensuring more effective legal protection. Expanding this model to other jurisdictions can significantly improve access to justice for victims and promote uniformity in handling domestic violence cases.

Challenges faced by countries in implementing legislation are often related to cultural barriers, insufficient funding, and weak institutional support. For instance, regional differences in Spain, cultural barriers in Japan and India, as well as limited resources in Kazakhstan and Mongolia, highlight the urgent need for tailored solutions. Strengthening awareness campaigns, enhancing community-level engagement, and fostering international collaboration are essential for overcoming these barriers.

Further research should focus on developing a methodology for assessing the economic impact of domestic violence and the effectiveness of preventive measures, exploring the possibilities of adapting successful European practices in Asian countries, considering cultural specifics, and investigating the impact of digitalisation on the effectiveness of mechanisms for protecting victims of domestic violence.

Acknowledgements

None.

Conflict of interest

None.

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Законодавчі заходи з протидії домашньому насильству: Порівняння європейських та азійських країн

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Анотація. Метою цього дослідження було визначити ефективність законодавчих ініціатив щодо протидії домашньому насильству в різних культурних контекстах. Дослідження охопило 10 країн: п'ять європейських (Німеччина, Франція, Велика Британія, Швеція, Іспанія) та п'ять азійських (Японія, Індія, Туреччина, Казахстан, Монголія), з додатковим аналізом Киргизстану, Узбекистану, України та Польщі для контекстуального порівняння. Дослідження включало аналіз законодавства відповідних країн та оцінку ефективності інноваційних правових підходів. Дослідження виявило суттєві регіональні відмінності в ефективності законодавчих заходів. Європейські країни продемонстрували вищий рівень впровадження комплексних механізмів захисту. Найбільш ефективними виявилися електронний моніторинг кривдників у Швеції, який призвів до значного скорочення кількості порушень обмежувальних приписів; система термінового реагування на телефонні дзвінки про серйозну небезпеку (TGD) у Франції, яка забезпечила швидкий захист жертвам, що перебувають у зоні підвищеного ризику; спеціалізовані суди в Іспанії, які прискорили розгляд справ про домашнє насильство. В Азії найбільший прогрес спостерігався у впровадженні реабілітаційних програм для кривдників у Монголії, що дозволило знизити рівень рецидивів, а також у розширенні юридичного визначення домашнього насильства в Індії, яке тепер включає економічне та психологічне насильство. Аналіз показав, що культурні бар'єри залишаються значним викликом для ефективного впровадження законодавства в країнах Центральної Азії, де лише 10% випадків домашнього насильства переслідуються в судовому порядку. Дослідження показало, що ефективність законодавчих заходів значною мірою залежить від їх практичної реалізації, наявності відповідних ресурсів та громадської підтримки. Отримані результати є цінним підґрунтям для подальшого вдосконалення законодавчих заходів з протидії домашньому насильству та розробки більш ефективних механізмів захисту потерпілих з урахуванням специфіки різних національних контекстів

Ключові слова: правові механізми; жертви; культурні бар'єри; запобігання; гендерна рівність; соціальна підтримка

UDC UDC 346.53:334.7
Doi: 10.32518/sals4.2024.170

Соціально-правові студії. 2024. Т. 7, № 4
Social & Legal Studios. 2024. Vol. 7, No. 4

Legal regulation of social entrepreneurship focused on the integration of marginalised groups into society

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Abstract. The study aimed to compare legal approaches to support social entrepreneurship aimed at the integration of marginalised groups into society in several countries, including France, Italy, Great Britain, the United States of America and South Korea. The results demonstrated unique models of legislative support focused on social inclusion: from the social and solidarity economy model in France to public interest companies in Great Britain. Each of these models has its own characteristics, particularly in terms of tax incentives, grant support, and integration requirements. The results of the study emphasize the important role of social entrepreneurship in promoting social and economic integration. The comparison of legal frameworks showed that different levels of support can affect the stability and efficiency of social enterprises. For example, the Social and Solidarity Economy model in France and the cooperative system in Italy emphasise the reinvestment of profits in social projects, the Community Interest Companies in Great Britain ensures transparency, and in South Korea enterprises receive subsidies for the employment of vulnerable groups. This indicates the adaptation of approaches to the specific national context. Thus, the study found that a clear and structured legal framework significantly contributes to the development of social entrepreneurship, providing stable financial support and the opportunity to achieve social inclusion through job creation, skills development and increased financial stability among marginalised groups

Keywords: community inclusion; vulnerable populations; inclusive economy; rights protection; policy development

Suggested Citation

Article's History: Received: 12.08.2024 Revised: 18.11.2024 Accepted: 23.12.2024

Ualiyeva, A., Zhempiissov, N., Zhabelova, T., & Nurgalym, K. (2024). Legal regulation of social entrepreneurship focused on the integration of marginalised groups into society. *Social & Legal Studios*, 7(4), 170-180. doi: 10.32518/sals4.2024.170.

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Introduction

The increasing necessity to develop a sustainable social policy that guarantees equal opportunities for all citizens determines the applicability of researching the legal regulation of social entrepreneurship centered on the integration of marginalised groups. In the current climate, social entrepreneurship is emerging as a crucial instrument for lowering social inequality, expanding employment opportunities, and assisting those who are hampered by cultural, social, or financial constraints. An efficient legal framework for social companies can guarantee the long-term viability of their operations, improve their social impact, and establish support systems. The research holds significance for the advancement of institutional and regulatory tools designed to maximize the socio-economic assimilation of marginalised communities into the community.

G.N. Akramov (2024) examined discrimination based on class, gender, race, and orientation, Certain population groups were significantly marginalised, leading to social and economic isolation. Author finding that social workers played a key role in supporting these groups and planning their integration. However, he noted the need for further research to develop comprehensive strategies against marginalization. The challenge of conducting research to support marginalised groups and promote educational equity was studied by D. Beach and M.B. Vigo-Arrazola (2024). They found that combating educational hegemony requires close collaboration with communities to address marginalised groups' interests. However, they noted the need for strategies to ensure these groups have full access to study findings and are actively involved in the research process. The problem of limited legal frameworks for supporting social entrepreneurship and its integration into social policy has been considered by such authors as M. Snowden (2024). According to their research, social enterprises' growth and interactions with public and governmental entities are hampered by the absence of defined legal standards. Nonetheless, the authors emphasised that more research into ways to harmonize laws is required in order to establish favorable conditions for the expansion and societal importance of these businesses.

The lack of support for social entrepreneurship in the legal framework was studied by N.K. Singh and P. Kumar (2023). They found that broad legal norms, unclear terminology, and limited resources hindered social enterprise development. The authors proposed an adaptive regulatory approach (ARLD-CI) to create a flexible framework for social entrepreneurship. However, further research is needed to evaluate its effectiveness in ensuring long-term viability and adaptability of social enterprises. The problem of social exclusion and exclusion of vulnerable groups due to insufficient participation in public services was studied by M. Czuba (2019). He noted that social enterprises in this area contribute to increasing social security for workers belonging to groups at risk of exclusion by providing them with employment opportunities. This, in turn, has a positive impact on their self-esteem and sense of security, but the study does not include an analysis of the long-term effects on the well-being of these individuals.

The complexity of social enterprises in combining commercial activities with political advocacy to solve social problems was studied by J. Mair and N. Rathert (2024). They found that engaging in political advocacy contributes to the influence of social enterprises on social norms, policies and legislation aimed at solving problems in society. However, gaps remained in the study of factors that facilitate or limit such activities, including the difference between cultural and political approaches to advocacy. The problem of effective approaches to social entrepreneurship in difficult conditions has been studied by such authors as J.J. Baker and C. Weerakoon (2024). They found that the integration of a marketing logic focused on coordination and interaction between participants contributed to the creation of value through the sharing of resources. However, the studies pointed to the need for further research into the mechanisms of interaction and the long-term results of such coordination. The problem of underdeveloped legal frameworks to support social entrepreneurship was explored by an Organisation for Economic Co-operation and Development (OECD) (2022) who noted that countries with appropriate legislation were better able to support such organisations. However, social enterprises often acted as de facto organisations without legal recognition, which limited their access to support (Yatsiv *et al.*, 2024). Further research is needed on universal approaches to legal recognition and better evaluation of the effectiveness of existing frameworks.

This study is aimed at identifying effective legal approaches for promoting social initiatives aimed at involving marginalised groups in active public life. To achieve this goal, the following objectives were set: to analyse the existing legal frameworks for social entrepreneurship in different countries and identify key factors that affect its effectiveness; to explore tools and mechanisms that can help improve the integration of marginalised groups through social enterprises.

Materials and methods

This study conducted a comparative analysis of social entrepreneurship support models in five countries: France, Italy, Great Britain, the United States of America, and South Korea due to the diversity of their approaches to supporting social entrepreneurship, which represent different models of regulation and legal recognition of social enterprises. The study covered the period from 2018 to 2023, which allowed for a detailed cross-country review of approaches. Data were collected from official reports of government institutions, publications of international organisations, as well as academic research in the field of social entrepreneurship. The data collected covered legislative provisions, mechanisms for supporting social enterprises, tax incentives and other forms of financial assistance.

The research took place in three stages using methods of qualitative analysis. At the first stage, the main criteria were selected, according to which various legal models were evaluated, including financing opportunities, tax incentives, conditions for access to state programs, as well as ways of involving socially vulnerable groups in economic activity. This step involved applying a data systematization method to create a framework that allowed for the separation of commonalities and differences in each country's approaches to supporting social enterprises, providing key benchmarks for comparison. At the second stage, the method of comparative analysis was used to evaluate the data, allowing for the creation of a standardised comparative structure for analysing support models. The comparison covered key indicators, such as the legal status of social enterprises, access to public resources, tax incentives, and requirements for the

integration of vulnerable groups. The study examined the laws governing social entrepreneurship in different countries. In particular, in France, the Law "On the Social and Solidarity Economy" (2014) (SSE) was analysed (Organisation for Economic Co-operation and Development, 2017). In Italy, the study covered Law of "Discipline of Social Cooperatives" (1991). In the United Kingdom, the Companies (Audit, Investigations and Community Enterprise) Act (2004) was considered. In the United States, the Delaware Public Benefit Corporations (2020), which is regulated at the level of individual states, such as Delaware, was reviewed. In South Korea, the Social Enterprise Promotion Act (2007) was examined.

At the third stage, the research results were were synthesised and presented in the form of a comparative table, which made it possible to visualize the main similarities and differences between the legal models of different countries. The method of structured visualization based on the collected data provided clarity in the presentation of the results and helped to summarize the key findings, highlighting the most successful strategies that promote social integration. The results of this stage helped not only to identify the main successful approaches, but also outlined directions for further research in the field of social entrepreneurship, in particular, taking into account the specific needs of each individual country.

Results

Different nations encourage and foster social entrepreneurship through distinctive legal frameworks that enable the inclusion of underrepresented groups in society and the economy. Every nation has a unique regulatory framework that establishes limitations and standards for businesses' operations as well as the chances for them to obtain tax breaks, funding, and investment. A thorough explanation of these strategies in South Korea, the United States, France, Italy, and the United Kingdom is provided below. The Social and Solidarity Economy (SSE), which was implemented in France in 2014, grants social enterprise a distinct legal character. According to this regulation, social entrepreneurs are required to follow specific guidelines regarding accountability and openness. Businesses that must reinvest at least 50% of their revenues in social projects and activities aimed at enhancing public welfare are covered by the SSE, including associations, mutuals, and cooperatives. SSE businesses can receive specific grant programs, financial aid, and tax perks from the French government (Organisation for Economic Co-operation and Development, 2017). This makes it possible for the state to provide steady funding and assistance to social enterprises that serve underserved populations, such the unemployed or those with impairments. Since the earnings made by these businesses are allocated to regional social projects like job programs, skill-training programs, or other social projects that raise the standard of living in the communities, SSE also helps to develop regional communities.

The social cooperative concept serves as the foundation for Italy's system of support for social entrepreneurship. The Italian government offers them tax breaks, soft credit funding, and the chance to take part in specific initiatives that improve working conditions and integrate vulnerable populations, including the unemployed, low-income individuals, and those with impairments. According to Law of Italy No. 381 (1991), social cooperatives are able to obtain funding from both the state and local governments, which greatly improves their stability and makes it easier for them to grow. In order to guarantee long-term sustainable development and assistance for socially vulnerable groups, cooperatives are required to reinvest the majority of their revenues back into social projects or the organization's growth (Kalyuzhna *et al.*, 2024). Additionally, by investing in infrastructure, generating employment, and implementing training and educational initiatives, this model enables social cooperatives to assist the areas in which they operate (Carrera *et al.*, 2007).

The legal status of Community Interest Companies (CICs) in the UK is primarily established under the Companies (Audit, Investigations and Community Enterprise) Act (2004) and further detailed in the Community Interest Company Regulations (2005). These laws set the framework that allows CICs to operate with public benefit, access certain government funding programs, and receive tax benefits while imposing restrictions on profit distribution to ensure that community interests remain a priority. With the potential for a restricted distribution of earnings to investors, CICs provide social entrepreneurs flexible circumstances that enable them to draw in investment. In addition to offering a financial opportunity, this fosters an environment that appeals to investors who wish to fund social projects. Because of the CIC's dedication to accountability and openness, businesses are required to submit reports on a regular basis about their operations, including the use of state or investor cash (Andreadakis, 2023). As a result, the public has more faith in the CIC, which enables social entrepreneurs to better interact with their communities and meet their social needs, including creating jobs, offering training, and supporting underserved populations.

The Delaware Public Benefit Corporations (2020) is the primary legislation that establishes the legal framework for B-Corporations in the United States. This law provides legal protection for companies that wish to combine commercial operations with a social purpose. It requires B-Corporations to adhere to high standards of accountability and transparency, including regular reporting to investors and the public on their social and environmental impact. Although B-Corporations do not receive direct tax benefits, this model allows them to attract socially conscious investors by ensuring public accountability and supporting social initiatives, thus contributing to long-term business sustainability.

The Social Enterprise Promotion Act (2007), is the key legislation in South Korea that provides financial assistance to social enterprises. This law offers a framework for social entrepreneurs to access government subsidies, rent discounts, and other financial incentives. It aims to support social enterprises in creating employment opportunities for underserved groups, including youth, low-income families, and individuals with disabilities. This legislation underscores the government's commitment to fostering a socially inclusive economy through targeted support for social entrepreneurship. In order to lower their expenses, social companies in Korea are also eligible for discounts on soft loans, rent, and other financial products (Kim & Moon, 2017). This promotes the economic and social stability of social enterprises by enabling them to actively incorporate marginalised populations into their operations. Furthermore, the Korean model envisions a close partnership between social entrepreneurs and local communities, helping to build social infrastructure that

raises living standards. Different legal approaches, presented in Table 1, influence the development of social entrepreneurship by determining financial incentives, legal obligations, and the level of integration of vulnerable groups into society.

Table 1. Comparison of legal frameworks for social entrepreneurship in different countries

Country	Type of legal status	Benefits and support	Primary objective	Additional requirements
France	Social and Solidarity Economy (SSE)	Tax benefits, funding, grants	Integration of marginalised groups	Reinvestment of 50% of profits
Italy	Social Cooperatives	Tax relief, concessional loans	Support for vulnerable population groups	Profit reinvestment into community projects
United Kingdom	Community Interest Companies (CIC)	Tax benefits, limited profit distribution for investors	Support for social initiatives	Reporting and transparency
United States	B-Corporation	Public recognition, accountability	Combining profit-oriented activity with social mission	Accountability to the public
South Korea	Special Status for Social Enterprises	Subsidies, rent discounts, concessional loans	Employment for vulnerable groups	Connection with local communities

Source: compiled by the authors based on Organisation for Economic Co-operation and Development (2017), Law of Italy No. 381 (1991), the Companies (Audit, Investigations and Community Enterprise) Act (2004), the Delaware Public Benefit Corporations (2020), the Social Enterprise Promotion Act (2007)

The table 1 demonstrates a wide range of legal approaches to social entrepreneurship in France, Italy, the United Kingdom, the United States, and South Korea, each offering distinct frameworks and incentives. For example, Article 11 of Law of France No. 2014-856 "On the Social and Solidarity Economy" (2014) requires social enterprises to reinvest at least 50% of profits, aiming to reinforce their focus on societal contributions rather than profit distribution, in contrast to the UK's Community Interest Company Regulations (2005), which allows limited profit distribution to investors while maintaining a primary focus on public benefit. Similarly, Italy's Law of Italy No. 381 (1991), particularly Article 5, prioritizes the integration of marginalised groups and mandates profit reinvestment in community projects, aligning closely with France's model but differing in that it focuses heavily on workforce inclusion. In the United States, the Delaware Public Benefit Corporations (2020) establishes the B-Corporation model, mandating regular impact reporting to stakeholders without offering tax benefits, thus focusing on accountability over financial incentives. This contrasts with South Korea's Social Enterprise Promotion Act (2007), which provides direct government support through subsidies and preferential financing to promote employment for vulnerable populations, as stipulated in its provisions. These legal differences underscore how each country tailors its regulatory approach to promote social inclusion and economic stability through varying mechanisms and priorities in social entrepreneurship.

Through the provision of financial opportunities and assistance for effective social adaptation, social entrepreneurship plays a vital role in enhancing the social inclusion of excluded populations (Borshch, 2024). In actuality, this entails establishing employment that considers the requirements of marginalised communities and gives them access to financial security, education, and skill development. Overcoming social exclusion and promoting the financial independence of persons on the periphery of society are the objectives of social entrepreneurship (Terziev, 2017).

Social entrepreneurs employ a variety of models in many nations to assist marginalised populations. For instance, the social company Anchal Project (2024) in the US provides opportunity for women who have been exploited for profit to engage in the design and craft sectors. Additionally, the business gives these women access to educational materials and financial literacy, allowing them to invest in their children's future and build self-confidence in addition to earning a consistent income. Women's self-esteem and social integration are positively impacted by these activities because they help them feel appreciated and overcome social isolation. Another illustration is found in Jordan, where the social venture Sitti Soap assists Palestinian refugees in obtaining steady work in the natural soap-making industry (Sofia, 2018). In addition to hiring underrepresented groups, this business teaches them production and entrepreneurial skills. Supporting these programs gives refugees the opportunity to feel a part of society and earn money, which promotes stability and improves their degree of integration. Numerous effective social entrepreneurship initiatives that attempt to integrate underprivileged people may be found in Europe. For instance, the Dutch social firm Fairphone (Miquel, 2013), which manufactures ethical smartphones, collaborates with miners in the Democratic Republic of the Congo to give them better working conditions and fair wages. In addition to producing a sustainable product, this project aims to promote ethical supply chain methods and social responsibility. By giving workers, a steady salary and possibilities for growth, this company lowers their social vulnerability and raises their standard of living.

It's also important to remember that social entrepreneurs use circular business models to not only create jobs but also help the environment (Koshkinbaeva *et al.*, 2019). For instance, Goonj (2023) actively involves underprivileged communities in the collection, recycling, and reuse of things that would otherwise be considered rubbish in India. In addition to providing jobs for the unemployed, this also contributes to the region's environmental condition, which is a crucial component of social and environmental sustainability. This makes it easier for the communities taking part in these programs to integrate into the economy and society

by giving them access to more resources and development opportunities. By collaborating with farmers' cooperatives in Africa, other social entrepreneurs, like Divine chocolate impact (Fairtrade America, 2024) in the UK, have shown success in fair trade. Through this program, African farmers are able to keep control over the production process and receive a fair wage for their labour. By giving farming communities access to European markets and a steady income, supporting these cooperatives substantially improves their financial status and helps them escape poverty. Through stability and growth, this fosters social integration and raises the standard of living for farmers and their families. The Indonesian business Greenhope (A world without…, 2024), which specializes in creating eco-friendly packaging from biodegradable materials, serves as another illustration. By working with underprivileged groups and interacting with local communities, the company offers them support and steady employment. In addition to encouraging social cohesion, this business improves the local environment by cutting waste and advancing sustainable development. It is worth considering how a social enterprise affects the integration of the population.

Insufficient legal regulation and inadequate government agency support are two of the structural barriers that social entrepreneurship must overcome (Gazilas, 2024). These limitations restrict social enterprises' ability to address social and economic challenges and keep them from reaching their full potential. The absence of a distinct legal position that would guarantee social entrepreneurs access to special tax incentives, subsidies, and preferences in public procurement is one of the biggest issues (Kovach *et al.*, 2024). In the United Kingdom, Italy, South Korea, and the United States, social entrepreneurs are compelled to decide whether to register as non-profit or for-profit businesses, which ignores their special dual purpose of accomplishing social objectives and financial security at the same time. The Community Interest Company (CIC) designation in the UK, under the Companies (Audit, Investigations and Community Enterprise) Act (2004) and the Community Interest Company Regulations (2005), offers certain benefits, such as access to tax reliefs and grants, along with limited profit distribution to investors. However, this framework also includes restrictions on dividend payments and asset locks, which limit returns to investors and make it challenging to attract large-scale private investment.

In the United States, B-Corporations are governed by state-specific legislation, such as the Delaware Public Benefit Corporations (2020). While B-Corporations benefit from public recognition and legal protection for their dual social and profit missions, they lack federal tax incentives and face restrictions on profit distribution similar to non-profits. In India, the absence of a clear legal framework for social enterprises restricts their ability to access government contracts and subsidies, as the concept of social entrepreneurship lacks formal recognition (Asian Development Bank, 2012). Social enterprises like Goonj (2023) often operate under non-profit or for-profit models, neither of which fully supports their dual mission of social impact and financial sustainability. Currently, Indian law does not provide a specific status for social enterprises, resulting in limited benefits such as tax breaks or funding incentives that would otherwise enhance their competitiveness with traditional for-profit entities. This limitation stems from India's lack of a regulatory structure for social enterprises, as highlighted in reports by the British Council (2016), which note the fragmented support system and limited policy focus on social entrepreneurship in India. The absence of standardised criteria for evaluating social impact is another significant issue that makes it challenging to gauge the effectiveness of social enterprises and prevents them from obtaining foreign investment. The implementation of standardized techniques for evaluating social enterprises' accomplishments will allow for a transparent presentation of their activities and increase investor confidence. In addition to making money easier to obtain, this will enhance social entrepreneurs' capacity to collaborate with major corporations globally and take part in international projects. It is crucial to create uniform metrics that show how well social entrepreneurs accomplish their goals, given the various impact evaluation techniques employed in various nations.

The growth of social enterprises is limited by a lack of tax benefits and financial incentives that are typically available to non-profits. For instance, in France, while non-profits benefit from tax exemptions, social enterprises operating under the Law of France No. 2014-856 "On the Social and Solidarity Economy" (2014) do not receive the same tax relief, despite their social objectives. Similarly, B-Corporations in the United States, recognised under the Delaware Public Benefit Corporations (2020), are ineligible for federal tax breaks, which creates financial challenges and restricts their expansion potential. This restricts the ability of social enterprises to innovate and grow, as they are often required to reinvest a substantial portion of their revenues into social projects without receiving tax relief. For example, Italy's Law of Italy No. 381 (1991) provides tax benefits for social cooperatives that reinvest profits in community projects, while South Korea's Social Enterprise Promotion Act (2007) offers subsidies for social enterprises involved in socially beneficial initiatives. Table 2 summarizes these legal gaps, providing recommendations such as tax incentives for enterprises actively reinvesting in social projects to enhance their development and sustainability.

Table 2. Key gaps in legal approaches for social enterprises and recommendations for improvement

Issue	Impact on Social Enterprises	Recommendations for Improvement
Lack of Clear Legal Status	Limited access to funding and tax incentives	Establish a legal status that acknowledges the dual mission
Lack of Standardised Social Impact Evaluation	Difficulty in attracting investments, lack of transparency	Develop standardised metrics for objective impact measurement
Limited Market Access	Reduced competitiveness compared to commercial enterprises	Provide preferences in government contracts and access to infrastructure

Source: compiled by the authors

This table highlights critical challenges faced by social enterprises due to gaps in the current legal and regulatory frameworks. The lack of a clear legal status limits social enterprises' access to vital funding and tax incentives, restricting their capacity to fulfill their social and financial goals. Similarly, the absence of standardised metrics for social impact evaluation creates challenges in transparency and investment attraction, as potential stakeholders struggle to assess the effectiveness of these enterprises objectively. To improve the legal framework for social enterprises, targeted amendments to existing laws could provide substantial support. For instance, in France, modifying Law of France No. 2014-856 (2014) could introduce tax benefits for social enterprises that reinvest profits, similar to non-profit advantages. In the United States, the Delaware Code (2023). Nonprofit nonstock corporations could be revised to include federal tax incentives, encouraging investment in B-Corporations that achieve specific social impact goals. To enhance the legal framework supporting social enterprises, several key measures are recommended to create a favorable environment for their growth. First, establishing a specialized legal status for social enterprises would provide a clear distinction from traditional commercial and nonprofit organizations, granting them access to specific government programs, tax incentives, subsidies, and funding essential for achieving social goals. For example, Article 11 of the France's Law of France No. 2014-856 (2014) requires reinvestment of profits but could extend this to include tax benefits similar to Law of Italy No. 381 (1991), which grants tax reductions for community-directed profits in social cooperatives. Furthermore, social enterprises often face challenges due to the lack of standardised methodologies for measuring social impact, complicating the assessment of their outcomes and limiting their ability to attract investments. Introducing universal standards for social impact evaluation would enable enterprises to demonstrate their achievements transparently and objectively, strengthening the trust of investors and government institutions. For instance, South Korea's Social Enterprise Promotion Act (2007) demonstrates how financial subsidies can support job creation for marginalised groups, highlighting the benefits of structured government support. An essential aspect of supporting social enterprises is granting preferences in public procurement and access to infrastructure. Social enterprises often compete with commercial companies that have substantially greater resources. Implementing procurement preferences, such as simplified participation conditions or designated quotas, would allow social enterprises to expand their market reach and increase their influence within communities. For example, CICs in the UK, governed by the Companies (Audit, Investigations, and Community Enterprise) Act (2004), demonstrate the value of transparency and accountability, yet their competitive standing remains limited due to the lack of specific tax incentives.

Finally, introducing tax incentives for social enterprises, especially for those that actively reinvest their profits in social programs, would significantly increase the financial resources available to them. Similar to the Delaware Code (2023), targeted tax incentives for B-Corporations could encourage reinvestment in social projects. These recommended measures would contribute to the development of social enterprises by supporting the achievement of social and economic goals and creating favorable conditions for the growth and effective operation of these organizations.

Discussion

The European Commission (2024) study and this study share a common vision of social entrepreneurship as an effective tool for the social integration of marginalised groups. Both studies emphasize the importance of a legal framework that provides social enterprises with access to stable financing, tax benefits, and other forms of government support that facilitate the integration of vulnerable groups into social and economic life. At the same time, there are some differences. This study focuses on the comparison of international models of social entrepreneurship support in countries such as France, Italy, the United Kingdom, and the United States, providing a comparative analysis of different approaches. The study by European Commission (2024) focuses on the national specifics of one country's legislation, examining in detail the specific legal and regulatory aspects that are unique to that jurisdiction.

The study by the Office of the United Nations High Commissioner for Human (2021) and this study have similarities in exploring the problems of discrimination and segregation in access to housing for marginalised groups. Both studies emphasize the importance of legal and policy instruments to ensure equal access to housing and social inclusion, especially for groups such as Roma, migrants and low-wage earners. However, there are significant differences in focus and approach. The study by the Office of the United Nations High Commissioner for Human focuses in detail on specific aspects of Italy's anti-discrimination policy, including specific mechanisms such as the National Office against Racial Discrimination (UNAR), which monitors discriminatory cases and works to improve access to housing through sustainable solutions projects. While this study takes a broader, comparative approach, analysing legislative models of support for social entrepreneurship in different countries to integrate vulnerable groups.

The study by C. van Lierop (2016) and the current research share a focus on supporting marginalised communities and the role of legal and financial mechanisms in their integration. Both studies highlight the importance of funding from the EU and national authorities to improve the living conditions of these groups, especially through access to housing, education, healthcare, and social services. They emphasize the need for collaboration between national governments and the European Union to ensure effective integration and stress the importance of active participation by marginalised groups in decision-making processes that affect them. However, the differences lie in their specific focus areas. C. van Lierop's (2016) study focuses on EU policies for integrating the Roma and other marginalised communities through coherent policy frameworks and structural funds, analysing EU efforts to combat discrimination, poverty, and social segregation. In contrast, the current research takes a broader approach by comparing various international models of support for social entrepreneurship in countries like France, Italy, the United Kingdom, and the United States, aiming at the integration of vulnerable groups.

The research by F. Petrella and N. Richez-Battesti (2014) and the current study both focus on the role of social entrepreneurship in promoting social change and integrating marginalised groups. Both emphasize the importance of innovative approaches aimed at meeting social needs and the role of the social entrepreneur as a change agent in society. In both works, the achievement of a social mission alongside

economic efficiency is highlighted as an essential element for supporting marginalised groups. However, a key difference lies in their focus on specific aspects of social entrepreneurship. F. Petrella and N. Richez-Battesti's (2014) study addresses the semantics and theoretical contradictions within the definitions of social entrepreneurship, social innovation, and the social entrepreneur, analysing various approaches to these concepts, particularly in the context of the European Union. In contrast, the current study is more focused on practical legal and financial models supporting social entrepreneurship in different countries, offering a comparative overview of specific legislative approaches in countries such as France, Italy, the United Kingdom, and the United States.

The research by S. Kidd and K. McKenzie (2014) and the current study shares a focus on the role of social entrepreneurship in supporting marginalised groups. Both studies emphasize that social enterprises can play a transformative role by providing essential services and fostering social inclusion for vulnerable populations, such as immigrants, refugees, and those facing mental health disparities. Each study acknowledges the importance of embedding services within the communities they serve, ensuring that initiatives are tailored to the unique challenges of these populations. However, there are notable differences. S. Kidd and K. McKenzie's research primarily investigates the effectiveness of social entrepreneurship specifically within the mental health sector, examining how social enterprises address mental health inequities for groups like LGBTQ+ individuals, Indigenous communities, and the homeless in Canada. Their study focuses on mental health services and highlights core themes such as the personal investment of leaders, innovative approaches, and active community involvement as critical for success in this context. In contrast, the current study takes a broader, comparative approach by analysing legal and financial frameworks supporting social enterprises in various countries, including France, Italy, the UK, and the US. It evaluates how these frameworks foster the social and economic integration of marginalised groups more generally, beyond the scope of mental health.

Upon reviewing both studies, several similarities and differences emerge. Both J.S. Liptrap (2021) and the current research explore the impact of legal frameworks on social enterprise, highlighting the role of policy and regulation in shaping the operational landscape of these enterprises. Each study emphasizes how regulatory structures can empower or limit social enterprise growth and adaptation. However, J.S. Liptrap's (2021) research uniquely focuses on the UK's CIC model, analysing how the British welfare state's political economy influenced the development of CICs as a tool to fulfill social welfare objectives. This framework is specific to the UK and includes an in-depth examination of CIC governance structures and legal restrictions designed to promote public benefit through mandated capital retention within the social sector. In contrast, the current study encompasses multiple countries, comparing various legal models that support social enterprises beyond the UK context. It broadens the scope by examining the efficacy of legal statuses in different nations and how this support or restrict social missions in various regulatory environments. This broader, comparative approach contrasts with J.S. Liptrap's narrower focus on the UK's specific regulatory and political context for CICs.

The study by the European Center for Not-for-Profit Law (ECNL) (2015) and the current research share a common focus on understanding how legal frameworks can facilitate the development of social enterprises. Both studies emphasize the importance of a supportive legal environment that provides social enterprises with access to tax benefits, funding, and other resources necessary for growth. Both analyses also highlight how structured legal recognition can help social enterprises effectively address social issues and promote the integration of marginalised groups into society. However, the key difference lies in their scope. The ECNL study primarily provides a comprehensive overview of regulatory frameworks across various European countries, assessing their effectiveness in promoting social objectives and supporting disadvantaged groups within a European context. In contrast, the current research expands its comparative analysis to include not only European countries but also non-European ones, such as the United States, to provide a broader, global perspective on how different nations approach the legal support of social enterprises.

The similarities and differences between the research by C.V. Vasserot (2022) and the present study primarily focus on the regulation and development of social enterprises within different legal frameworks. Both studies investigate the legal structures that support social enterprises, emphasizing how the law can accommodate organizations that pursue both profit and social missions. In terms of similarities, both studies underscore the necessity of hybrid legal forms, such as benefit corporations and community interest companies, which allow social enterprises to fulfill their dual goals effectively. Each study highlights how these legal structures help balance financial viability with societal impact, aiming to provide stability and incentives for social enterprises through defined legal recognition and benefits. The primary difference lies in the geographic scope and specific legal nuances explored. While C.V. Vasserot's (2022) work focuses on a broader comparative analysis of social enterprise law across various European countries, the current study provides an in-depth examination of national-level adaptations, focusing on the localized implications of these regulations on social enterprise growth and sustainability. Additionally, C.V. Vasserot (2022) places more emphasis on the challenges posed by traditional corporate structures and their adaptation to social aims, whereas the current research delves into practical recommendations for bridging regulatory gaps specific to the regional needs of social enterprises.

The research by S. Adam *et al.* (2016) and the current study both examine regulatory frameworks that support social enterprises in achieving social impact. Both emphasize the need for adaptable legal structures, tax incentives, funding, and official recognition to empower social enterprises effectively. However, a key difference is the scope: S. Adam *et al.* (2016) focus on European countries' specific policies and adaptations, while the current study provides a broader, global comparison, including non-European contexts like the U.S. This approach allows for identifying both universal best practices and specific regulatory gaps that could impede social enterprise development. With an emphasis on how legal frameworks might assist social enterprise growth and their role in integrating excluded groups, the current research and the studies by A. Ciepielewska-Kowalik and M. Starnawska (2021) both examine the regulatory and historical evolution of social enterprises. These studies demonstrate how social enterprises can be used as instruments for vulnerable groups' economic and social inclusion through modified

laws and support systems. They do, however, take somewhat different approaches. A. Ciepielewska-Kowalik and M. Starnawska's study offers a thorough analysis of Poland's social enterprise industry, emphasising the distinct institutional, historical, and social background that has influenced Polish social enterprises, such as cooperatives and non-profits. On the other hand, the current study adopts a more comprehensive, global comparative viewpoint, examining and contrasting different legislative regimes for social enterprises across multiple countries to identify best practices and highlight areas where the regulatory framework could be improved.

The study by A. Ciepielewska-Kowalik *et al.* (2015) and the current research both explore how institutional and regulatory frameworks shape the effectiveness of social enterprises, emphasising the influence of historical, economic, and political contexts on their ability to advance social welfare. Both studies underscore the importance of supportive legal environments that allow social enterprises to address the needs of marginalised communities. However, A. Ciepielewska-Kowalik *et al.* (2015) concentrate specifically on Poland, providing an in-depth look at social enterprise models unique to the Polish context, such as cooperatives and entrepreneurial non-profits, and examining the local challenges and opportunities these organizations face. In contrast, the current study adopts a broader, comparative approach, analyzing various legal frameworks across multiple countries and identifying gaps that may limit the development of social enterprises. This comparative perspective aims to offer more universally applicable recommendations, unlike the Poland-focused insights provided by A. Ciepielewska-Kowalik *et al.* (2015). Y. Stryjan's (2023) study and the current research examine how social enterprises support work integration for marginalised groups, highlighting the importance of policy support in creating sustainable environments that bridge economic and social goals. However, Y. Stryjan's (2023) focuses on Sweden's work integration social enterprises (WISEs) within a government-centered framework emphasizing full employment, noting limitations due to the state-managed nature of these initiatives. In contrast, the current research provides a broader international perspective, examining models like the British Community Interest Company (CIC) and critiquing its flexibility in attracting private investments for social aims.

In summary, the comparisons between the current study and other research works reveal both shared objectives and distinct focuses regarding social enterprise and its impact on integrating marginalised groups. Each comparative study acknowledges the role of supportive legal frameworks and policies, highlighting the need for tax benefits, financing, and inclusive strategies to empower social enterprises in their social missions. However, each work's approach varies, with some focusing on specific national contexts – such as the frameworks in Poland, Italy, or Sweden – while others, like the present research, adopt a broader, global perspective. This global approach enables the current study to identify universal best practices and recommendations for legislative improvements, while the national studies provide in-depth insights tailored to their unique institutional and regulatory landscapes.

Conclusions

The research findings emphasised the crucial role of social entrepreneurship in fostering the integration of marginalised groups into the socio-economic framework. A comparative analysis of international legal approaches demonstrated that each country utilizes distinct regulatory models, such as SSEs in France, CICs in Great Britain, and B-Corporations in the United States, to support social enterprises. These frameworks offer varying levels of legal recognition, financial support, and operational independence, contributing to the advancement of social integration and enhancing the corporate responsibility of enterprises in addressing critical social needs.

Results indicated that despite the differences in these frameworks, the overarching goal remains consistent: providing social enterprises with opportunities to thrive by offering legal structures that align social impact with economic sustainability. For instance, France's Law of France "On the Social and Solidarity Economy" mandates that 50% of profits from social enterprises be reinvested in community-focused initiatives. This approach prioritises the reinvestment of profits while maintaining operational independence. Similarly, Italy's Law "Discipline of Social Cooperatives" encourages social cooperatives to reinvest their profits by granting tax benefits, supporting social goals while allowing financial stability. South Korea's Social Enterprise Promotion Act offers additional direct financial support, including subsidies and preferential financing, especially for those creating employment opportunities for vulnerable populations, highlighting how legal frameworks can prioritize social stability and inclusion.

The analysis also revealed commonalities across these support models. All significant legal frameworks prioritize balancing social objectives with economic sustainability, enabling social enterprises to remain viable while providing meaningful assistance to marginalised groups. Critical factors for the successful development of social entrepreneurship include legal recognition, tax benefits, subsidies, and access to financing programs. These factors reduce the barriers that social enterprises face in accessing essential resources and markets. However, the study also identifies challenges that persist globally. One pressing issue is the absence of standardised metrics for measuring social impact, which complicates the ability of social enterprises to attract investments and demonstrate their effectiveness to stakeholders. This lack of metrics hinders transparent reporting and makes it difficult for investors to evaluate the social and economic benefits of these enterprises accurately. Furthermore, social enterprises encounter substantial challenges in competing with traditional commercial enterprises, which have greater access to financial resources and established markets. The limited market access and reduced visibility for social enterprises decrease their competitiveness. Additionally, gaps in legal recognition lower their attractiveness for investors and limit access to government incentives, which are essential for ensuring long-term sustainability.

A limitation of this study is its reliance on existing literature and comparative analysis, which, while helpful, does not fully capture cultural, political, or economic nuances specific to each region. For future research, empirical studies focused on social enterprises in various countries are recommended to explore practical challenges and successes. Developing standardised criteria for assessing social impact could also aid in harmonizing reporting and evaluating social enterprise performance internationally, ultimately promoting sustainability.

Acknowledgements

None.

Conflict of interest

None.

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Правове регулювання соціального підприємництва, спрямованого на інтеграцію маргіналізованих груп у суспільство

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Анотація. Дослідження мало на меті порівняти законодавчі підходи до підтримки соціального підприємництва, спрямованого на інтеграцію маргіналізованих груп у суспільство, у кількох країнах, зокрема у Франції, Італії, Великій Британії, Сполучених Штатах Америки та Південній Кореї. Результати продемонстрували унікальні моделі законодавчої підтримки, орієнтовані на соціальну інклюзію: від моделі соціальної та солідарної економіки у Франції до компаній суспільного інтересу у Великій Британії. Кожна з цих моделей має свої особливості, зокрема щодо податкових стимулів, грантової підтримки та вимог до інтеграції. Результати дослідження підкреслюють важливу роль соціального підприємництва у сприянні соціальній та економічній інтеграції. Порівняння законодавчих баз показало, що різні рівні підтримки можуть впливати на стабільність та ефективність соціальних підприємств. Наприклад, модель соціальної та солідарної економіки у Франції та кооперативна система в Італії наголошують на реінвестуванні прибутків у соціальні проекти, компанії суспільного інтересу у Великій Британії забезпечують прозорість, а в Південній Кореї підприємства отримують субсидії за працевлаштування вразливих груп населення. Це свідчить про адаптацію підходів до конкретного національного контексту. Таким чином, дослідження показало, що чітка та структурована законодавча база значно сприяє розвитку соціального підприємництва, надаючи стабільну фінансову підтримку та можливість досягти соціальної інтеграції через створення робочих місць, розвиток навичок та підвищення фінансової стабільності серед маргіналізованих груп населення

Ключові слова: інклюзія громади; вразливі верстви населення; інклюзивна економіка; захист прав; розробка політики

UDC 349.2
Doi: 10.32518/sals4.2024.181

Соціально-правові студії. 2024. Т. 7, № 4
Social & Legal Studios. 2024. Vol. 7, No. 4

Threats to EU Member States induced by mass migration due to the full-scale war in Ukraine: Reconsideration labour legislation

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Abstract. In the contemporary world, large-scale migration flows triggered by global conflicts underscore critical challenges faced by nations worldwide. The full-scale war in Ukraine has prompted significant waves of migration, giving rise to various social and security threats for European Union Member States. This article aimed to reconsider labour legislation by identifying the most pressing threats posed by mass migration to EU countries as a result of the full-scale war in Ukraine. The research employed key methods, including formal-legal analysis, the Saaty hierarchical analysis method, and expert surveys enhanced by the Delphi method. These approaches facilitated the identification of the most significant threats arising from mass migration to EU countries in the context of the war in Ukraine. As a result, a list of the most significant threats posed by mass migration to EU countries as a result of the full-scale war was proposed. Potential interconnections and dependencies among the identified threats have been presented. With expert input, the key threats posing risks to the national security of EU countries due to the mass migration of Ukrainians were characterised. As a result, the article proposes an effective methodological approach for evaluating the significance of these threats. The identified threats were hierarchically ordered, ranging from the most critical to the least significant. Pathways for rethinking labour legislation in response to the most critical threats, as highlighted through modelling, were proposed. Additionally, the necessary amendments to labour legislation to minimise existing gaps were outlined. The practical

Suggested Citation **Article's History**: Received: 30.08.2024 Revised: 25.11.2024 Accepted: 23.12.2024

Parasiuk, V., Kucher, V., Onyshko, O., Shyshko, V., & Boryslavskyi, R. (2024). Threats to EU Member States induced by mass migration due to the full-scale war in Ukraine: Reconsideration labour legislation. *Social & Legal Studios*, 7(4), 181-190. doi: 10.32518/sals4.2024.181.

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value and significance of the findings lie in their potential use by legislators to refine labour laws, thereby minimising or countering the most critical threats

Keywords: social challenges; immigration policy; Saaty hierarchical analysis; national security; hierarchical modelling

Introduction

The current labour law within the European Union is characterised by a significant degree of flexibility and adaptability. This enables each Member State to develop its own socio-economic conditions while adhering to European standards and requirements. Consequently, modern EU legislation sets a framework for the national labour laws of Member States. Within these boundaries, each EU country has the right to establish specific rules and regulations that correspond to the historical, economic, cultural and other particularities and needs of each Member State. The war in Ukraine has forced millions of people to seek refuge in neighbouring countries, giving rise to economic, social, and security implications for the host nations. This necessitates a review of labour legislation to facilitate the integration of migrants into the labour market, mitigate social tensions, and enhance national security. Reforming the legislation can help better utilise the potential of migrants, fostering their economic adaptation and social stability, which is crucial for maintaining overall European harmony and prosperity.

Many EU countries are making significant changes to their national migration policies to better integrate migrants into the domestic labour market. This includes regulations on legalising documents for work access, and more liberal access to social services such as healthcare, education and social security. In this context, providing migrants with access to a package of social services is critically important, both from an economic perspective and from the standpoint of social integration. Another important aspect to consider when researching migration policy and its optimisation is the challenges faced by national governments in trying to balance the labour market while ensuring the rights of migrants. These challenges include issues such as detecting and combating labour exploitation and ensuring fair working conditions and rights for migrants, regardless of their origin or social status.

Regarding academic literature, it should be noted that there is a limited amount of research dedicated to the topic of the impact of mass migration caused by the full-scale war in Ukraine on the countries of the European Union. However, the migration of Ukrainians to EU countries has interested researchers even before 2022. For example, even before the COVID-19 pandemic, C. Beierlein *et al.* (2016) and E. Davidov *et al.* (2020) studied the relationship between universalism, conservatism, and attitudes towards minorities, indicating that deep-rooted societal values significantly influence the individual needs of migrants.

L. Shimchenko (2023) examines migration processes in Ukraine during the ongoing war, focusing on security challenges and available legal options for migrants. The research highlights how these dynamics impact the broader security landscape of the European Union, emphasising the need for adjustments to legal frameworks to better accommodate foreigners and ensure mutual benefit for both migrants and host countries. O. Dmytrenko (2024) concentrates on contemporary Euroscepticism, analysing how migration influences public and political sentiments within the EU. A comparative analysis of various EU regions indicates that increased migration from Ukraine might intensify Eurosceptic attitudes, affecting the political climate and potentially impacting labour legislation for migrants. V. Vasechko (2023) explored the right to education for individuals granted temporary protection in EU Member States, which is key to understanding the broader context of migrant integration. Ensuring access to education can increase migrants' readiness for employment, directly linked to labour legislation. V. Vasechko's (2023) findings can support arguments in favour of more inclusive policies that both protect and empower migrants through education, thus contributing to the labour market. T. Kortukova (2021) examines the legal aspects of employment for highly skilled migrants in the EU. This research is particularly relevant as it discusses the integration of skilled workers into EU labour markets, suggesting that easing restrictions and increasing legal support for skilled migrants can mitigate some negative consequences of mass migration by harnessing the potential of migrants for economic contribution.

J. Dennison and A. Geddes (2019) discuss how immigration has become increasingly important in Western Europe, correlating with the rise of anti-immigration political parties. The economic impact of Ukrainian immigrants on EU countries is discussed by P. Strzelecki *et al.* (2022) and P. Spiegel (2022), who detail how migration has contributed to economic growth in Poland, one of the main host countries for Ukrainian migrants since the start of the full-scale invasion. It should be noted that the findings of E. Guild and K. Groenendijk (2023), E. Ociepa-Kicińska and M. Gorzałczyńska-Koczkodaj (2022), and N. Letki *et al.* (2024) demonstrate that there is a real need for legislative improvements, particularly in developing new measures to address key threats. This requires new research to facilitate the solution to this problem.

As a result of the literature review, the aim of the study was to identify the most significant threats posed by mass migration to EU countries as a result of the full-scale war in Ukraine. By identifying key gaps, the following research question can be formulated: to propose an effective methodological approach to assessing the significance of these threats and to analyse current legislation. The object of the study is the phenomenon of mass migration of Ukrainians to EU countries.

Materials and methods

To achieve the research objectives, several methods were employed that best suited the stated aim and research objective. The first method used was an expert survey. Forty experts from fields related to the formulation and implementation of migration policy participated in the survey. These included legal experts such as university professors with over 15 years of experience in teaching and consulting on international and migration law, as well as lawyers specialising in defending the rights of migrants. In the field of social policy, directors of non-governmental organisations and project managers working on the integration of migrants and the provision of social services to this population group were involved in the survey. Government officials, including

heads of migration departments in the ministries of internal affairs and foreign affairs, also participated in the research. The survey was conducted remotely, using electronic communication tools, which made it possible to involve experts from different geographic locations and thus obtain more objective and unbiased data. Before the survey began, all participants were fully informed about the research objectives, how the collected data would be used, and the potential risks associated with their participation. Complete anonymity of the participants was guaranteed, and it was ensured that no information that could identify an individual would be used in reports or publications. All data were processed and stored following the highest standards of security and confidentiality, as stipulated in the Guidance Note of the European Commission on Ethics and Data Protection (2021). These measures helped to build trust between the participants and the research team.

After collecting the information, the survey results were systematised using the Delphi method. This method involved several rounds of surveys that allowed for the refinement and consolidation of expert responses. In each round, experts were provided with the summarised results of the previous round to verify and refine their views. This facilitated the achievement of consensus and the identification of the most well-founded assessments and forecasts regarding migration legislation. Such an approach allowed for the obtaining of balanced and deeply analysed conclusions, which increased the reliability and validity of the research.

The second method employed in the study was Saaty's analytic hierarchy process. The use of this method made it possible to structure the threats, thereby creating a hierarchical model in which each element interacts with others and exerts an influence on them. In the process of this method, an assessment of the importance of each criterion was carried out through a pairwise comparison method, the results of which were used to take into account the weighting coefficients, which became a quantitative reflection of the importance of each factor in the overall structure.

The application of these methods allowed not only for the identification and structuring of the main threats but also for a deeper analysis of their interconnections and interdependencies. The information obtained played a key role in formulating proposals for modernising EU labour legislation aimed at minimising or counteracting the identified threats. Thanks to this approach, the research acquired practical significance and was able to propose concrete steps to improve the political and legislative response to the challenges associated with migration. Given this, a formallegal analysis was applied to several legislative acts (Directive of the Council of European Union No. 89/391/EEC, 1989; Directive of the Council of European Union No. 2000/78/EC, 2000; Directive of the Council of European Union No. 2003/88/EC, 2003). Such an analysis made it possible to better understand the subject matter of modern migration law both at the EU level and at the national level (Law of Ukraine No. 2449-VIII, 2018; Law of Ukraine No. 2136-IX, 2022). In addition, this analysis made it possible to better assess the existing legal framework that defines and regulates the status and rights of migrants, and their role in society.

Results and discussion

One of the key characteristics of EU labour law is its focus on promoting equal opportunities and preventing discrimination in the workplace, as outlined in Directive of the Council of European Union No. 2000/78/EC (2000), which establishes a general framework for equal treatment in employment and occupation, prohibiting discrimination on grounds of sex, age, ethnic origin, religion, and other factors.

The protection of workers' health and safety at work is another important aspect of European labour law, supported by the Directive of the Council of European Union No. 89/391/EEC (1989), which requires employers to provide and maintain a safe and healthy working environment. The EU places great emphasis on ensuring safe working conditions, setting strict rules and standards for occupational safety and health. Alongside this, maintaining a balance between work and rest is important and is regulated by the Directive of the European Parliament and of the Council No. 2003/88/EC (2003), which includes the formation of regulatory frameworks in the area of working time, requirements for leave, and other standards aimed at optimising working time and preserving the well-being and health of workers, as well as preventing burnout. Given this, it is common practice within the European Union to have pan-European directives and regulatory requirements aimed at changing the vectors of migration and labour policy of EU member states. Over the years, this activity has created a complex network of interactions and dependencies between national and pan-European policies. Labour law plays a key role in migration policy. Therefore, it is necessary to consider the key differences between Ukraine and EU countries in this area (Table 1).

Table 1. Key differences between labour legislation in Ukraine and EU countries

Criterion	Labour legislation in Ukraine	Labour legislation in EU countries
Working hours	The standard working week in Ukraine consists of 40 hours, typically distributed over five days. The minimum annual leave is 24 calendar days, with additional leave entitlements for specific categories of employees, such as individuals with disabilities or those working under hazardous conditions.	The EU also adheres to a 40-hour working week, although some countries, such as France, have adopted shorter workweeks (e.g., 35 hours per week).
Dismissal procedures	Employee dismissals in Ukraine are governed by labour legislation requiring a mandatory two-month notice period and compensation in cases of redundancy. Employers must also consider the social composition of personnel when reducing staff.	Requirements for employers in terms of social composition during staff reductions.

Table 1, Continued

Criterion	Labour legislation in Ukraine	Labour legislation in EU countries
Employment contracts	Standard full-time employment contracts have traditionally been predominant in Ukraine. However, recent reforms aim to increase flexibility by introducing provisions for remote work.	EU countries utilise a wide range of employment contract types, including part-time, temporary, freelance, and task-based contracts.

Source: compiled by the authors based on Directive of the Council of European Union No. 89/391/EEC (1989), Directive of the Council of European Union No. 2000/78/EC (2000), Directive of the European Parliament and of the Council No. 2003/88/EC (2003), Labour Code of Ukraine (1996); Law of Ukraine No. 2136-IX "On the Organisation of Labour Relations under Martial Law" (2022)

In the context of global migration crises, countries often face the necessity of adapting labour legislation to meet emerging challenges. These changes may involve amendments to existing norms governing employment, recruitment, and the rights of foreign workers. Such adaptations can range from simplifying work visa application processes to establishing new regulations for the social protection of migrants.

It should be noted that the migration of Ukrainians to EU countries is not new and is an extremely complex scientific and practical issue that is being considered by scientists and practitioners worldwide. For scientists and practitioners from EU countries, this is, in particular, a question of regulating legislation to achieve socio-economic justice for both migrants from Ukraine and their own citizens. For Ukrainian scientists and practitioners, this is the problem of regulating the balance in such a way as to try to retain qualified workers, but exclusively by democratic methods. At the same time, during the COVID-19 pandemic, a significant number of borders were closed, and as a result, the problems of migration reached the level of finding ways to help their citizens with the mass closure of borders.

During the COVID-19 pandemic, EU countries faced unique challenges regarding labour migration due to the temporary closure of borders, despite the usual absence of internal passport controls within the Schengen *Acquis* (2000). Many EU countries temporarily reintroduced border controls to contain the spread of the virus, which affected the free movement of workers, especially cross-border and seasonal workers who are vital to agriculture, healthcare, and other key sectors. To mitigate disruptions, the European Commission urged member states to ensure that workers identified as essential could cross borders with minimal delays. Special "green corridors" were created to expedite the passage of goods and essential workers, ensuring economic continuity and supporting healthcare efforts. A new surge of scientific and practical problems related to migration to EU countries occurred with the full-scale invasion of Ukraine by the Russian Federation in February 2022 (Fig. 1).

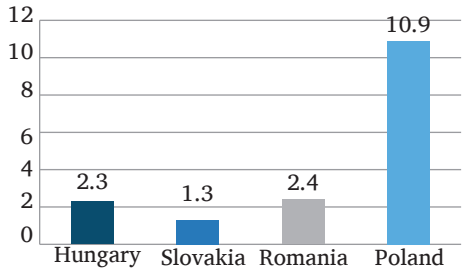

Figure 1. Number of people who crossed the border from Ukraine to EU countries for the period 24 February 2022 – 1 January 2024 (in millions)
Source: compiled based on data from the State Statistics Service of Ukraine (2024)

EU countries, being the closest neighbours, offered accessible and safe refuge that could be reached relatively quickly and safely compared to more distant destinations. Moreover, the EU rapidly implemented policies, such as Directive of the Council of European Union No. 2001/55/EC (2001), which granted Ukrainians the rights to residence, work, access to healthcare and education services without the lengthy asylum process that is usually required. The largest number of migrants have concentrated in Germany and Poland. This can be explained by several key factors. Firstly, the geographical proximity of these countries to Ukraine facilitates easier and faster movement for people seeking refuge from the war (Fig. 2).

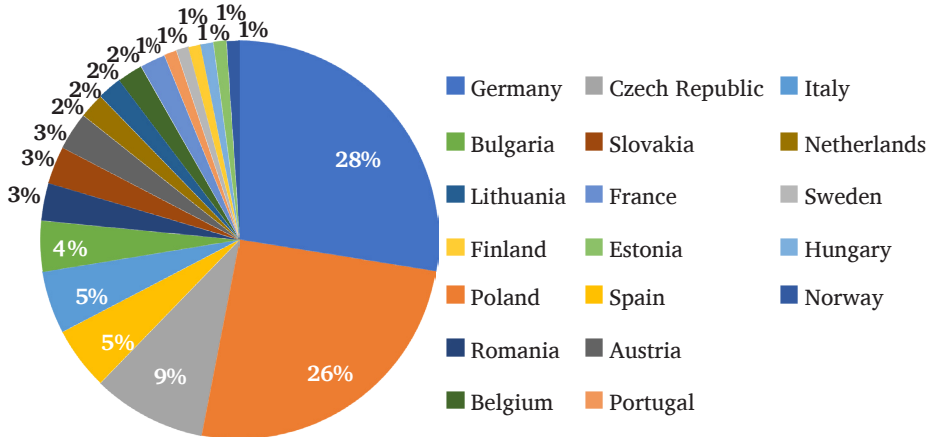

Figure 2. Distribution of registered migrants from Ukraine in the EU as of 1 January 2024
Source: compiled based on data from the State Statistics Service of Ukraine (2024)

However, the biggest challenges for EU countries were precisely those related to the legal framework. As a result, significant changes were made to the legal status and opportunities for refugees from Ukraine, defining the scope and specifics of legal, financial, or social assistance. Labour legislation underwent the most significant changes. EU countries found themselves tasked with finding the necessary balance between providing opportunities for migrants from Ukraine to work on equal terms with decent pay while avoiding widespread resentment among their own citizens. The most significant changes in EU labour legislation before and after the full-scale invasion of Ukraine have been identified. Before the invasion, most EU countries had established a robust minimum wage system, which was adjusted annually depending on the cost of living and economic conditions. This system was aimed at ensuring fair wages in various sectors. EU countries have introduced strict rules on working hours, generally limited to 48 hours per week, including overtime. These rules were aimed at protecting workers from exploitation and ensuring adequate rest and a work-life balance. Most EU countries were characterised by strong employment protection laws, including protection against unfair dismissal and extensive requirements for consultation with workers during significant organisational changes.

In response to the invasion, EU countries activated the Directive of the Council of European Union No. 2001/55/EC (2001). This allowed Ukrainian refugees to obtain immediate work permits, simplifying and accelerating the process of entering the labour market without the usual lengthy bureaucratic procedures. Following the invasion, most EU countries introduced measures to integrate Ukrainian refugees into the social security system, providing them with access to healthcare, unemployment benefits, and pension rights (The early integration…, n.d.). This was crucial for providing social protection to newly arrived individuals. Particular attention was paid to language and vocational training programs to help Ukrainian refugees integrate more effectively into the labour market. These programs were designed not only to overcome the language barrier but also to fill professional gaps in the EU labour market.

As the war in Ukraine persists, new challenges have emerged for EU countries due to the influx of Ukrainian refugees, necessitating responses and improvements to labour legislation. The most significant issues include:

1. The sudden influx of migrants and prolonged active hostilities put a significant strain on public finances, increasing demand for social services such as healthcare, housing, and education. The need to quickly integrate a large number of people gradually can only lead to significant premature financial burdens on local and national budgets.

2. The large movement of people, especially in conditions where health monitoring and medical services are limited, has led to challenges for healthcare. The risk of infectious diseases spreading increases and the pressure on healthcare systems can lead to reduced access and quality of medical care for all residents (Orcutt *et al.*, 2022).

3. The population increase due to the arrival of refugees has significantly overloaded existing infrastructure such as public transport, sanitation, and housing. This, in turn, has reduced the quality of life for all residents and increased social tensions (International Rescue Committee, 2016).

4. The rapid and large-scale movement of people across borders has created new security challenges. It has become much more difficult to conduct thorough security checks, increasing concerns about the potential infiltration of individuals who may pose a threat to European security.

5. While migrants may eventually have a positive impact on the labour market, it is important to remember that this causes significant dynamism and constant changes that are not always entirely positive. There is a risk of a mismatch between the skills of migrants and the availability of jobs, leading to higher levels of unemployment or underemployment among both the local population and newcomers.

6. The full-scale war has been ongoing for over 3 years, and Ukrainian culture is gradually beginning to manifest itself in most EU countries. However, this integration has led to social tensions. Differences in language, customs, and values have created barriers to integration and led to social isolation of migrants or an increase in xenophobia among the host population (European Foundation for the Improvement of Living and Working Conditions, 2023). Moreover, unfortunately, a significant number of migrants from Ukraine are unwilling to learn the new culture and language of the country they have moved to. This creates a real paradox where there are increasing calls in Ukraine for "communication exclusively in the state language", but when moving to an EU country, learning the language is still not accepted as a fact that one should "speak their state language".

7. The arrival of a large number of refugees has become a highly politicised issue. This has led to increased support for nationalist and anti-immigration political parties, creating greater political polarisation and potentially destabilising government policies.

This list was compiled based on the opinions of experts after conducting a survey using the Delphi method. The authors have summarised this list and comprehensively presented its agreedupon version. The list can be mathematically denoted as M, represented as the following set of threats:

$$\mathrm{M} = |M_1;M_2;M_3;M_4;M_5;M_6;M_7|, \quad (1)$$

where M_1, $M_{2...}$ are the corresponding threats from the list agreed upon by the experts. At the same time, some threats are characterised by interdependence and reinforce each other's negative impact. Thus, all threats that have arisen as a result of the mass migration of Ukrainians to EU countries are somehow interconnected or dependent on each other. It is necessary to identify the most significant of them. Through expert analysis, this can be graphically represented. This approach facilitates the visualisation and systematisation of the complex interrelationships between different threats, creating a clear map of interactions that simplifies the process of making decisions on priority legislative changes. This works on the principle of modelling complex networks, where nodes represent objects. Therefore, it allows researchers to visualise and analyse complex interdependencies of large data (Fig. 3). It is important to note that figure 3 becomes the basis for further matrix analysis. According to the applied methodology, two key matrices must be formed. The main goal of the A1 matrix is to analyse and visualise the complexity of interactions between elements. The first matrix, provisionally named A1, which is filled in as follows:

$$\mathrm{A1}=\begin{cases}1, if\ there\ is\ a\ dependence\ between\ threats\\ 0, if\ there\ is\ no\ such\ dependence\end{cases}, \quad (2)$$

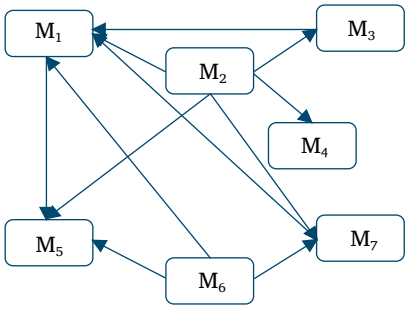

Figure 3. Structural-logical graph of connections between identified threats
Source: compiled by the author

In Saaty's analytic hierarchy process, numbers are used to evaluate and compare the importance of elements (in this case, the threats presented above) concerning one another. The numbers 0 or 1 are typically used to express the absence of comparison or equivalence, respectively: 0 may indicate the impossibility or inappropriateness of comparing two elements, while 1 means that both elements have equal importance or impact. Such coding simplifies the evaluation process and increases the convenience of using the method, providing a clear and unambiguous definition of the relationships between pairs of criteria or alternatives in complex decision systems. The result for A1 matrix is presented below:

$$A1=\begin{array}{c|ccccccc} M_n & M_1 & M_2 & M_3 & M_4 & M_5 & M_6 & M_7 \\ M_1 & |0| & |0| & |0| & |0| & |1| & |0| & |0| \\ M_2 & |1| & |0| & |1| & |1| & |1| & |0| & |1| \\ M_3 & |1| & |0| & |0| & |0| & |0| & |0| & |0| \\ M_4 & |0| & |0| & |0| & |0| & |0| & |0| & |0| \\ M_5 & |0| & |0| & |0| & |0| & |0| & |0| & |0| \\ M_6 & |1| & |0| & |0| & |0| & |1| & |0| & \lceil 1 \rceil \\ M_7 & |1| & |0| & |0| & |0| & |0| & |0| & |0| \end{array} \quad (3)$$

Regarding the second matrix, provisionally designated as A2, the following equality will be fulfilled:

$$A2=\begin{cases} 1, if\ one\ threat\ leads\ to\ another \\ 0, if\ not \end{cases} \quad (4)$$

On the diagonal in the A2 matrix, 1s are placed, as this reflects the comparison of an element with itself. According to the rules of the chosen methodology, each element on the diagonal is compared with itself, and obviously, each element is equal to itself. Such a comparison is identical, so the value on the diagonal is always equal to 1, expressing absolute equivalence and the absence of a difference between the element and itself:

$$A2=\begin{array}{c|ccccccc} M_n & M_1 & M_2 & M_3 & M_4 & M_5 & M_6 & M_7 \\ M_1 & |1| & |0| & |0| & |0| & |1| & |0| & |0| \\ M_2 & |1| & |1| & |1| & |1| & |1| & |0| & |1| \\ M_3 & |1| & |0| & |1| & |0| & |0| & |0| & |0| \\ M_4 & |0| & |0| & |0| & |1| & |0| & |0| & |0| \\ M_5 & |0| & |0| & |0| & |0| & |1| & |0| & |0| \\ M_6 & |1| & |0| & |0| & |0| & |1| & |1| & \lceil 1 \rceil \\ M_7 & |1| & |0| & |0| & |0| & |0| & |0| & |1| \end{array} \quad (5)$$

Furthermore, it should be further noted that if there is a connection between threats, then such a subset of threats will be denoted as C(M_n). At the same time, if one of the threats is a predecessor, then it forms a subset P(M_n). This is used according to the chosen methodology to determine the "zone of influence" of a vertex in figure 3, to find routes in networks, and to analyse structural characteristics such as strong connectivity between selected threats. At the same time, a certain equality must be fulfilled, which forms a third subset (When there is an intersection in graph and matrix analysis):

$$B(Mn) = C(M_n) \cap P(M_n) \quad (6)$$

In cases where B(Mn) = P(Mn) one of the levels of hierarchical ordering of the threats is defined:

M_n	$C(M_n)$	$P(M_n)$	$B(M_n)$
M_1	|1||5|	|1||2||3||6||7|	1
M_2	|1||2||3||4||5||7|	|2|	2
M_3	|1||3|	|2||3|	3
M_4	|4|	|2||4|	4
M_5	|5|	|1||2||5||6|	5
M_6	|1||5||6||7|	|6|	6
M_7	|1||7|	|2||6||7|	7

(7)

As observed, this equality holds for threats M2 "Healthcare problems" and M6 "Problems of cultural integration", and they are therefore excluded. This process continues until all levels of the threat hierarchy are formed. Following these intermediate calculations, the results are presented below. The ordered list of potentially the most significant threats affecting EU countries due to mass migration caused by the full-scale war in Ukraine, as determined by Saaty's hierarchy analysis, is summarised in Table 2.

Table 2. Changes in EU labour legislation before and after the full-scale invasion of Ukraine

The level of positioning of the weight of influence	Mathematical notation for threat	Threat description
Highest hierarchical level (requires urgent response and changes)	M1	Long-term financial and economic burden
	M5	Ongoing changes in the labour market
Moderate hierarchical level (requires response and changes)	M3	Overloaded infrastructure
	M4	Personal security challenges
	M7	Political and social tensions
Lowest hierarchical level (does not require urgent response or changes)	M2	Healthcare challenges
	M6	Cultural integration issues

Source: compiled by the author

Therefore, it has been established that the most significant threats today are M1 “Long-term financial and economic burden” and M5 “Ongoing changes in the labour market”. It is within the context of these two threats that labour legislation in EU countries should be improved and changed. It should be noted that the issue of the financial and economic burden is extremely difficult to resolve immediately. This is essentially a long-term process that requires significant effort and time. To counteract the long-term financial and economic burden on EU countries caused by mass migration from Ukraine, the European Union can take legislative and fiscal measures aimed at optimising the distribution and use of its own resources. One of the main steps could be to amend the regulations of the EU Solidarity Fund, in particular Regulation of European Parliament and of the Council No. 2012/2002 (2002). While it is primarily concerned with natural disasters, its purpose could be modified. Thus, it could also be adapted to cover crises of large-scale displacement, providing financial assistance to states disproportionately affected by migration. This would require modification of the eligibility criteria and funding mechanisms to include support for integration measures such as housing, education, and healthcare for migrants.

When it comes to labour law, regulating the labour market is crucial. Unsurprisingly, the constant instability in the EU labour market holds such significant weight among all threats. Regarding changes in the labour market, the European Union should reform its approach to integrating migrants into the workforce. One key legislative change could be a revision of the Directive of the European Parliament and of the Council No. 2014/36/EU (2014) on the conditions of entry and stay of third-country nationals for the purposes of employment as seasonal workers. Expanding this directive to include provisions for other forms of temporary and flexible employment would help meet the diverse skills of migrants and the dynamic needs of the labour market. This should include mechanisms for faster recognition of qualifications and skills assessments to quickly match migrants with suitable job opportunities.

Focusing on specific countries, Poland and Germany stand out as the largest hosts of migrants from Ukraine. Given the significant number of Ukrainian migrants, Poland should implement special reforms to simplify employment procedures. These reforms would include: amending legislation to allow Ukrainians to obtain work permits more quickly, facilitating their faster integration into the country’s economy. Poland should work on simplifying the process of recognising migrants’ educational and professional qualifications, which is key to their employment in skilled areas. Germany should develop mechanisms to actively expand its legislative framework to support the integration of migrants into the labour market. Key areas include: legislative initiatives aimed at providing migrants with access to integration courses, including language training and vocational education; changes in legislation should also include improving conditions for flexible forms of employment, such as part-time or temporary work, helping migrants to adapt more easily to the labour market.

However, it is not only EU countries that need to change their legislation, Ukraine should also improve its own laws to better assist its citizens abroad. Ukraine could amend Law of Ukraine No. 2145-VIII “On Education” (2017) to include provisions that facilitate the recognition of Ukrainian educational qualifications in the EU. This could involve adopting frameworks similar to the Bologna Process, which promotes the mutual recognition of degrees and other qualifications. This would significantly help with employment abroad. A significant problem in the foreign labour market is that EU countries often require graduates to complete their educational programs within their institutions before obtaining a decent position. Ukraine could also adopt a new legislative act aimed at supporting its diaspora, similar to the Irish and Indian models. This act could involve the creation of a specialised agency responsible for the well-being of Ukrainians abroad, providing them with legal assistance, guidance on employment rights in the EU, and help in navigating social services. This would significantly reduce the burden on embassies, which are already operating in extremely dynamic conditions. In this regard, embassies and consulates should be tasked exclusively with providing legal services (Law of Ukraine No. 2449-VIII, 2018).

O. Pozniak (2023) highlights pressing issues in migration policy caused by such large-scale displacements. These views corroborate observations that the war has triggered a significant wave of migration, necessitating swift and thoughtful legislative changes. The researcher also emphasises the need for substantial changes to labour laws, but these works do not employ quantitative or qualitative indicators or other forms of modelling to narrow down the range of threats posed by migration from Ukraine.

It is also important to recognise that threats can arise from public opinion and a range of political decisions made in EU countries. Therefore, public attitudes towards refugees and the differentiated treatment between Ukrainians and other refugee groups, as noted by D. Mendola and A. Pera (2022) and D. De Coninck (2023), provide context for understanding the most significant socio-legal threats. Researchers demonstrate models for implementing legislative changes and the direction in which reforms should move, not only to address practical needs but also to consider public opinion. However, most threats cannot be resolved solely by public opinion, and therefore, the recommendations relate to legislative changes in labour and other areas of law. Moreover, the research of N. Meidert & C. Rapp (2019) on attitudes towards refugees compared to other immigrant workers in the EU provides insights into the different levels of acceptance and support that various groups receive, which can inform tailored approaches in labour law for effectively accommodating different groups of workers. However, the threats they identified have become outdated due to the significant number of changes since 2019. Even when constructing an effective model for responding to the challenges of migration for EU countries (Dennison *et al.*, 2021), the full-scale war in Ukraine has introduced significant adjustments that cannot be ignored.

J. Doe and A. Smith (2024) discuss the threats to EU countries posed by mass migration due to the full-scale war in Ukraine and emphasise the need to rethink labour laws as a key area for adapting to migration challenges. While their approach is primarily focused on legal aspects, it is worth noting that compared to the research of R. Rananjan (2024), which highlights the socioeconomic consequences for the labour market, these issues are only part of a larger complex of problems. It is important to consider that the socioeconomic impact of Ukrainian refugees, as discussed in the research, also requires due attention when developing new labour

legislation, as the economic integration of migrants is directly linked to the adaptation of legal norms.

A comparison of the research findings shows that while J. Doe and A. Smith (2024) emphasise the threats and the need for legal changes, and R. Rananjan (2024) focuses on the opportunities that migrants can bring to the EU labour market, including filling vacancies and increasing economic activity. This indicates a certain divergence in approaches to assessing the impact of migration, as the first group of researchers is more focused on regulation and threats, while the second group emphasises potential benefits. This underscores the need for a balanced approach that takes into account both sides of the issue.

The findings align with R. Rananjan's (2024) research regarding the socioeconomic impact of Ukrainian refugees, but this study further emphasises the importance of considering long-term effects on the labour market. The study also complements the research of J. Doe and A. Smith (2024) by expanding on the interaction of legal changes with economic integration. This allows for a better understanding of the relationship between labour law and socioeconomic processes, underscoring the importance of a comprehensive approach to addressing migration challenges.

The discussion in the article correlates with current research, indicating a general need for improvements in labour law in the context of the migration crisis. The hierarchical ordering of identified threats and the involvement of experts to assess these threats are key to formulating effective recommendations, which sets this research apart from other publications. As a result, the identification of specific threats and the proposed hierarchical ranking in the study provide clear directions for legislative changes aimed at alleviating social tensions and financial and economic burdens.

Conclusions

In this study, contemporary methodological approaches were employed, including the expert survey method and the Saaty hierarchical analysis method. The combined use of these methods allowed for the evaluation and determination of the level of influence of each threat within the research area. The application of these methods provided tools and vectors for further problem-solving and improvement of existing legal frameworks in this field.

The study attempted to rethink and propose ways to adapt labour legislation, taking into account the most significant threats caused by the mass migration of Ukrainians to EU countries due to the full-scale war in Ukraine. The phenomenon of mass migration became the object of study, and the applied methods allowed for a hierarchical ranking of threats according to their level of importance. It was established that the most significant threats today are the long-term financial and economic burden and labour market instability. The modelling results provided a basis for identifying specific changes in labour legislation aimed at minimising existing gaps, intending to strengthen the national security of EU countries. For example, it was indicated that making changes to the regulations of the EU Solidarity Fund and adapting it to modern realities to cover crises of large-scale displacement, could provide financial assistance to states disproportionately affected by migration. The Directive of the European Parliament and of the Council No. 2014/36/EU also requires updating to include provisions on new forms of temporary and flexible employment, which would help meet the diverse skills of migrants and the dynamic needs of the labour market. Thus, the article proposed a methodological approach to adapting labour legislation, focusing on understanding and analysing significant threats related to the mass migration of Ukrainians to EU countries in the context of the full-scale war.

Despite its strengths, the research has several limitations that should be considered when interpreting the results and adapting them to practice. For example, the study is based on expert opinion, which may introduce a degree of subjectivity. Moreover, the dynamics of migration processes are variable and require constant analysis and systematisation. An escalation of hostilities could introduce new threats to EU countries. Considering these limitations, future research could involve using more dynamic models to forecast future migration trends and their impact on various aspects of public life in EU countries.

Acknowledgements

None.

Conflict of interest

None.

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Загрози для країн ЄС спричинені масовою міграцією через повномасштабну війну в Україні: переосмислення трудового законодавства

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Анотація. У сучасному світі масштабні міграційні потоки, спричинені глобальними конфліктами, як ніколи акцентують увагу на критичних викликах, з якими стикаються країни по всьому світу. Зокрема, повномасштабна війна в Україні спонукала до значних міграційних хвиль, що породжують різноманітні соціальні та безпекові загрози для країн Європейського Союзу. Метою статті було переосмислення трудового законодавства через визначення найбільш вагомих загроз, які спричинила масова міграція до країн ЄС, внаслідок повномасштабної війни в Україні. Ключовими методами дослідження були формально-юридичний аналіз, метод ієрархічного аналізу Сааті, метод експертного опитування, посиленого методом Дельфі, які дали можливість визначити перелік найбільш вагомих загроз, які спричинила масова міграція для країн ЄС, внаслідок повномасштабної війни в Україні В результаті було запропоновано перелік найбільш вагомих загроз, які спричинила масова міграція до країн ЄС внаслідок повномасштабної війни. Було представлено можливі взаємозв'язки й залежності між визначеними загрозами. Завдяки залученню експертів нами було охарактеризовано ключові загрози, які становлять небезпеку для національної безпеки країн ЄС внаслідок масової міграції українців в країни ЄС. В результаті в статті запропоновано дієвий методичний підхід до оцінювання вагомості цих загроз. Визначені нами загрози були ієрархічно впорядковано від найбільш важливих до найменш вагомих. Запропоновано шляхи переосмислення трудового законодавства згідно найбільш вагомих загроз, що виокремлено за результатами моделювання. Окрім того було охарактеризовано, які зміни слід ввести у трудове законодавство щоб мінімізувати існуючі прогалини. Практична цінність й значущість отриманих результатів полягає в можливості врахування законодавцем запропонованих напрямків удосконалення трудового законодавства з метою мінімізації або протидії саме найбільш вагомим загрозам

Ключові слова: соціальні виклики; імміграційна політика; ієрархічний аналіз Сааті; національна безпека; ієрархічне моделювання

UDC 342.9
Doi: 10.32518/sals4.2024.191

Соціально-правові студії. 2024. Т. 7, № 4
Social & Legal Studios. 2024. Vol. 7, No. 4

Problematic issues of applying an urgent restraining order in cases of domestic and gender-based violence

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Abstract. Even though the current Ukrainian legislation prescribes certain measures to influence perpetrators in cases of gender-based violence, an urgent restraining order is not part of such measures, which requires expanding the powers of the police to issue urgent restraining orders in cases of gender-based violence. The purpose of this study was to outline this problematic issue and to identify the shortcomings in the legal mechanisms for appealing against urgent restraining orders. The research methodology was based on a systematic and comparative analysis of judicial practice, as well as on sectoral interpretation of legal provisions and analysis of judicial acts. It was found that although the legislation defines most people as perpetrators of domestic violence, judicial practice establishes that such persons can be recognised as such only in cases where they are family members of the perpetrator. The absence of evidence of the latter leads to the closure of cases, regardless of the existence of evidence of violence. Thus, the fact that the victim and the perpetrator do not reside at the same address constitutes sufficient grounds for closing the proceedings due to the inability to confirm the person's status as a "perpetrator" (due to the absence of the offender as a legal subject of the offense). This is also the case when applying an urgent restraining order: the lack of evidence of a common household between the parties to the conflict deprives the police officer of the possibility of a quick response in the form of an order. Expanding the powers of the police to issue such an order in cases of gender-based violence will address this gap. The other side of the situation was addressed, specifically the lack of proper legal mechanisms for appealing against the order. Since an urgent restraining order is an act of law enforcement, it does not produce legal consequences and cannot be appealed. At the same time, failure to appeal the order may have negative consequences for individuals, including bringing them to justice for violating the order and/or committing domestic violence. The practical significance of the findings obtained lies in the possibility of using them as an argumentative basis for protecting the rights of citizens, as well as for formulating an initiative to amend the legislation

Keywords: domestic violence; legal mechanisms of appeal; empowerment of the police; judicial practice; acts of law enforcement

Suggested Citation

Article's History: Received: 04.09.2024 Revised: 20.11.2024 Accepted: 23.12.2024

Kohut, Ya., Khatniuk, Yu., Chornomaz, O., & Besaha, I. (2024). Problematic issues of applying an urgent restraining order in cases of domestic and gender-based violence. *Social & Legal Studios*, 7(4), 191-212. doi: 10.32518/sals4.2024.191.

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Introduction

Globalisation processes, which result in the blurring of international borders and the unrestricted dissemination of information, have led to the realisation that the solution to the issue of gender equality, and therefore the regulation of institutions that are linked to it (primarily the family institution), differs between different communities substantially. This has become an urgent problem for a modern, "mixed" society, wherein more radical cultures are trying to "push" their point of view, ignoring others. The problem has been exacerbated by the COVID-19 pandemic, which has caused forced social isolation and exacerbated interpersonal (and especially family) relationships. The principle of gender equality as a political and legal principle has been recognised in modern constitutional systems in Europe. Its implementation requires the adoption of laws to prevent discrimination, as well as changes in legal, social, and political practices in the respective countries. Through the adoption of various directives and policies, the European Union has emphasised the importance of gender equality in the EU. Furthermore, it has become one of the political criteria for countries wishing to become members of the community. The Council of Europe has also adopted documents in this area. The question of how the adopted international and domestic regulatory documents interact with each other, what conflicts and gaps in legal regulation exist, is currently relevant. Of particular significance in this regard are the legal mechanisms related to the use of state coercion.

Purposeful measures to combat domestic violence have signs of coercion. Their application must be carried out in strict compliance with the law. However, the existence of a detailed procedure does not exclude mistakes on the part of authorised actors. Furthermore, Ukrainian legislation guarantees the right of everyone to apply to the court for protection of their violated, unrecognised, or disputed rights and legitimate interests. The issue of legislative regulation of the mechanisms for appealing against the application of purposeful measures to combat domestic violence is relevant and requires in-depth scientific investigation.

N. Pfitzner and J. McGowan (2023), using the method of interviewing respondents from Australia, found substantial difficulties with face-to-face accessibility and remote access to services for victims of domestic violence during COVID-19. The principal issue was identified as "loss of privacy": the victim of violence, being isolated with their abuser, was unable to safely seek help. K. Bracewell *et al.* (2022) similarly considered the issue of state protection of persons from domestic and gender-based violence during the pandemic, focusing specifically on procedural issues of protection, such as the constant postponement of court dates, indifference of the police and prosecutors to a considerable number of reports, and the failure to apply temporary (pending court hearings) measures to restrict the perpetrator to ensure the protection of the victim. E. Williamson *et al.* (2020) emphasised that in times of crisis, such as the COVID-19 pandemic, the increase in domestic violence is mistakenly perceived as a reaction to this particular event. The researchers argued that domestic violence is a manifestation of long-term patterns of violent behaviour and the result of gendered social and cultural stereotypes. These and many other studies in recent years have highlighted the issues of domestic and gender-based violence in relation to the COVID-19 pandemic.

Some researchers have actively focused on the coverage of state policies and programmes in the field of overcoming violence against women and children. K. Beavis (2024) highlighted Norway's progress in combating gender-based violence, including the establishment of administrative (public) responsibility, the implementation of specialised state policies, the introduction of funding and the expansion of services for victims. S. Banarjee (2024) examined the gaps between Bangladesh's domestic legal instruments and international legal instruments. S. Banarjee's (2024) findings revealed major gaps and limitations in the conceptualisation of sexual violence, the judicial process, medical tests, and victim protection in this area.

Ukrainian researchers O. Moroz and Y. Khatniuk (2023) investigated the issue of police competence in the field of preventing and combating domestic violence. These researchers identified the powers of various police units and services and made recommendations for their legislative consolidation. L. Sukmanovska (2023) studied the powers of the national police to apply purposeful measures to combat domestic violence, as well as the competence of the court to consider cases of prosecution of minors, protection of their personal, property, housing, and other rights and interests. R. Kiuntsli *et al.* (2024) analysed the elements of the administrative offence of "committing domestic violence" under Article 173-2 of the Code of Administrative Judicial Procedure of Ukraine (2005) by reviewing the rulings of first instance judges in this category of cases. The researchers found the inconsistency of judicial practice caused by gaps in legislation.

In Ukraine, the issues of the legal nature of special measures to combat domestic violence, the grounds for their application, and the possibilities for restricting the rights of the perpetrator were raised in public discourse after the adoption of the Law of Ukraine "On Prevention and Counteraction of Domestic Violence" (2017) and over the next two years. As of 2024, there are practically no discussions on these issues. In this regard, the purpose of this study was to identify and analyse certain problematic issues related to the determination of the scope of application of an urgent restraining order. A prominent aspect of the study was the identification of the shortcomings of legal mechanisms for challenging the legality of such orders.

Literature review

In the scientific literature on the powers of law enforcement agencies to respond to domestic and gender-based violence, administrative legal mechanisms to ensure the safety of the victim occupy a prominent place (Zuhdi *et al.*, 2024). In most of the countries that recognise these types of violence as punishable, it is the police who are responsible for risk assessment and urgent preventive measures.

Researcher from Indonesia S. Choirinnisa (2022) addressed domestic violence as a social problem that involves law enforcement agencies, advocates, and courts. The researcher provided only a general overview of the powers of these actors, without specifying what concrete measures can be taken to protect victims of violence. S. Annisa (2020) also noted that in Indonesia, the forms of legal protection against violence in criminal proceedings include 1) rehabilitation; 2) measures to protect and conceal the identity through the media; 3) provision of security guarantees for

witnesses; 4) provision of victims with access to information on the progress of the investigation. R. Alimi and N. Nurwati (2021) added spiritual support for victims to this list.

S. Marković (2019) examined the urgent measures used in Serbia to combat domestic violence: a ban on approaching the victim, objects or place of the offence and requirements for the potential abuser to leave the victim's place of residence. Furthermore, the researcher drew parallels between immediate measures and long-term protection measures taken under family law. S. Marković's (2019) opinion, immediate measures are often insufficient without further support from family protection measures, which include long-term measures aimed at supporting victims on a long-term level, such as orders for mandatory rehabilitation programmes or restorative courses. Thus, the researcher emphasised the need for coordination and cooperation between law enforcement agencies and family protection services to ensure effective and complete protection of victims of domestic violence in all aspects of their lives. This is also related to the issue studied by M.J. Neunkirchner and P. Herbinger (2021) in the context of the need to develop strategies and programmes for coordination between different agencies with responsibilities in the field of combating domestic and gender-based violence.

A.P. Noer and RD. Agustanti (2024) identified several measures to counteract violence in the United States, including restraining order mechanisms: 1) emergency protective order, which is granted for immediate protection of the victim; 2) temporary restraining order, which is valid for a certain period until the court makes a final decision; 3) permanent restraining order, issued by the court for a longer period after the case is heard; 4) criminal protective order or "stay-away", which is issued within the framework of a criminal case and obliges the offender to stay away from the victim at a certain distance and for a certain time. The researchers also provided a general description of restraining orders in Finland and Belgium. The researchers concluded that the lack of protection for victims both during the pre-trial investigation and after the trial is a deficiency of legal regulation in some EU countries.

Materials and method

The study included a review of the practice of general and administrative courts of Ukraine in cases of prosecution under Article 173[2] of the Code of Administrative Judicial Procedure of Ukraine (2005) and appeals against an urgent restraining order issued against a person. The study was based on a system of general scientific and sectoral (jurisprudential) methods and techniques. The systemic and comparative methods represented the general scientific level of research. The systematic method was employed to summarise the judicial practice on combating domestic and gender-based violence to identify the problematic aspects of issuing and appealing against an urgent restraining order. The findings obtained were systematised, the legal positions of the courts were summarised, and the trends in resolving court disputes regarding the protection of persons whose rights/legal interests were violated within the framework of the above-mentioned jurisdictional proceedings were analysed. The method of comparative analysis was used to identify commonalities and differences in the approaches of courts to decision-making in analogous factual circumstances in this area. Sectoral (jurisprudential) methods of interpreting legal provisions and analysing judicial acts were employed to determine the approaches of judges to solving problematic situations of law enforcement when issuing and appealing against an urgent restraining order, and to analyse the regulations of Ukraine, namely, the Code of Administrative Judicial Procedure of Ukraine (2005), the Law of Ukraine No. 2866-IV (2005), the Law of Ukraine No. 2229-VIII (2017).

The study was also based on the review of scientific literature, legal sources, legislation, and documents related to domestic and gender-based violence. The Unified State Register of Court Decisions (n.d.) was searched for court decisions on gender-based violence using the keywords "ensuring equal rights and opportunities for women" and "preventing and combating domestic violence". Other court decisions were selected contextually in the register of court decisions for January 2023 – May 2024 (with some exceptions) in the subsection of the register "Committing domestic violence, gender-based violence, failure to obey an urgent restraining order or failure to report the place of temporary residence". Overall, out of 267 court decisions analysed under the keywords "urgent restraining order" and "absence of an administrative offence", proceedings in 47 (or 17.62%) of the total number of cases analysed were closed due to the failure to establish in court the existence of family ties, mutual rights and obligations to support and maintain a common household between the offender and the victim.

Results

Distinction between domestic violence and gender-based violence to establish whether or not a police officer is authorised to issue an urgent restraining order. The current legislation of Ukraine in the field of preventing and combating domestic violence, as well as ensuring equal rights and opportunities for women and men, and eliminating gender discrimination, prescribes almost identical measures to influence perpetrators: a programme for perpetrators, a restraining order against the perpetrator, and preventive registration. At the same time, an urgent restraining order, which has proven to be effective in combating domestic violence, is not prescribed as a measure to combat gender-based violence (Code of Administrative Judicial Procedure of Ukraine, 2005; Law of Ukraine No. 2866-IV, 2005; Law of Ukraine No. 2229-VIII, 2017). Specifically, in 2023, 98,947 urgent restraining orders were issued against perpetrators; in 2022, 43,341 orders were issued (JurFem, 2024).

This situation requires legislative intervention to expand the powers of the National Police to issue urgent restraining orders in cases of gender-based violence. The objective need for this is caused by the fact that the victims in such cases are mostly people who have been in relationships or are former family members, including former spouses. Even though the Law of Ukraine No. 2229-VIII (2017) defines most of the above-mentioned persons as perpetrators of domestic violence, not gender-based violence, the current judicial practice law proceeds from the fact that these persons are perpetrators of domestic violence only when they fall under the term "family member" – the victim lives with the perpetrator or is united with them by legal rights or obligations for maintenance. In cases where the court does not see the possibility of considering the persons as family members (mainly if it establishes that the persons do not

live together), it closes the proceedings, regardless of the evidence of violence (Decision of Berislavsky District Court of Kherson Region in Case No. 647/1273/19, 2019; Decision of Bilokurakynsky District Court of Luhansk Region in case No. 409/719/20, 2020; Decision of Shevchenkivsky District Court of Chernivtsi City in Case No. 727/3995/23, 2023; Decision of Nadvirnyansky District Court of Ivano-Frankivsk Region in case No. 348/2762/23, 2024; Decision of Zalishchytsky District Court of Ternopil Region in Case No. 597/495/24, 2024)

Article 173[2] of the Code of Administrative Judicial Procedure of Ukraine (2005) prescribes liability for both domestic violence and gender-based violence. The offence of these two types of violence is quite analogous, and most cases of bringing a person to administrative responsibility for domestic violence can easily be transformed into cases of gender-based violence. This situation is dictated primarily by underdeveloped judicial practice: the lack of conclusions on the application of these provisions by the Supreme Court, which leads to major differences/lack of unity in the judicial practice of lower courts. For instance, when bringing to liability under Article 173[2] of the Code of Administrative Judicial Procedure of Ukraine (2005), the courts refer to the Law of Ukraine No. 2866-IV (2005) and the Law of Ukraine No. 2229-VIII (2017), even without specifying what kind of violence is taking place (Decision of Haisynsky District Court of Vinnytsia Region in Case No. 129/2514/21, 2021; Decision of Slavutsky City District Court in Case No. 682/147/24, 2024; Decision of Shevchenkivsky District Court of Lviv City in Case No. 466/366/22, 2022). The register of court decisions contains only one ruling in an administrative offence case concerning gender-based violence itself (Decision of Shchorsky District Court of Chernihiv Region in Case No. 749/695/20, 2020).

Thus, when preparing materials in cases of administrative offences in this area, police officers prefer to qualify a person's actions as domestic violence, which ultimately leads to the closure of proceedings by the courts due to the absence of an offence, namely due to the lack of a special subject of the offence, which is a person who is related to the victim, if not by family ties, then at least by domestic relations, shared responsibilities, and rights of support. However, this situation has a positive aspect. By qualifying a person's actions as domestic violence, an authorised official of the National Police may apply a special measure to counteract this type of violence – an urgent restraining order.

However, as of mid-2024, there are no effective mechanisms for challenging the legality of such an order. On the one hand, it serves as a quick and effective police response to violence (legal uncertainty results in discretionary powers for police officers to classify almost any violence as domestic violence) and, on the other hand, it leads to a situation where a person who believes that the order issued against them is unlawful cannot appeal against the police officer's actions.

As opposed to the legal impossibility to file an administrative claim with the court, this refers to the factual impossibility to use the relevant procedure. This is dictated by two circumstances. Firstly, when filing an administrative lawsuit to challenge the legality of an order and its cancellation, the court can only assess the procedural component: the correctness of the order, the availability of a risk assessment, etc. However, the court cannot determine whether or not the person's actions constituted domestic violence, as the relevant issue must be resolved during the consideration of an administrative offence case under Article 173[2] of the Code of Administrative Judicial Procedure of Ukraine (2005) by a general court. Therefore, the formal correctness of the order makes it impossible to cancel/recognise it as unlawful, even if such an order is issued in circumstances that clearly do not correspond to the circumstances of domestic violence. Secondly, an urgent restraining order refers to individual acts/acts of law enforcement, which means that it expires after the expiry of the period for which it was issued. In such a case, it is presumed that it no longer produces legal effects and therefore does not need to be cancelled.

Thus, the existing legal mechanism does not make provision for urgent restraining orders as a remedy in cases of gender-based violence. This calls for expanding the powers of the police to issue such orders in cases of gender-based violence to effectively protect victims and prevent violence. The primary reason for increasing the scope of police powers in this area is the fact that as of 2024, there is no unity of interpretation of the law and, accordingly, their application on the issue of determining the offence of gender-based violence. Considering the above, in many cases, police officers do not view the perpetrator's actions as gender-based violence, but rather classify them as domestic violence, referring to the fact that the victim is a person who is/was related to the perpetrator by close (or even family) relations. This is done, specifically, to ensure prompt protection of the victim through an urgent restraining order. On the other hand, by classifying an act as domestic violence, the police actually create grounds for releasing the perpetrator from public liability if the court does not find sufficient grounds to consider the perpetrator and the victim to be related by common household.

Appeal against an urgent restraining order as an act of law enforcement. Paragraph 16 of Article 1 of the Law of Ukraine No. 2229-VIII (2017) establishes that an urgent restraining order against an abuser is a special measure to combat domestic violence, which is taken by authorised units of the National Police of Ukraine as a response to the fact of domestic violence and is aimed at immediately stopping domestic violence, eliminating the danger to the life and health of the victims and preventing the continuation or recurrence of such violence. The legislators presume that if the police have been issued with this order, domestic violence has occurred. This circumstance is not refuted by the issuance of an "acquittal" in a domestic violence case that was initiated simultaneously with the issuance of an urgent restraining order. Violation of the restrictions imposed by the order is an independent offence. Considering the above, the only way to cancel the negative consequences of the order is to appeal against it to the court in the general procedure provided for appealing against decisions, actions, or inaction of an employee of the authorised police unit that issued the order, following part 9 of Article 25 of the Law of Ukraine No. 2229-VIII (2017).

Pursuant to Article 122 of the Code of Ukraine on Administrative Offences (1984), a six-month period is established for applying to an administrative court for the protection of the rights, freedoms, and interests of a person, which, unless otherwise stipulated, is calculated from the day when the person learned or should have learned of the violation of their rights, freedoms, or interests. An urgent restraining

order is by its nature an individual act – a decision of a public authority issued (adopted) in the exercise of its administrative functions or in the provision of administrative services, which concerns the rights or interests of a person or persons specified in the act, and whose effect is exhausted by its execution or has a specified term – Article 4(19) of the Code of Ukraine on Administrative Offences (1984).

Paragraph 4 of item 1 of the reasoning part of the Decision of the Constitutional Court of Ukraine in Case No. 3/35-313 (1997) states that "...by their nature, non-regulatory acts, unlike regulations, establish not general rules of conduct, but concrete prescriptions addressed to an individual or legal entity, are applied once and exhaust their effect after implementation". Paragraph 5 of the Decision of the Constitutional Court of Ukraine in Case No. 9-rp/2008 (2008) states that in determining the nature of a "legal act of individual action", the legal position of the Constitutional Court of Ukraine is based on the fact that "legal acts of non-regulatory nature (individual action)" relate to individuals, "are designed for personal (individual) application", and exhaust their effect after implementation.

Individual legal acts as the results of law enforcement are addressed to concrete persons, i.e., they are formally binding on personified (clearly defined) subjects; contain individual prescriptions that set out subjective rights and/or obligations of the addressees of these acts; are designed to regulate only a concrete life situation, and therefore their legal effect (formal binding) is exhausted by a single implementation. Furthermore, such acts cannot have retroactive effect in time, and their external manifestation is not only in written (documentary) but also in oral (verbal) or physical (conjunctive) forms.

Referring to the above conclusions, the Supreme Court also assumes that an act of application of legal provisions regulates a concrete life situation, and its effect expires due to the termination of a concrete legal relationship (Decision of the Supreme Court of Ukraine in Case No. 640/29515/21, 2023). An act that has expired after its execution cannot be cancelled, as its cancellation will not create/cancel any legal consequences for the parties concerned, i.e., will not affect the rights and interests of the plaintiff in any way. Since when applying to the court, it is necessary to prove which right of a person was violated, the court will be able to satisfy the claim only if such violation exists at the time of the dispute consideration in court.

Considering the above, the order may be challenged not within the six-month period, but within the period of validity of the order itself. However, considering the procedure for consideration of the case in court, at least one and a half months will pass before the date of the first hearing on the merits of the dispute, which is significantly longer than the maximum period of validity of the order. Therefore, if the term of the urgent restraining order has expired at the time of consideration of the administrative case on recognition as unlawful and cancellation of the urgent injunction, there is no basis for satisfying the claim. This has been repeatedly confirmed by the current court practice (Decision of Cherkasy District Administrative Court in Case No. 580/4608/22, 2023; Decision of Ivano-Frankivsk District Administrative Court in Case No. 300/2425/23, 2023).

At the same time, there are cases when the adoption of an individual act not only resolves the situation for which it was adopted, but also generates new legally significant consequences. The latter may negatively affect the person in respect of whom the individual act was issued, even after the expiry of the act/its implementation. For instance, the fact that the National Agency for Prevention of Corruption published on its official website a certificate on the results of a full inspection containing conclusions on the detection of inaccurate information in the declaration of the declarant (plaintiff), given the legal status of the person, the legal status of a person holding a particularly responsible position, negatively influences the right to work guaranteed by Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), which covers the field of labour activity, as it causes interference (negative impact) on the business reputation of the plaintiff (declarant) as a public figure (Decision of the Supreme Court of Ukraine in Case No. 640/29515/21, 2023).

The above can be projected by analogy to a person against whom an urgent restraining order has been unlawfully issued. Since an urgent restraining order is one of the core pieces of evidence in jurisdictional cases of domestic violence, the fact that such an order is found to be unlawful in court directly affects bringing a person to justice under Article 173^2 of the Code of Administrative Judicial Procedure of Ukraine (2005) (Decision of Ternopil City District Court of Ternopil Region in Case No. 607/8361/23, 2023; Decision of Starosambirsky District Court of Lviv Region in Case No. 455/921/24, 2024; Decision of Teofipolsky District Court of Khmelnytsky Region in Case No. 685/1278/23, 2023). In some cases, courts, having found deficiencies in the procedural design and issuance of an urgent restraining order, still dismiss an administrative claim for its cancellation, citing the fact that such a restraining order does not have any legal consequences that would violate the rights, freedoms, or interests of the plaintiff, and therefore does not require additional cancellation in court (Decision of Lviv District Administrative Court in Case No. 380/11299/22, 2023).

The absence of an appeal against the order also affects the person's legal liability for violation of the restrictions imposed by the urgent restraining order (Decision of the Borznyansky District Court of Chernihiv Region in Case No. 730/574/23, 2023; Decision of the Borznyansky District Court of Chernihiv Region in Case No. 730/488/23, 2023). Thus, when appealing against an urgent restraining order, a person may refer to the existence of a legitimate interest, since failure to recognise the order as unlawful may have negative consequences for the person in the form of bringing them to justice for violating the order and/or for committing domestic violence. In this context, it is advisable to focus on the item 3 of part 1 of Article 236 of the Code of Ukraine on Administrative Offences (1984) regarding the suspension of proceedings in a case due to the objective impossibility of considering this case until another case is resolved (Decision of Rivne City Court of Rivne Region in Case No. 569/1977/22, 2022).

Furthermore, in its ruling of 20 February 2019 in Case No. 522/3665/17 (2019), the Supreme Court defined general approaches to determining the signs of a "victim" of a violation of a legitimate interest as follows: (a) the plaintiff directly owns the legitimate interest in defence of which the claim is filed; (b) is a direct negative impact of the violation on the plaintiff or a reasonable probability of a negative impact on the plaintiff in the future. Specifically, if the plaintiff is forced to change its behaviour or there is a risk of being

held liable; (c) the negative impact is significant (specifically, the plaintiff has suffered damage); (d) there is a causal relationship between the legitimate interest, the challenged act, and the alleged violation (Decision of the Supreme Court of Ukraine in Case No. 240/24844/21, 2023).

Notably, when appealing against an urgent restraining order in an administrative court, the court sometimes verifies not only compliance with the proper procedure for issuing such an act, but also its material basis – the fact of domestic violence (Decision of Cherkasy District Administrative Court in Case No. 580/4608/22, 2023). However, this is beyond the scope of the dispute. The presence of an offence in a person's actions should be established in the relevant jurisdictional proceedings. Therefore, the court's conclusions in such cases will be considered in further proceedings – Article 78 of the Code of Ukraine on Administrative Offences (1984).

Thus, an urgent restraining order cannot be cancelled automatically in connection with the closure of proceedings on an administrative offence or crime, and its appeal to the court is the only way to eliminate its negative legal consequences for the interests of the parties concerned. Ukrainian law defines an urgent restraining order as an individual act issued to perform governmental administrative functions or provide administrative services and has a specified period of validity. Such an act cannot be cancelled after its execution, as such cancellation will not have legal consequences for the parties concerned. It is possible to appeal against the order to the court during its validity period, but due to the lengthy procedure of considering the case in court, this may result in the cancellation of the order due to its expiry before the first hearing on the merits. In certain legal conflicts, it is possible to observe a situation where the adoption of an individual act not only resolves the current situation, but also generates new legally significant consequences. These consequences may negatively affect the person who is a party to the act, even after its validity or implementation expires. This principle can also be applied to persons who believe that an urgent restraining order has been unlawfully issued against them.

Discussion

Austrian researchers M.J. Neunkirchner and P. Herbinger (2021) investigated the powers of the police to impose an administrative ban on the abuser from contacting the victim or staying in the same room as the victim, as well as to investigate criminal offences related to domestic violence, such as bodily harm, dangerous threats, coercion, stalking, etc. At the scene, the police must identify the dangerous person and protect the victim, including by assessing risks and ensuring the preservation of evidence. The researchers also addressed the essence of the IMPRODOVA Training Platform, a training platform designed to improve the skills of police officers, healthcare professionals, and social workers in the field of domestic violence. It offers training materials, indicators for risk assessment, practical recommendations for cooperation between distinct professional groups, and tools for assessing dangerous situations to prevent violence effectively. At the same time, the study did not elaborate on the functioning of urgent measures used by the police as a response to violence. However, the introduction of a programme to regulate the interaction of the police, healthcare workers, and social workers in taking measures to prevent and combat domestic violence could bring positive results for Ukraine.

The system of bodies and types of response to violence varies in national legislation from country to country. Researchers tend to recognise the following common features: 1) urgent/immediate measures include independent legal procedures that are distinct from coercive mechanisms, including public liability for domestic or gender-based violence; 2) such measures are taken by the police (if applicable, with the involvement of the prosecutor's office and the court) to protect the victim based on a risk assessment that is not related to the establishment of an offence/crime in the actions of the person; 3) such measures show effectiveness in combination with the use of civil law mechanisms that can be used by victims and administrative/criminal law and procedural measures to resolve the issue of bringing the offender to justice. G.V. Tolochko (2019) pointed out the following positive features of the introduction of such a measure as an urgent restraining order in Ukrainian legislation: 1) expanding the circle of persons who are recognised as victims of domestic violence, namely, recognising a child who witnessed violence as a victim; 2) maintaining a balance between the protection of the victim's right to life and health and the offender's property rights, in the case of applying such a measure as an obligation of the offender to leave the victim's place of residence (stay); 3) a successful legislative definition of the police's competence to ensure the victim's safety even if the victim, regardless of the reasons, refuses to give up power. Unfortunately, these conclusions of the researcher, despite their legal significance, do not contain detailed arguments. Still, the latter of these conclusions was confirmed and partially substantiated by A.B. Blaha (2019). The author draws attention to the police's powers to assess risks as a basis for issuing an urgent restraining order, as well as to the possibility of using administrative discretion in cases where the risk assessment does not fully cover the circumstances of the case.

O.V. Makukh (2019), analysing the legislative innovations regarding the introduction of an urgent restraining order in Ukraine, addressed the absence of any legislative provisions on the definition of entities responsible for monitoring the execution of the order. The researcher also believes that the legislative provisions defining the procedure for appealing against an urgent restraining order are unregulated. While agreeing with the O.V. Makukh (2019) position on the second problematic point, one cannot but address the fact that the regulations in force as of July 2024 designate authorised national police officers as an authority responsible for monitoring the execution of the order. Their competence includes recording in the register of notifications of the abuser's place of temporary residence, registering abusers for preventive registration, applying special coercive measures to evict the abuser from the dwelling, if such a measure is provided for, re-issuing an urgent restraining order indicating measures that were not previously applied, as well as drafting protocols in cases of administrative offences for failure to obey an urgent restraining order and/or committing domestic violence. Thus, control over the execution of orders in Ukraine is arguably within the powers of the police. This is in line with the findings of M. Bertsyukh (2020), L. Sukmanovska and M. Repan (2021), and O. Moroz and Y. Khatniuk (2023). The researchers pointed out that the control over the proper implementation of purposeful measures to combat domestic violence during their validity period is entrusted to the authorised units of the national police.

T. Rekunenko and N. Udolova (2021) also addressed the imperfection of legislative technique in the formulation of regulatory provisions for appealing against an urgent restraining order. Furthermore, the researchers provided their views on the similarities between an urgent restraining order and the detention of a suspect during or after the commission of a crime under criminal procedure law. The authors of the present study cannot unconditionally agree with the researchers that in the case of an urgent restraining order, a police officer is obliged to consider initiating jurisdictional proceedings (draft a report on an administrative offence under Article 173[2] of the Code of Administrative Judicial Procedure of Ukraine (2005) and/or notify an authorised police officer to initiate criminal proceedings). An urgent restraining order, as defined in the Law of Ukraine No. 2229-VIII (2017), is not classified by the legislator as either a preventive or coercive measure, nor is it among the measures to ensure the proceedings (although the order certainly has features of each of the above measures). The purpose of an urgent restraining order is not specified as ensuring the performance of the tasks of criminal or administrative proceedings. Furthermore, when drafting the order, the police officer does not preliminarily establish the potential presence of an offence in the person's actions, and the closure of proceedings on an administrative offence for domestic violence due to the court's finding that there is no offence does not affect the legality of the urgent restraining order. The position of Y.M. Horbunova (2023) appears more substantiated – the researcher considered an urgent restraining order as an independent decision of an authorised body with the issuance of an administrative act.

Thus, an urgent restraining order should be considered a decision of an authorised body with the issuance of an administrative act. Control over the execution of orders in Ukraine is the responsibility of the police, which is authorised to ensure the safety of the victim even if the victim recants their testimony at any stage of the proceedings. To use measures to prevent and combat domestic violence more effectively, it is potentially useful to introduce a programme to regulate the interaction between the police, medical workers, and social workers.

Conclusions

This study was aimed at identifying problematic issues in resolving cases of violence, including domestic and gender-based violence, and included an empirical analysis of court practice in Ukraine on prosecution under Article 173[2] of the Code of Ukraine on Administrative Offences of 1984 and appealing against an urgent restraining order. To this end, the study employed systematic and comparative methods to summarise court practice and identify trends in the resolution of such disputes and analysed the mechanisms for issuing and appealing against urgent restraining orders in cases of domestic and gender-based violence in Ukraine.

The study showed that these types of violence are interrelated, but existing legal provisions do not make provision for urgent restraining orders as a tool of protection in gender-based cases, which requires expanding the powers of the police. An analysis of court practice revealed a lack of uniformity in the understanding and application of gender-based violence, which can lead to uncertainty in the qualification and response to such cases. The need to improve legal mechanisms and protect the rights of victims was highlighted as key to strengthening the judicial system and guaranteeing equal rights for all citizens.

It was found that as of July 2024, there is no legislative regulation of the procedure for appealing against an urgent restraining order. Since it, as an act of law enforcement, exhausts its effect upon the expiry of the period for which it was established, and, according to the majority of judges whose cases were included in the sample of the study, does not give rise to any legal consequences, its appeal does not lead to the protection/restoration of any rights and interests of a person. The right to appeal in itself, in the absence of a real opportunity to use it, is not a sufficient legal guarantee and does not follow the principles of the rule of law and access to justice.

However, the analysis revealed that an urgent restraining order generates legal consequences not only during its validity, but also after it expires, namely, when a person is brought to criminal liability for an administrative offence or a crime related to the violation of restrictions imposed on a person by such an order, as well as domestic violence. In such cases, the order is a vital piece of evidence and affects not only the degree of liability, but also the very possibility of being found guilty. Thus, the dismissal of administrative claims for recognition of urgent restraining orders as unlawful and their cancellation, with reference solely to the fact that the term of the challenged order has expired, and therefore there are no grounds for cancellation of the order, as it no longer produces legal consequences, is illegal.

Future research on this subject could focus on developing mechanisms for effective appeals against urgent restraining orders; the substantiation for the existence of a "legitimate interest" in having an unlawful order cancelled; the breadth of discretion of police officers in issuing urgent restraining orders; and the possibility of using such orders in cases of gender-based violence.

Acknowledgements

None.

Conflict of interest

The study was funded by the European Union, but the views and opinions expressed are those of the authors alone and do not necessarily reflect the views of the European Union or the European Executive Agency for Education and Culture. Neither the European Union nor the grantor can be held responsible for them.

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Проблемні питання застосування термінового заборонного припису у справах про домашнє та ґендерно зумовлене насильство

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Анотація. Попри те, що чинне законодавство України передбачає певні заходи впливу на кривдників у справах про ґендерне насильство, терміновий заборонний припис не є частиною таких заходів, що вимагає розширення повноважень поліції щодо видачі термінових заборонних приписів у справах про насильство за ознакою статі. Метою статті було окреслення вказаного проблемного питання, а також виявлення недоліків у юридичних механізмах оскарження термінових заборонних приписів. Методологія дослідження ґрунтувалась на системному і порівняльному аналізі судової практики, а також на галузевому тлумаченні норм права та аналізі судових актів. Встановлено, що хоча законодавство визначає більшість осіб як суб'єктів домашнього насильства, судова практика встановлює, що такі особи можуть бути визнані такими лише у випадках, коли вони є членами сім'ї кривдника. Відсутність доказів останнього призводить до закриття справ, незалежно від наявності доказів насильства. Таким чином, факт того, що потерпілий і кривдник не проживають за однією адресою, є достатньою підставою для закриття провадження за відсутністю суб'єкта правопорушення. Вказане має свій вияв і при застосуванні термінового заборонного припису: відсутність доказів зв'язаності спільним побутом учасників конфлікту позбавляє поліцейського можливості швидкої реакції у вигляді винесення припису. Розширення повноважень поліції щодо винесення такого припису у справах про ґендерно зумовлене насильство усуне вказану прогалину. Було розглянуто зворотний бік ситуації, зокрема, відсутність належних юридичних механізмів оскарження винесеного припису. Оскільки терміновий заборонний припис є актом правозастосування, він не породжує правових наслідків та не може бути оскарженим. У той же час, неоскарження припису може мати негативні наслідки для осіб, включаючи притягнення їх до відповідальності за порушення припису та/або вчинення домашнього насильства. Практичне значення одержаних результатів полягає в можливості використати їх в якості аргументаційної бази для захисту прав громадян, а також для формулювання ініціативи внесення змін у законодавство

Ключові слова: домашнє насильство; юридичні механізми оскарження; розширення повноважень поліції; судова практика; акти правозастосування

UDC 364.2
Doi: 10.32518/sals4.2024.201

Соціально-правові студії. 2024. Т. 7, № 4
Social & Legal Studios. 2024. Vol. 7, No. 4

Transnational human trafficking in Central Asia: Scale, causes and solutions

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Abstract. Human trafficking is a severe transnational issue in Central Asia, where vulnerable populations, particularly women, children, and migrant workers, are frequently trafficked for sexual exploitation, forced labour, and other forms of abuse. The purpose of this study was to examine the dynamics of transnational crime in the Central Asian region and to systematise recommendations for minimising the risks of human trafficking. This study employed statistical data in addition to legislative documents, reports from civil society organisations, and regional mapping studies, utilised qualitative analysis and statistical methods to assess the efficacy of anti-trafficking initiatives in Central Asia. The research findings revealed considerable variations in anti-trafficking initiatives across Central Asian countries. Kazakhstan has achieved significant advancements in victim support systems and legislative frameworks, whilst Kyrgyzstan and Turkmenistan persist in facing challenges related to insufficient victim identification and assistance infrastructure. Trafficking routes in the area are varied, with victims being exploited in neighbouring countries like Russia and Turkey, as well as more distant locations such as the United Arab Emirates and India. Women and children are the most susceptible demographics, with an excessive proportion of trafficking victims emerging from economically deprived homes. The research highlighted the critical necessity for increased inter-agency collaboration, refined data-gathering systems, and robust victim protection protocols. Moreover, it underscored the necessity of using international best practices to efficiently address human trafficking throughout Central Asia. These findings can inform policymakers, law enforcement agencies, and non-governmental organisations in Central Asia and abroad to formulate more focused, coordinated strategies for combatting human trafficking, especially through enhanced victim identification and protection mechanisms

Keywords: modern slavery; modernisation of legislation; public administration; cotton harvesting; sexual exploitation; complex threats

Introduction

In modern democratised world, it is still extremely difficult to counter numerical transnational threats such as drug trafficking, money laundering, trafficking in arms, animals, rare plants and others. For the international community, these problems pose a particularly serious threat that requires coordinated efforts and strategies. Not the least of these is human trafficking, the threat of which has only increased over the years. As the global trend towards high-technology development becomes more and more evident, these preferences can also be exploited by organised criminal groups.

Suggested Citation

Article's History: Received: 09.09.2024 Revised: 21.11.2024 Accepted: 23.12.2024

Dyussenova, A., Darkenov, K., & Abzhapparova, B. (2024). Transnational human trafficking in Central Asia: Scale, causes and solutions. *Social & Legal Studios*, 7(4), 201-211. doi: 10.32518/sals4.2024.201.

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For example, they can use the latest advances in artificial intelligence, make payments in cryptocurrencies and remain virtually undetected by blockchain systems. Male victims of organised criminal groups are often subjected to the hardest labour and women are in most cases sexually exploited (UNODC is the leading…, 2021).

The Central Asian region, according to the UN, is the region with the highest percentage of sexual exploitation of women, but the real figures, according to the UN Special Rapporteur for Kyrgyzstan, are much higher, due not so much to inaccessibility and inaccuracies in information as to the reluctance of victims to report (UN helps Central Asian…, 2023). Ulan Nogoibaev also noted that as of 2023, the money turnover of human trafficking offenders already exceeds that of narcotics and arms smuggling. Traffickers from organised criminal groups often have an understanding of the political, social, economic and cultural particularities of a particular community or even region (Khamzin *et al.*, 2022). In this way, they exploit the local population and can take advantage of the plight of some of the family members who are unable or unwilling to turn to law enforcement in the event of a threat (Spytska, 2023).

Human trafficking persists as a widespread international menace that confronts legal frameworks and cultures globally. Notwithstanding global initiatives to criminalise and reduce trafficking, researchers contend that law alone has been inadequate in diminishing its prevalence. Y. Dandurand (2024) critically evaluated the effectiveness of criminalising human trafficking, arguing that these laws frequently lead to law enforcement shortcomings rather than substantial decreases in trafficking occurrences. This viewpoint highlights the intricacy of trafficking networks and indicates that a comprehensive strategy, above simple regulation, is necessary for effective intervention. The structure and functioning of criminal networks engaged in people trafficking have been a primary subject of scholarly investigation. E. Loibl and S. Mackenzie (2023) examined the complex frameworks of global adoption markets, emphasising how organised crime exploits legal gaps and employs advanced techniques to enable trafficking. Their investigation indicated that traffickers have leveraged technological breakthroughs, including artificial intelligence and blockchain, to improve their operating secrecy and efficiency. C. Gibson (2024) examined the dynamics of transnational organised crime in the Caribbean, demonstrating how regional characteristics and socio-economic factors enhance the resilience of trafficking networks. This underscores the flexibility of criminal organisations and the necessity for international collaboration and new tactics to eradicate their activities.

The topic of transnational threats, in particular human trafficking, is a significant one and is regularly analysed by scholars and researchers (Fernández-Villarán & Cuenca, 2023). In a paper authored by A.B. Izbasova *et al.* (2021), the authors highlighted the actual manifestations of the problem of trafficking in persons, the role of State Governments and the range of measures taken by them, as well as the different objectives of organised criminal groups in exploiting men, women, and children. Y. Buribayev and Zh. Khamzina (2023) analysed national mechanisms to ensure the rights of trafficked persons and access to specialized social services. They also highlighted the need to modernise Kazakhstan's legislative and regulatory framework by introducing optimal procedures for assisting victims of human trafficking in countries such as the USA, Canada, Australia, Sweden, and New Zealand. Z.S. Seitaeva and R.S. Balashov (2020) compared the work of inter-agency anti-trafficking commissions in Uzbekistan and Kazakhstan and analysed the reform of individual structures in these countries.

In the work of B.Z. Kyzdarbekova and A.K. Orazbekova (2022), the authors conducted a comparative study of the definition of "trafficking in persons" under Kazakhstan's national legislation and the Palermo Protocol. The need to adopt a special law as an important component of the "anti-trafficking" policy in Kazakhstan was voiced in the work of A. Bekmagambetov *et al.* (2021). D. Utepov and B. Karimov (2022) put forward in their work recommendations to supplement national legislation with provisions related to trafficking in persons through the use of the Internet. At the same time, A.B. Bekmagambetov (2021) noted in his work that anti-corruption and anti-drug policies existed in the general legal system, but there was no so-called "anti-trafficking" policy.

Based on the above, the aim of this study was to analyse the efforts of Central Asian states in combating the transnational threat of human trafficking to determine the effectiveness of the measures taken. The objectives of the study were to analyse legislation, statistics and the socio-economic context in the region.

Materials and methods

The study analysed statistical indicators on the number of trafficking victims in Central Asia, based on information from the Institute for War and Peace Reporting's Central Asia Regional Unit (60 per cent of…, 2022). In order to determine the degree of effectiveness of public administration in Central Asian governments, performance indicators developed by the Office to Monitor and Combat Trafficking in Persons at the US Department of State were analysed in detail (Trafficking in Persons Report, 2023). Additionally, the provisions of the UN Trafficking in Persons Protocol (Protocol to Prevent…, 2000), which governments must meet in order to effectively combat trafficking in persons, were analysed. To understand the official number of registered victims of human trafficking in the Central Asian region who have been assisted or reported to specialised civil society organisations, the statistics of the Counter Trafficking Data Collaborative (CDTC) (CDTC: Global dataset, 2024) were analysed in detail.

Analyses of the scale, recommendations, geographical coverage and other aspects of trafficking in human beings in Central Asia have been conducted through the annual reports of the Office for Monitoring and Combating Trafficking in Human Beings. This enabled the identification of both advantages and disadvantages of state administration in the Kyrgyz Republic (Trafficking in Persons Report: Kyrgyzstan, 2023), the Republic of Uzbekistan (Trafficking in Persons Report: Uzbekistan, 2023), Turkmenistan (Trafficking in Persons Report: Turkmenistan, 2023), the Republic of Tajikistan (Trafficking in Persons Report: Tajikistan, 2023) and the Republic of Kazakhstan (Trafficking in Persons Report: Kazakhstan, 2023). A workshop in Kyrgyzstan aimed at building the capacity of law enforcement structures and a general understanding of the risks and threats posed by trafficking in persons was also analysed (A training seminar on…, 2023). In addition, national legislation plays a pivotal role in strengthening the capacity of national Governments

to combat trafficking in persons, and the Resolution of the Government of the Republic of Tajikistan No. 55 "On the National Plan to Combat Trafficking in Persons in the Republic of Tajikistan for 2022-2024" (2022) and Program to Combat Trafficking in Human Beings in the Kyrgyz Republic for 2022-2025 (2022).

The educational brochure Combating trafficking in children in Kazakhstan (2023), published by Winrock International, was examined with the aim of reducing the number of cases of human trafficking, particularly among children and adolescents in Kazakhstan. Analysis of this resource has provided insight into what actions can be taken to minimise the incidence of child trafficking not only in Kazakhstan but also in the rest of the Central Asian region. Statistical analysis was used to identify a sample of countries that were final destinations for victims of trafficking from the Central Asian region (UNODC, 2024). For this purpose, a joint report by the United States Agency for International Development (USAID), the anti-trafficking platform Freedom Collaborative, and the non-profit organisation Winrock International, "Regional Mapping of Human Trafficking and Migrant Routes of Unprotected Groups: Collective Data from Civil Society Organizations on Migration Routes in Central Asia" (UN: Human Trafficking, 2024), was examined in detail.

Results

Based on the definition used by UN agencies, human trafficking involves the recruitment, transportation, harbouring, transfer, or theft of individuals through force, fraud, or deception for the purpose of exploitation or profit (Improving protection for…, 2015). Victims of this type of crime can be men and women, and not infrequently even adolescents and children, anywhere in the world. In addition, it is crucial to understand that human trafficking exploitation is understood in a broad sense and includes sexual exploitation, involuntary labour or services, as well as slavery (Safe Migration in Central Asia, 2019). The problem of human trafficking in the Central Asian region has been noted in UN documents for a very long time. In 2005, the International Organization for Migration, as part of the UN system, issued a report on human trafficking in the Central Asian region (Kelly, 2005). At that time, the problems that the states of the region had inherited from the Union of Soviet Socialist Republics, such as planned economies, authoritarian governance, imperfect markets and limited privatisation and democratisation, were already mentioned. Alongside these problems, the lack of transparent visa application schemes and recruitment procedures meant that the movement of people in the region was a disorderly and uneven process. This created a favourable environment for the operation and development of the now massive phenomenon of human trafficking. According to a study by the Institute for War and Peace Reporting's Central Asia Regional Unit (60 per cent of…, 2022), about 60% of citizens of Central Asian states who were enslaved were women as of 2022. These women were often in difficult situations and had to put up with what was happening, and did not seek help for fear of stigmatisation.

In 2023, 111 cases of trafficking in persons were reported by representatives of relevant structures in Kazakhstan (Trafficking in Persons Report: Kazakhstan, 2023), 102 in Uzbekistan (Trafficking in Persons Report: Uzbekistan, 2023) and 90 in Tajikistan (Trafficking in Persons Report: Tajikistan, 2023). The Government of Kyrgyzstan reported only three cases of trafficking in persons, while civil society identified 66 victims (Trafficking in Persons Report: Kyrgyzstan, 2023). For the Government of Turkmenistan, as of 2023, no victims of trafficking had been identified for four consecutive years, while representatives of international organisations reported assisting 21 victims of trafficking (Trafficking in Persons Report: Turkmenistan, 2023). There are many classifications of the effectiveness of national governments' anti-trafficking measures. One of the most significant statistics and one that can be based on official data is the reports on human trafficking published annually by the Office to Monitor and Combat Trafficking in Persons at the U.S. Department of State. As a result, none of the states in the Central Asian region has reached the first level of government effectiveness in combating human trafficking. Although Level 1 is the highest assessment rating, it would not mean that the problem of human trafficking does not exist in a particular state, but it would indicate the best efforts of state authorities to address the problem. Level 2 and Level 3 respectively mean that governments are not making enough effort to even minimally comply with the UN Trafficking in Persons Protocol (Protocol to Prevent…, 2000).

A characteristic feature of the Central Asian region was high migration activity. Migrants could travel both within and outside the region. At the same time, there remained a problem of insufficient information on migration, exploitation, and human trafficking in the region. Winrock International launched a five-year project, "Safe Migration in Central Asia", in 2019, implemented in Kazakhstan, Kyrgyzstan, Uzbekistan, and Turkmenistan (Shashkina, 2022). The objective was to enhance mutual responsibility and effectiveness among governments, non-governmental organisations, and the private sector in preventing human trafficking in the region. The report, released in August 2023, was an important resource for identifying the geography of trafficking routes (Fig. 1).

Figure 1. Data from civil society organisations on migratory journeys in Central Asia
Source: UN: Human Trafficking (2024)

The data from figure 1 indicated high migration activity both within and outside the Central Asian region. In 17 of the cases studied, the traffickers left their victims in Kazakhstan. In another 10 cases, the victims travelled to the Russian Federation and in 6 cases to Turkey. In the remaining 17 trafficking cases, the victims may have remained in Kyrgyzstan or Uzbekistan, or may have been sent in transit to India, the United Arab Emirates (UAE), Bangladesh, Belarus, and Moldova (UN: Human Trafficking, 2024). Based on data from another organisation that provides open datasets on victims of trafficking, in Kazakhstan, Tajikistan and Turkmenistan, women trafficked into slavery accounted for 74%, 60% and 60% respectively. The gender dimension was virtually equal only in Kyrgyzstan and Uzbekistan, with 47% and 48% respectively. When it comes to the routes of further exploitation of victims, 42% of Kyrgyz citizens go to the Russian Federation, 23% to Kazakhstan, and 12% to Turkey. However, in Kazakhstan, for example, as many as 80% of victims remain within the state, while about 10% go to the Russian Federation and the UAE. In general, the main routes of organised criminal groups for further exploitation of the population of Central Asian states are the Russian Federation, Turkey, less frequently the UAE or further stay in the region (CDTC: Global dataset, 2024).

In conformity with a US Department of State investigation (Trafficking in Persons Report: Kyrgyzstan, 2023), the greatest risk of being trafficked in Kyrgyzstan is among labour migrants. Men, women, and children have been forcibly exploited in the Russian Federation, Kazakhstan, and to a lesser extent in Ukraine, Turkey, and a number of European countries. Some Kyrgyz families who were blacklisted, i.e., banned from entering and staying in the Russian Federation, continued to send their children there to work, which left them in an extremely vulnerable situation and at risk of trafficking. It was also reported that due to the poor economic situation of the Kyrgyz population, girls, and adolescents were forced to go to work as nannies or domestic workers in the Russian Federation and Kazakhstan, which also added to the risk of sexual slavery. Another important reason for the actualisation of the issue of human trafficking in 2022-2024 was the fact that Kyrgyz migrants in the Russian Federation could be fraudulently or forcefully recruited to participate in the aggressive war against Ukraine (Kuznetsova *et al.*, 2024). The same applies to labour migrants in the temporarily occupied territories of Ukraine.

Another reason for the involvement of the Kyrgyz population in sexual exploitation and forced labour was the so-called practice of "bride kidnapping" by the male population for the purpose of further forced marriage. In terms of the geography of sexual and labour exploitation of Kyrgyz women outside the Central Asian region, the final destinations were often India, Kazakhstan, the Russian Federation, the Republic of Korea, Turkey, and the UAE (Trafficking in Persons Report: Kyrgyzstan, 2023). Based on the above, the Government of the Kyrgyz Republic has taken appropriate qualitative decisions to counter such a transnational threat as human trafficking. For example, Program to Combat Trafficking in Human Beings in the Kyrgyz Republic for 2022-2025 (2022). In particular, the provisions of the Programme established a framework for State policy in the area of combating trafficking in persons with a view to ensuring the best systematic approach and increasing the effectiveness of measures taken both against perpetrators and victims of trafficking. Seminars and training seminars on preventing human trafficking have been organised in Kyrgyzstan. For example, in July 2023, a training seminar on preventing human trafficking in Kyrgyzstan took place in Batken oblast (2023), aimed at developing and approving unified principles and mechanisms for dealing with individuals affected by human trafficking, making joint efforts to establish the facts of involving children in forced labour, and so on. The event was organised jointly with international representatives of the UN on drugs and crime, as well as the Ministry of Internal Affairs of the Kyrgyz Republic and the Public Security Service under the Ministry of Internal Affairs of the Kyrgyz Republic. However, according to the U.S. Department of State (Trafficking in Persons Report: Kyrgyzstan, 2023), Kyrgyzstan still lacked a unified system for collecting data on anti-trafficking efforts. Nevertheless, in a positive development, a National Rapporteur on Combating Trafficking in Persons was established in the Kyrgyz parliament. Such a position is essential for States with serious trafficking problems. Despite some positive aspects of the Kyrgyz government's anti-trafficking efforts, the U.S. Department of State has noted (Trafficking in Persons). The U.S. Department of State noted (Trafficking in Persons Report: Kyrgyzstan, 2023) that the government is not fully meeting even minimum standards for eradicating the problem, although it is making significant efforts. Among the negative factors for the lack of efforts, insufficient assistance and very few resources for victims of trafficking were noted, as well as the lack of convictions of trafficked persons between 2022 and 2023.

The trafficking situation in the Republic of Uzbekistan and Turkmenistan has one distinct feature: forced labour in the cotton harvest. The U.S. Department of State (Trafficking in Persons Report: Uzbekistan, 2023) noted a positive aspect in the context of the abolition of systematic forced labour in the cotton harvest by the government of Uzbekistan, but from time to time there were still isolated cases of forced labour in the cotton harvest by local officials. In the case of Turkmenistan (Trafficking in Persons Report: Turkmenistan, 2023), teachers, health workers, workers of public utilities, people with registered mental disorders are recruited to pick cotton, and if they refuse, they may be dismissed, their wages withheld and so on. Geographically, traffickers use Uzbek nationals for forced labour and sexual exploitation in Bahrain, Saudi Arabia, the UAE, Estonia, Latvia, Georgia, the Russian Federation, as well as in India and Sri Lanka (Trafficking in Persons Report: Uzbekistan, 2023). In the case of Turkmen victims of trafficking, the final destinations were often Turkey, India, and the Russian Federation (Trafficking in Persons Report: Turkmenistan, 2023).

The U.S. Department of State explicitly encouraged the Government of Uzbekistan to implement several measures to address human trafficking (Trafficking in Persons Report: Uzbekistan, 2023). Initially, it advocated for the criminalisation of forced labour involving trafficked individuals. Secondly, officials must be educated to recognise victims of trafficking. Third, it is imperative to enforce the prohibition against forced labour in cotton production. The government should enhance investigations and prosecutions for trafficking offences. Creating a fund for the reintegration of victims into society is crucial. The research underscores the

necessity of granting access to impartial observers and guaranteeing that trafficking victims are not coerced into forced labour. The Government of Turkmenistan was advised to let impartial observers' access to the cotton cultivation and harvesting processes. The administration should eliminate mandatory involvement in public works by revoking the pertinent clause in the State's Labour Code. It is imperative to train law enforcement authorities to recognise victims of trafficking. Moreover, formulating a thorough national action plan to address trafficking is essential (Trafficking in Persons Report: Turkmenistan, 2023).

Citizens of the Republic of Tajikistan are often exploited abroad rather than within the state. This is due to the economic migration of men, women and sometimes entire families with children, which multiplies the risk of being involved in forced labour or sexual exploitation. Geographically, Tajik men and women provide services in the service sector, agriculture, and construction in the Russian Federation, Kazakhstan, Saudi Arabia and neighbouring Central Asian states. In terms of sexual slavery, Tajik women and children are often subjected to this type of violence in Turkey and the UAE, as well as India or even Afghanistan (Trafficking in Persons Report: Tajikistan, 2023). The Government has made efforts to counter trafficking in persons. For example, the Resolution of the Government of the Republic of Tajikistan No. 55 (2022). In particular, the norms of this resolution focused on regular events with the participation of public and international organisations, awareness-raising activities, television and radio dialogues, training for citizens intending to migrate, and so on.

Priority recommendations made by the U.S. Department of State were (Trafficking in Persons Report: Tajikistan, 2023) to adopt uniform step-by-step guidelines for identifying victims of trafficking, increase funding for specialised shelters, continue and improve mechanisms for inviting outside observers to the cotton harvesting and cultivation process, increase the timing and quality of training for government officials, including diplomatic personnel, implement a victim assistance programme, and raise awareness of the problems of trafficking in persons. The Government of the Republic of Kazakhstan has also not fully recognised and taken appropriate measures to eradicate the problem of human trafficking, although it has made significant efforts. Among the positive measures taken, the Office for Monitoring and Combating Trafficking in Persons reported that the status of police units that dealt with trafficking in persons had been upgraded and the staff of the relevant police units had been increased (Trafficking in Persons Report: Kazakhstan, 2023).

In addition, qualitative recommendations were also offered to the Government of Kazakhstan that, in the short term, could significantly improve the efforts of the relevant authorities to combat trafficking in persons. For example, it was advised that initiatives to identify victims of transnational crimes among the most vulnerable groups of the population be significantly intensified, and that special attention be paid to cases of forced labour of victims of foreign origin and to facilitate further assistance for them (Trafficking in Persons Report: Kazakhstan, 2023). It was also an important recommendation to allocate sufficient financial resources to shelters for victims of trafficking of foreign origin to provide comprehensive assistance as required by law, including temporary residence and work permits. Training seminars should be held for law enforcement officials on the application of the legislation of the Republic of Kazakhstan on trafficking in persons, especially in cases involving psychological coercion into forced labour. It was recommended that the capacity of the Labour Inspectorate to identify victims of forced labour be strengthened, and that they be given unrestricted access to factories, plants, industries, and farms for unannounced inspections to detect potential cases of forced labour and theft. Strengthen oversight of recruitment agencies, and establish a centralised, unified data collection system to combat human trafficking.

The U.S. Department of State in Kazakhstan also noted (Trafficking in Persons Report: Kazakhstan, 2023) that the exploitation of Kazakhstani men and women occurs predominantly in the Russian Federation, and to a lesser extent in Bahrain, the Republic of Korea, Turkey, and the UAE, extending the geographic scope of further trafficking to East Asia and another state in the Middle East. In addition, it was not uncommon for PRC authorities to detain and forcibly labour Kazakh nationals who were visiting relatives in Xinjiang province. In 2022, representatives of non-governmental and international organisations stated that the number of criminal cases of forced and sexual exploitation is much higher than the number of criminal cases opened for these offences. Marat Akhmetzhanov, former Minister of Internal Affairs of the Republic of Kazakhstan stated (Shashkina, 2022) that everything is broken (referring to the system of proceedings and prosecution), there is no special law, comprehensive legal information is not available either to state officials or victims, authorised bodies are not defined and there is no clear competence.

In March 2023, the President of Kazakhstan stated (Bassarova, 2023) that the current growing problem of regional and global forced migration required the adoption of a special law that would fully provide protection and social support for citizens who were victims of such a transnational threat as human trafficking. By March 2024, the Parliament of the Republic of Kazakhstan adopted in the first reading a draft law (Khalbarova & Ilibarova, 2024) providing for the introduction in general education institutions of programmes aimed at combating trafficking in persons. These norms were incorporated into the draft law "On Combating Trafficking in Persons in the Republic of Kazakhstan", which had been proposed earlier by the President of the State. Importantly, the draft law introduced a new conceptual apparatus, including definitions of "victim of human trafficking", "potential victim of human trafficking", "vulnerable situation", "subjects of combating human trafficking" and others. The new Minister of Internal Affairs, Yerzhan Sadenov, stated that the norms of this draft law are fully in line with international standards and the UN Palermo Protocol. In May 2024, the Law of the Republic of Kazakhstan No. 110-VIII "On Countering Human Trafficking" (2024) was passed in the second and final reading by the Majilis, and then sent to the Senate for consideration.

The Law of the Republic of Kazakhstan No. 110-VIII "On Countering Human Trafficking" (2024) establishes a comprehensive framework to combat human trafficking within the country. Article 1 defines human trafficking as "the purchase and sale or commission of other transactions with respect to a person, including a minor, as well as his/her exploitation

or recruitment, transportation, transfer, concealment, receipt, as well as the commission of other acts for the purpose of exploitation". Criminal Code of the Republic of Uzbekistan (1994), specifically Article 135, criminalises human trafficking but includes measures that are inconsistent with international norms. For example, Article 135 recognises the use of force, fraud, or coercion as aggravating factors rather than basic parts of the offence. This is in contrast to Kazakhstan's legislation, which, in Article 1, presents a more expansive description consistent with the Palermo Protocol, highlighting exploitation and recruitment as fundamental elements of trafficking offences. Kazakhstan's legislation adopts a more systematic methodology for victim support. Article 9 delineates a structure for the provision of temporary accommodation, medical treatment, and psychological support to victims of trafficking. The Law of the Republic of Uzbekistan No. 154 "On Combating Trafficking in Persons" (2008) has comparable measures but encounters considerable implementation difficulties, especially in remote regions with underdeveloped infrastructure. This disparity underscores Kazakhstan's comparatively developed institutional capacity to assist victims.

Articles 130 and 132 of Criminal Code of the Republic of Tajikistan (2015), which prohibit trafficking and provide punishments for associated crimes, primarily outline the country's strategy for addressing human trafficking. notwithstanding these legislative frameworks, the execution of anti-trafficking legislation is uneven due to substantial difficulties, including corruption and insufficient inter-agency cooperation. The Ministry of Internal Affairs has created a dedicated unit inside its Combating Organised Crime Directorate to detect trafficking incidents (Trafficking in Persons Report: Tajikistan, 2024). However, official complicity and insufficient resources compromise the overall efficacy of law enforcement initiatives. Although Tajikistan's legislation includes measures for victim protection, it lacks the comprehensive, victim-centred approach prevalent in neighbouring Kazakhstan. Kazakhstan's legislation requires the participation of healthcare organisations and educational institutions in victim identification, whereas Tajikistan mostly depends on law enforcement authorities for this task. This disparity underscores a significant deficiency, as a multi-sectoral strategy is typically more efficacious in tackling the intricacies of trafficking situations. Systemic deficiencies in law enforcement and victim care systems obstruct the effective implementation of Tajikistan's legislative measures against human trafficking.

Public Law No. 106-386 "Victims of Trafficking and Violence Protection Act of 2000" (2000) (TVPA), as amended, offers a comprehensive framework for addressing human trafficking on a worldwide scale. It underscores a triadic strategy: prosecution, protection, and prevention. The legislation of Kazakhstan reflects this framework but does not possess the same degree of precision in its stipulations. The TVPA requires annual reporting on trafficking cases and victim assistance through the Trafficking in Persons Report (2023), promoting openness and accountability. Kazakhstan might gain from implementing such reporting structures to improve supervision and public awareness. The TVPA also provides particular safeguards for overseas trafficking victims, including the issuing of T-visas. Kazakhstan's Article 8 offers temporary residency permits for trafficking victims. However, it does not specifically include foreign nationals, which may restrict the extent of its security measures.

The Law of the Republic of Kazakhstan No. 110-VIII "On Countering Human Trafficking" (2024) introduces significant measures to address various forms of trafficking, including forced labour and sexual exploitation. However, there are several areas for improvement that could enhance the effectiveness of these legal frameworks. The law could benefit from clearer definitions of critical terms such as "coercion" and "exploitation", similar to the precise language used in the TVPA (2000). This clarity would help ensure uniform understanding and application of the law across different agencies and stakeholders involved in combating human trafficking. Another important aspect is implementation mechanisms. While the law outlines robust measures, enforcement remains a challenge due to issues like corruption and weak inter-agency coordination. Kazakhstan could draw lessons from countries like the United States, where specialised task forces ensure effective coordination across various agencies, facilitating a more comprehensive approach to tackling trafficking. Additionally, international collaboration is crucial given the transnational nature of trafficking. Kazakhstan could enhance its efforts by aligning more closely with regional agreements, such as the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (2014). Strengthening ties with neighbouring countries and international organisations would improve information sharing and joint efforts in combating trafficking networks.

An AMANAT MP stated (A law against human trafficking…, 2024) that every day the media are reporting more and more cases of human trafficking. Most of the victims of such crimes are women and children who are forced into prostitution, and the main reasons for this are poverty, unemployment, lack of education and a number of other factors (Khamzina *et al.*, 2020). As mentioned above, Yelnur Beisenbaev confirmed that the most frequent victims are people from socially vulnerable groups. In this regard, as well as the decision of the Parliament of the Republic of Kazakhstan to gradually introduce anti-trafficking programmes in educational institutions, it is worth paying attention to manuals focused on combating trafficking in children. For example, the international organisation Winrock International (2003) published a booklet on training and exercises to combat trafficking in children in Kazakhstan. This training booklet is divided into several modules, including: an introduction to the concept of trafficking, legal and national framework and understanding of child trafficking, best practices in working with trafficked children, and so on. This manual can be useful for teachers and children in educational institutions, for government officials in line ministries in countering trafficking in human beings, and for improving inter-agency co-ordination and the effectiveness of the child protection system in Kazakhstan.

Given the above, the governments of the Central Asian states continue to make efforts to counter the transnational threat of human trafficking. However, independent and foreign observers, in particular representatives of the U.S. Department of State, have continued to document numerical violations and weak governance in each of the Central Asian states (Table 1).

Table 1. Positive and negative aspects of the activities of the governments of Central Asian states in combating trafficking in human beings

	Kazakhstan	Uzbekistan	Tajikistan	Kyrgyzstan	Turkmenistan
Achievements	Modernisation of specialised structures, transformation of the regulatory framework	Cancellation of forced cotton harvesting at the official level	National Plan to Combat Trafficking in Human Beings in the Republic of Tajikistan for 2022-2024	Seminars and trainings on preventing trafficking in human beings with the involvement of international organisations	Access for independent observers to monitor the cotton harvesting process
Disadvantages	Lack of a unified data collection system	Risk of forced labour and sexual exploitation abroad due to mass economic immigration, weak national legal and regulatory frameworks	Individual cases of forced labour within the state, risk of forced labour and sexual exploitation abroad due to mass economic immigration	Vulnerable situation of labour migrants in the Russian Federation, risks of sexual exploitation of women and girls due to poverty of certain segments of the population	Lack of investigations into human trafficking, forced mobilisation of labour resources, lack of funding for programmes to assist victims of human trafficking

Source: compiled by the authors based on Trafficking in Persons Report (2023)

In sum, despite the apparent awareness of national governments of the problem of human trafficking, counteraction remained at a rather low level. The problem of human trafficking is a complex threat directly related to the overall economic performance of the region, the economic performance of individual states, and the lack of awareness among the local population, especially in rural areas, of the causes and preconditions for involvement in labour or sexual exploitation. National governments in the region need to pay close attention to the recommendations of international, interregional and non-governmental organisations to understand the risks and threats in order to develop effective anti-trafficking responses.

Discussion

In the course of the study, it was determined that trafficking in human beings includes a number of illegal activities, ranging from illegal transportation to harbouring people in unknown locations for profit. An important aspect that can be applied to the Central Asian region has been explored in the work of A. Genova and V. Castelli (2022), noting the link between the globalised economy and the thirst for the cheapest labour. This directly correlates with the results of the study, since it is precisely because of the poor economic situation in some states of the region that the population is forced to immigrate, which multiplies the chances of falling into labour slavery. In addition, up to 60% of Central Asian citizens who were victims of human trafficking were women as of 2022 (Shcherbatiuk *et al.*, 2024). The gender dimension of human trafficking has also been studied by M.M. Kakar and F.N. Yousaf (2021), noting the processes of forced marriage that lead to prolonged and multiple exploitation, stigmatisation and social exclusion. Forced marriages were not uncommon in Central Asian states, such as the so-called practice of "bride kidnapping" in Kyrgyzstan.

In studying the problem of human trafficking for the Kyrgyz Republic, it was determined that citizens were often sent for the purpose of labour migration to the Russian Federation, and less frequently to other states. Such forced measures were related to the difficult economic situation for part of the population, and the presence of some on "blacklists" for entry and work in one or another state increased the risk of being involved in illegal labour exploitation. In a study by F.M. Critelli *et al.* (2020), the experiences of migrants and their family members were studied, and the results showed that the fact of migration was determined by the economic needs in the family. In addition, it was stated that male labour migrants on the territory of the Russian Federation can be recruited to serve and wage a war of aggression against Ukraine, which can also be considered illegal human trafficking for certain benefits. This is due to the fact that tens of thousands of citizens of the Kyrgyz Republic found themselves on "black lists" and, accordingly, became extremely vulnerable on the territory of the Russian Federation. In his study, M. Laruelle (2023) came to a similar conclusion, noting the Russian government's strategies for recruiting labour migrants for its armed forces. The study noted that human trafficking is a complex threat and its solution should start from proper schooling to systematic assistance to both people who are about to travel abroad and victims of human trafficking. In their study, J. Ortega *et al.* (2022) came to a similar conclusion that systemic changes should take place to improve the response to care for certain social groups that are potentially vulnerable to trafficking.

Positive aspects of the fight against human trafficking in the Kyrgyz Republic include seminars and training sessions aimed at developing and approving unified principles and mechanisms for dealing with victims of human trafficking, and joint efforts to establish whether children are being forced into forced labour. In addition to the relevant national bodies and departments, experts from leading international organisations were invited to participate in the seminars. A survey conducted by H. Lee *et al.* (2021) showed that discussion trainings on combating human trafficking lead to a short-term improvement in knowledge and a sustained improvement in public awareness of the problem of human trafficking. This confirms the idea expressed in the survey results that such events should take place on a regular basis, which has been actively pursued by the Government of the Kyrgyz Republic in recent years. The study noted that forced

labour in the Republic of Uzbekistan and Turkmenistan was specific to cotton picking, which could involve both citizens of these states and foreigners. A. Zenz (2023a) also studied the issue of forced labour in the cotton harvest in Uzbekistan and noted that forced labour mobilisation is a goal of internal government policy aimed at transferring the population from traditional livelihoods and communities to "modern", state-controlled conditions of work, ideological processing and social control. Furthermore, A. Zenz (2023b) noted in his study of forced labour in Turkmenistan, that recruitment for cotton picking in the state is driven by established production goals, and public sector workers are often involved in the work. This confirms the results of the study, as teachers, health workers, public utility workers and so on are indeed involved in such labour.

D. Esson *et al.* (2023) noted in their study the significant contribution of the Government of the Republic of Kazakhstan to countering human trafficking in the 2010s and 2020s. For example, there are shelters for victims of trafficking in Kazakhstan, which offer various assistance and rehabilitation mechanisms for victims, provide social and psychological services, and develop plans to prevent and combat trafficking. These assertions are supported by the findings of the survey, namely the existence of further government efforts, such as the second reading of the Law of the Republic of Kazakhstan No. 110-VIII "On Countering Human Trafficking" (2024). Importantly, the norms of the new legal and regulatory framework in the Republic of Kazakhstan were aimed at developing, as part of the educational process, appropriate knowledge, skills, and abilities to combat and prevent trafficking in persons. R.J. Shin *et al.* (2020) investigated the integration of educational projects on human trafficking into training programmes for medical professionals, but the results of their study are similarly crucial for the entire education system. They concluded that education and proper awareness shapes behavioural change, and thus the integration of these types of projects is a critical component in improving the identification of and appropriate assistance to victims of trafficking.

I.B.M. Praditama and I.B.E. Ranawijaya (2023) noted that human trafficking is a violation of one of the most significant international treaties, namely the Palermo Convention on Transnational Organized Crime. In the course of the study, it was learnt that the adoption in the Republic of Kazakhstan of the new Law of the Republic of Kazakhstan No. 110-VIII "On Countering Human Trafficking" (2024) is in full compliance with international standards, including the UN Palermo Protocol. K. Bryant and T. Landman (2020), analysing global anti-trafficking practices, noted the positive role of the Project Lantern programme in the Philippines, which helped to develop new manuals, guidelines, build the capacity of law enforcement structures and so on. Similar recommendations were made by representatives of the Office for Monitoring and Combating Trafficking in Persons to the Governments of Central Asian States. The work of international non-governmental organisations is also important in countering the problem of human trafficking.

Conclusions

In the course of the study, it was noted that according to information from the Institute for War and Peace Reporting's regional unit for Central Asia, about 60% of trafficking victims were women. Geographically, regardless of the gender of the trafficked person, people are trafficked for forced labour or sexual exploitation to the Russian Federation, Saudi Arabia, UAE, Bahrain, Republic of Korea, India and some European countries. None of the Central Asian governments were determined to have achieved the first level of effort in countering human trafficking, according to the U.S. Department of State's Office to Monitor and Combat Trafficking in Persons. The governments of the Republic of Kazakhstan, the Republic of Uzbekistan, the Kyrgyz Republic, and the Republic of Tajikistan received Level 2 efforts in 2023, while the government of Turkmenistan only received Level 3 out of three possible. This demonstrates the insufficiency of the measures taken, which do not even meet the minimum requirements of the UN Trafficking in Persons Protocol.

It transpired that the Government of the Republic of Kazakhstan sought to minimise the risks of trafficking in persons on its territory, which led to the adoption of the law "On Combating Trafficking in Persons" in the second reading by Parliament in early 2024. In 2022, the Government of the Republic of Tajikistan adopted a decree "On the National Plan to Combat Trafficking in Persons in the Republic of Tajikistan for 2022-2024", and the Government of the Kyrgyz Republic adopted the Programme to Combat Trafficking in Persons in the Kyrgyz Republic for 2022-2025. It is stated that despite the existence of a legal framework on combating human trafficking, the US Department of State continued to make recommendations to further minimise the risks and threats. These recommendations included increasing funding for shelters, increasing social and psychological assistance, allowing independent observers into the cotton-picking process, raising awareness among citizens who are going to work abroad, training government officials, including diplomatic representatives, to identify and assist victims of trafficking, and so on.

It was concluded that Kazakhstan's Law No. 110-VIII "On Countering Human Trafficking" establishes a thorough framework that conforms to international standards, with an enhanced definition of trafficking and substantial victim assistance provisions. Conversely, the legal frameworks of Uzbekistan and Tajikistan, although addressing trafficking, lack the victim-centric elements present in Kazakhstan's legislation, including multi-sectoral identification and assistance structures. The execution of these regulations is inconsistent, especially in Tajikistan, where corruption and resource constraints impede implementation. Kazakhstan's legislation, while better aligned with international frameworks such as the TVPA, requires more precise definitions and enhanced enforcement tools for successful execution. Furthermore, Kazakhstan should bolster its initiatives by improving reporting frameworks and promoting international cooperation to address transnational trafficking. The research underscores the necessity for continuous legislative enhancements and efficient implementation of anti-trafficking statutes, especially in combating corruption, bolstering inter-agency collaboration, and providing extensive victim assistance.

The limitations of the survey were the closed nature of Turkmenistan's information and government resources. It was also difficult to estimate the actual number of trafficking victims, as most cases remained "in the shadows" from government law enforcement structures or victims were afraid to report the incident. Future research on trafficking in persons in Central Asia can draw on publications by Central Asian

governments after the termination of the terms of the decrees and anti-trafficking programmes, which expire in 2024-2025. Also, useful for research may be the dynamics of trafficking offences and their detection in Kazakhstan after the adoption of the law "On Combating Trafficking in Persons".

Acknowledgements

None.

Conflict of interest

None.

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Транснаціональна торгівля людьми в Центральній Азії: Масштаби, причини та шляхи вирішення

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Анотація. Торгівля людьми є серйозною міжнародною проблемою в Центральній Азії, де вразливі групи населення, особливо жінки, діти та трудові мігранти, часто стають жертвами сексуальної експлуатації, примусової праці та інших форм зловживань. Метою цього дослідження було вивчення динаміки транснаціональної злочинності в Центральноазійському регіоні та систематизація рекомендацій щодо мінімізації ризиків торгівлі людьми. У дослідженні використано статистичні дані, звіти громадських організацій та регіональні картографічні дослідження з використанням якісного аналізу та статистичних методів для оцінки ефективності ініціатив у сфері протидії торгівлі людьми в Центральній Азії. Результати дослідження показали значні відмінності в ініціативах з протидії торгівлі людьми в країнах Центральної Азії. Казахстан досяг значних успіхів у розвитку систем підтримки жертв і законодавчої бази, тоді як Киргизстан і Туркменістан продовжують стикатися з проблемами, пов'язаними з недостатньою інфраструктурою ідентифікації жертв і надання їм допомоги. Маршрути торгівлі людьми в цьому регіоні різноманітні: жертв експлуатують у сусідніх країнах, таких як Росія і Туреччина, а також у більш віддалених країнах, таких як Об'єднані Арабські Емірати та Індія. Жінки та діти є найбільш вразливими демографічними групами, а надмірна частка жертв торгівлі людьми походить з економічно неблагополучних родин. Дослідження підкреслює гостру потребу в посиленні міжвідомчої співпраці, вдосконаленні систем збору даних і розробці надійних протоколів захисту жертв. Крім того, воно підкреслює необхідність використання найкращих міжнародних практик для ефективної боротьби з торгівлею людьми в Центральній Азії. Результати даного дослідження можуть допомогти політикам, правоохоронним органам і неурядовим організаціям у Центральній Азії та за її межами сформулювати більш цілеспрямовані, скоординовані стратегії боротьби з торгівлею людьми, особливо за допомогою вдосконалення механізмів ідентифікації та захисту жертв торгівлі людьми

Ключові слова: сучасне рабство; модернізація законодавства; державне управління; збір бавовни; сексуальна експлуатація; комплексні загрози

UDC 347.965:342.7
Doi: 10.32518/sals4.2024.212

Соціально-правові студії. 2024. Т. 7, № 4
Social & Legal Studios. 2024. Vol. 7, No. 4

Advocacy in the system of protection of human rights and freedoms in wartime

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Abstract. The purpose of the study was to identify the key aspects of the functioning of the Bar, its role and mechanisms in ensuring effective protection of human rights and freedoms under martial law. To achieve this goal, the author used the case study method to analyse the practical interaction of the national bar network with representatives of international missions with a view to guaranteeing the rights of citizens to healthcare, education, compensation for damages and social security. It was found that in wartime, the challenges for the Ukrainian legal community are the lack of transparency and accountability of professional practice, especially in the temporarily uncontrolled territories; the unsystematic nature of documenting and finding legal solutions to problems arising in the exercise of citizens' rights and freedoms; verification of data and certificates issued in the temporarily occupied territories; lack of a unified database and access to information, especially in the combat zone, temporarily occupied, etc. Given the analysis, the author proposed strategies to improve the effectiveness of advocacy in protecting the rights and freedoms of citizens under martial law. Such strategies include, in particular, the creation of a single digital platform to ensure interaction between members of the country's legal community and those in need of legal aid; systematic documentation of material and moral damages caused by military aggression; work with citizens to inform them about existing legal defence opportunities; international partnerships to continuously improve the quality and accessibility of legal defence

Keywords: full-scale military aggression; humanitarian aid; internally displaced person; temporarily occupied territories; annexation

Introduction

Starting from 24 February 2022, the number of citizens in Ukraine in need of professional advice and support in connection with military operations and martial law has significantly increased. Such citizens include, in particular, internally displaced persons (IDPs); citizens affected by armed aggression; persons who have lived or are living in the temporarily occupied territories, etc. The provision of legal aid under martial law is an extremely difficult task, as, according to the Ukrainian National Bar Association, as of 2023, there were 41,713 lawyers registered on the website of the Ukrainian National Bar Association, while the number of IDPs in need of legal protection alone exceeds 4 million (There are 47…, 2023).

One of the challenges under martial law is the need to adapt the mechanisms for providing legal aid to the population, such as consultations, damage audit, etc. to the changed reality. This task requires an in-depth study of the peculiarities of human rights observance and implementation of legal aid in wartime. This topic, however, has not been sufficiently researched, as Ukraine is facing a full-scale military aggression for the first time in the history of its independence, i.e. it does not have sufficient experience in using tools to ensure human rights and freedoms in wartime.

The development of a state governed by the rule of law is impossible without guarantees of human rights protection, which is carried out by a specific democratic institution known as the Bar. Yu. Bysaha (2023) analysed the instruments that guarantee the effective functioning of legal institutions, including the Bar. According to the researcher, the key instrument is the Constitution of Ukraine, namely Art. 59, which guarantees the right of every citizen to professional legal aid, and Art. 131, subpara. 2, according to which the Bar has the exclusive right to represent the public interest in court. A.Yu. Oliynyk (2023), having studied the ways to bring in line with democratic norms and standards, confirmed the feasibility of the reform that began in industry in 2021, a few months before the full-scale invasion, and aimed at expanding the rights and powers of the legal profession. L. Ostapenko and A. Shandruk (2023) analysed the effectiveness of the reform in wartime and concluded that it is necessary to continue the transformation processes, including ensuring guarantees of the practice of

Suggested Citation

Article's History: Received: 15.09.2024 Revised: 29.11.2024 Accepted: 23.12.2024

Bandurka, S. (2024). Advocacy in the system of protection of human rights and freedoms in wartime. *Social & Legal Studios*, 7(4), 212-221. doi: 10.32518/sals4.2024.212.

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law and improving the self-government of the Bar, which should be based on an understanding of not only national but also international legal acts on the practice of law under martial law. Confirmation of this opinion was found in the Article by D. Dryzhakova (2024), who studied the problems of monopoly in the bar self-government bodies. According to the researcher, this problem arose due to the erroneous application of the continuum, due to which the heads of the bar self-government continue to make strategic decisions, despite the fact that their five-year term of office expired on 17 November 2022. In the context of military aggression, the monopoly of the self-government is a cause for concern, given the impossibility of monitoring the practice of law in the temporarily occupied territories. In support of this opinion, D. Dryzhakova quoted the meeting of the Bar Association of the Donetsk People's Republic (DPR) of 11 December 2022 on joining the Federal Chamber of Advocates of the Russian Federation. The Council of the DPR Bar Association includes 5 lawyers registered in the Unified Register of Lawyers of Ukraine, who can practice law in both countries, including in order to justify armed aggression.

According to E.D. Didenko (2024), the main problem in reforming the legal profession in wartime is that the introduction of proposals and amendments to legislation in wartime is unsystematic and not fully aimed at solving existing problems. A similar opinion was presented in the work by Ye. Duliba (2023), who studied the main legal issues addressed to lawyers during martial law: contract service and mobilization, material and social security, benefits and compensation, obtaining a certain status, land allocation, housing, labour and pension. K. Gusarov (2023) studied the categories of citizens in need of legal aid and concluded that they also include judges, who are under additional pressure caused by the aggression.

The importance of providing timely legal aid was also emphasized by H. Ostapenko (2023), who investigated the relationship between the principle of legal certainty and access to justice under martial law. According to the scientist, the availability of legal services in times of crisis strengthens citizens' trust in state institutions and becomes the basis for a just state system. A similar opinion was expressed by T. Beardmore *et al.* (2024), who analysed the impact of legal aid on access to healthcare for certain categories of citizens. Based on the results of a survey of 67 respondents, the researchers concluded that timely and qualified legal aid reduces social tensions caused by unequal access to certain resources and services. This experience underlines the need for constant monitoring and timely transformation of the lawyer network, even under martial law.

In the Ukrainian-language academic segment, the problem of advocacy for the observance of human rights and freedoms in wartime is insufficiently studied due to the unique challenges faced by the profession. In their turn, representatives of international missions, such as the Danish Refugee Council, have gained sufficient experience in assisting persons affected by military aggression. Therefore, the purpose of this study is to analyse the cooperation of members of the Ukrainian Bar with international organizations to protect the rights and freedoms of citizens under martial law.

Materials and methods

The analysis of the role and mechanisms of the Ukrainian Bar in ensuring effective protection of human rights and freedoms under martial law was based on the legal provisions of Law of Ukraine No. 5076-VI "On the Bar and Practice of Law" (2012) and Law of Ukraine No. 389-VIII "On the Legal Regime of Martial Law" (2015). The highlighted provisions were studied through the prism of the comparative legal method, which involves comparing legal aspects, including the observance of the rights and freedoms of citizens in peacetime and martial law, with further identification of the features of similarity or difference between them. The analysis of the main provisions of these legal acts was carried out with a view to outlining the functions of the national bar community and to studying the impact of the martial law regime on the performance of these functions. The peculiarities of providing legal aid to citizens under martial law were also investigated in terms of the main provisions of the European Convention on Human Rights (1950). The above analysis helped to contextualize the practice of law under martial law, highlight the problems faced by the profession, and consider possible approaches to their solution.

The study also used the case study method for a detailed analysis of the place and role of the Bar in the system of protection of the rights and freedoms of citizens under martial law. The following cases were analysed as cases of protection of the rights and freedoms of citizens in wartime:

- protection of the rights of IDPs Pokrovsk, Donetsk region, to receive medical services and social assistance through representatives of the Holobske Psychoneurological Boarding School;
- protection of the right of IDPs from Donetsk region to receive temporary housing and documenting losses through the mediation of the Cherkasy Human Rights Centre;
- protection of the right of a native of Lyman to transfer to another higher education institution and further study on a free-of-charge basis.

The cases under consideration involved the interaction of representatives of the national bar community with representatives of the Danish Refugee Council (2024), a leading international organization whose 7,500 employees provide assistance, including legal aid, in 40 countries. It was also taken into account that the Danish Refugee Council is one of the few global NGOs specializing in assisting internally displaced persons. The use of the case study method involved the analysis of basic statistics on the work of the Danish Refugee Council in Ukraine after the full-scale invasion; work on retraining specialists and creating a lawyer network to protect the rights and freedoms of citizens under martial law; some examples of the successful work of the created network to overcome the challenges faced by the lawyer community due to military aggression. The results obtained can be used for further reform of the Ukrainian legal community in the face of uncertainty.

Results and discussion

Guaranteeing human rights and freedoms under martial law. Military aggression has a negative impact on various groups of the population, including those who are not directly affected by hostilities. According to E.J. Molloy and C.F. Bearer (2024), children who are vulnerable to global conflicts are an example of such a group. The data provided by L. Hazer and G. Gredebäck (2023) indicate that every sixth child in the world is a victim of military aggression and needs assistance. An equally vulnerable category of the population is the elderly, who, according to T.N. Nguyen

and C.M. Tran (2024), are more likely to die in military conflicts due to limited physical and emotional endurance. The researchers emphasized that despite the fact that international conventions require parties to a conflict to take care of the most vulnerable groups, few countries comply with these conditions. As a result, residents of territories that have become a theatre of war cannot exercise their basic rights to education, freedom of movement, etc. Y. Zaporozhchenko *et al.* (2023) pointed out the dilemma between the importance of constitutional rights and freedoms of citizens and the need to restrict some of them in order to maintain national security. Thus, preserving human dignity through the observance of fundamental human rights and freedoms is one of the most important, but also extremely difficult tasks.

K.Y. Primakov and S.S. Bednyak (2023) noted that since armed conflicts are an inevitable reality in many countries, a number of legislative initiatives have been developed at the international level to ensure the observance of fundamental rights and freedoms of citizens. These initiatives include, in particular, the European Convention on Human Rights (1950). In their work, K.Y. Primakov and S.S. Bednyak (2023) also mentioned the International Covenant on Civil and Political Rights (1966). The international system of human rights protection is one of the branches of international law and provides for different approaches to its interpretation. According to J. Neagli (2023), one of the most frequently declared is the approach that emphasizes the mandatory observance of human rights and freedoms, regardless of the circumstances. The implementation of this approach, however, is not always possible in practice, which makes this study relevant.

In addition to the above-mentioned legal acts, the activities of the legal community during martial law are regulated by the Law of Ukraine No. 5076-VI "On the Bar and Practice of Law" (2012), which defines the concepts of "lawyer" and "practice of law" and outlines the principles and principles of the of law. Article 5 of the analysed document contains provisions on the interaction between the bar and the state. Based on these provisions, the Bar is independent of the state, which, in turn, creates appropriate conditions for the Bar and ensures compliance with the guarantees of the Practice Law. The guarantees of the practice law, in particular, are enshrined in Article 12^2 of the Law of Ukraine No. 389-VIII "On the Legal Regime of Martial Law" (2015). This document emphasizes that the activities of the bodies and institutions of the justice system under the legal regime of martial law are carried out on the basis, within the limits and in the manner determined by the Constitution of Ukraine (1996) and the laws of the state, and the powers of representatives of the justice system cannot be limited. In other words, the current legislation points out the importance of respecting human rights and freedoms under martial law and does not limit the justice system in the choice of instruments to protect these rights.

The scientific discourse on the rights and freedoms of citizens is driven by an understanding of the importance of their observance and protection. According to V. Thangavel (2023), the importance of respecting universal rights is due to their function as a "common heritage" and "common language"; this means that respect for rights and freedoms is a demonstration of readiness for international cooperation and harmonious coexistence. F. Baca and A. Anxhaku (2023) expressed in their work their opinion on the connection between the observance of rights and freedoms and the development of democracy in different countries of the world. Thus, international humanitarian law is a tool for building a more just society (Boulos & La Barbera, 2022).

Based on previous research, it can be argued that the observance of internationally recognised rights and freedoms is a challenging task, especially in times of shocks such as armed conflict. During an armed conflict, the number of people who find themselves in a vulnerable situation and need assistance in protecting their rights and freedoms increases significantly (Ivanov *et al.*, 2020; Weiß & Zimmermann, 2022). A.C. Lee *et al.* (2023) analysed the sharp increase in the number of refugees, especially in the first months of the armed aggression against Ukraine. According to the data presented by the researchers, in the first two months after the full-scale invasion, the number of Ukrainian refugees in Poland alone reached 3 million; that is, millions of Ukrainians felt the need for legal assistance in obtaining the appropriate status, applying for certain benefits, resolving property issues, etc. Several million more Ukrainians have sought refuge in other countries or have become IDPs. These data suggest that the legal protection system that existed in Ukraine at the beginning of the full-scale invasion was not designed for the number of citizens who needed this assistance.

Another obstacle to ensuring the rights and freedoms of citizens under martial law was the lack of infrastructure and resources necessary to perform this task. This opinion was expressed, in particular, in the work of T. Mykhailichenko *et al.* (2023), who emphasized that the realization of certain rights, in particular the right to healthcare, is impossible in those parts of the country that are close to the front line or directly in the area of war actions. The idea that certain fundamental rights, including the right to education and development, cannot be realized in the context of military aggression has also been discussed in the works by N. Nohas (2022), and S. Tsebenko and D. Surkes (2024). In their works, they emphasized that military conflicts deplete or destroy the network that functioned to protect the rights and freedoms of citizens, including support for the most vulnerable groups of population.

Y. Harust and B. Pavlenko (2024) highlighted that the Ukrainian Bar Network plays a significant role in overcoming the crisis caused by the armed aggression of the Russian Federation, in particular by guaranteeing legal status and creating mechanisms for receiving, registering and reporting on the humanitarian aid received. By providing legal aid, including information and assistance in preparing the necessary documents, the lawyers' network guarantees equal access to humanitarian and other resources necessary for the exercise of basic rights and freedoms of citizens (Spytska, 2024). Yu. Serget (2023) examined the peculiarities of the functioning of the Ukrainian National Bar Association in overcoming the humanitarian crisis caused by the military invasion. According to the researcher, one of the key tasks of the newly created association was to accumulate financial, organizational, human, logistical and other resources for their further fair distribution among different categories of citizens.

Thus, the Ukrainian Advocates' Network is a part of the international humanitarian community, whose key task is to ensure the observance of universally recognised human rights and freedoms. Guaranteeing these rights and freedoms under martial law is a challenging task, because in

addition to the lack of a single generally accepted definition of humanitarian rights and freedoms, their implementation may be hampered by the lack of a sufficient number of specialists and infrastructure necessary for their implementation. Analysing the experience of countries that have experience in building a lawyer network in the context of military aggression is crucial for the implementation of fundamental rights and freedoms of Ukrainian citizens under martial law.

Guarantee of rights and freedoms under martial law. The fact that Ukraine is facing a full-scale invasion for the first time in the history of its independence necessitates an analysis of international experience in respecting human rights and freedoms under martial law. The development of an effective advocacy network in Ukraine is taking place, among other things, thanks to the assistance of the Danish Refugee Council (2024). According to the industry report "Legal aid in a year of war", the Council's specialists have been working in Ukraine in 2014, but their staff has increased significantly since the first days of full-scale military aggression. As of 2023, more than 500 employees provide protection, shelter and legal assistance to victims of military aggression. The fact that legal aid is one of the priorities of international partners is confirmed by the fact that in 2023, 26,487 individual legal consultations were provided and 26,937 people attended legal information sessions. In 2023, the Council's specialists also took up 1,249 legal cases, the current status of which is shown in figure 1.

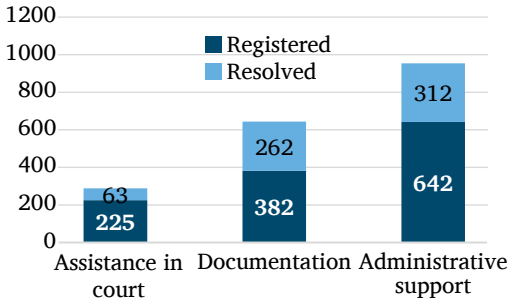

Figure 1. Legal cases referred to the Danish Refugee Council as of 2023
Source: compiled by the author based on the Danish Refugee Council (2024)

The figure above shows that representatives of the National Bar Association demonstrate a fairly high level of efficiency in documenting and resolving cases of violations of the rights and freedoms of victims of military aggression. The work on the provision of administrative services, which, according to the Concept for the development of the system of administrative service provision by executive authorities (2006), is the result of the exercise of power by an authorized entity that, in accordance with the law, provides a legal formalization of the conditions for the exercise of rights, freedoms and legitimate interests by individuals and legal entities at their request. The same figure shows that assistance in defending the rights and freedoms of citizens in court is not the main activity of human rights defenders. Only one in four cases in this category of services was completed in 2024. This statistic provides an understanding of the difficulties faced by the Ukrainian legal community, including the overload of the judicial system, which makes it impossible to quickly protect the rights and freedoms of citizens. In addition, the collection of data necessary for the successful representation of a case in court may be hampered by military operations, for example, documents have been destroyed or left in the temporarily occupied territory. The statistics of cases in which experts of the legal community provided assistance in 2023 provides an understanding of the legal needs of the population under martial law. The statistics of the cases reviewed is presented in figure 2.

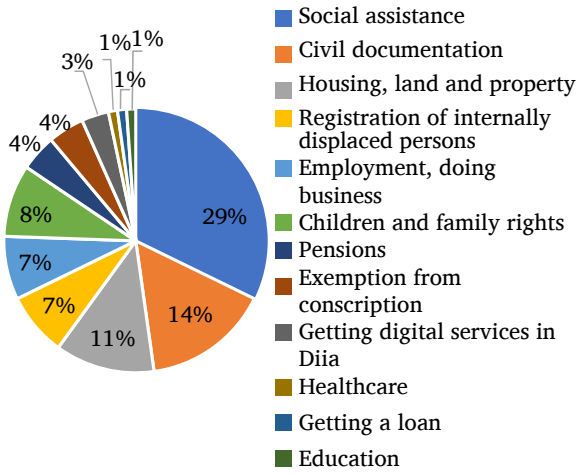

Figure 2. Cases reviewed by Danish Refugee Council specialists in 2023
Source: compiled by the author based on the Danish Refugee Council (2024)

The figure above shows that during martial law, the most significant needs of the population are social assistance, registration of IDPs for their further integration in a new place, and issues related to housing, land and property. The latter ones, in particular, include the issue of receiving compensation for damaged and destroyed property, including in the temporarily occupied territories. Addressing these issues requires an extensive network of professionals with the knowledge and skills to provide legal aid. To achieve this goal, a digital legal aid platform was created. According to experts, this platform functions as a platform where citizens in need of legal aid look for representatives of the legal community who can provide such assistance. In its current form, this platform has a fairly broad functionality, which includes the following services:

- a lawyer helpdesk;
- automated appointment of a specialist;
- automated integration of lawyers;
- free legal advice;
- consultations via chatbot;
- a database of 500+ most popular questions and answers to them;
- searchable legal analysis;
- access to legal information, including professional articles;
- humanitarian information.

In the future, the platform's functionality will be expanded by adding such services as real-time mobile phone notifications, mobile access, video chat with lawyers and multimedia content. The existence of this platform is an important step for both Ukrainian citizens who need to protect their rights and freedoms in wartime and for representatives

of the legal community. For citizens, the uniqueness of the platform lies in the opportunity to choose a specialist for further interaction, as well as to receive legal services at a convenient time and in a convenient way. Representatives of the legal community are also interested in the functioning of the platform, which contributes to their professional growth and allows them to overcome the crisis of client outflow, which was reported in their research by Yu. Serget (2023), D. Dryzhakova (2024) and other experts. Thus, the effective functioning of the platform contributes to the sustainable development of the Ukrainian legal community, the reform of which began shortly before the full-scale invasion.

In cooperation with international partners, representatives of the National Bar Association also introduced a 5-day course to help professionals provide legal services to the population in the changed reality. Based on a report from the Danish Refugee Council (2024), the need for this course arose because, since the beginning of the full-scale invasion, many members of the bar community have decided to devote their time and invest their knowledge to providing free legal aid to the most vulnerable groups of the population. The difficulty in achieving this goal was that the number of people in need of humanitarian assistance far exceeded the number of lawyers who could provide it, so it was decided to increase the number of professionals in the humanitarian sector by retraining them.

Based on this report, the activities of the national bar community are effective in terms of protecting the rights and freedoms of citizens under martial law, as can be seen from individual examples of work. One of these examples is the functioning of the Holobske Psychoneurological Boarding School in the Volyn region, which, since the beginning of the full-scale invasion, has been providing shelter to citizens with disabilities who became IDPs from the city of Pokrovsk in the Donetsk region. Upon arrival at the home, some IDPs had difficulties in obtaining IDP status and receiving the necessary benefits. Understanding the need for legal aid in this case, the lawyers of the Kovel Secondary Legal Aid Centre determined that the Holobske Psychoneurological Institution should obtain the status of a guardian of persons with disabilities in order to have legal grounds to act in their interests. This task involved dismissing the existing guardians and assigning guardianship responsibilities to the Holobske Psychoneurological Facility. The goal was achieved with the support of the Kovel Centre's lawyers, who assisted in drafting and adopting the necessary legal documents and filing an appeal with the local court, which granted the institution the status of legal guardian of IDPs with disabilities (Judgment of the Kovel City District Court of Volyn Region No. 109502262, 2023). Having the status of guardian, the facility helped the IDP to complete the necessary documents and receive payments for more effective integration in a new place.

The case study illustrates several ideas about the functioning of the bar under martial law. Firstly, the case highlights the importance of legal aid, especially when working with the most vulnerable groups of the population. The case also illustrates the importance of respecting key rights and freedoms, including the right to a safe environment and healthcare. The analysed case also highlights the importance of cross-border cooperation for the realization of the rights and freedoms of citizens affected by military aggression. According to the Danish Refugee Council (2024), the successful resolution of the case was made possible by the partnership between the Kovel Free Secondary Legal Aid Centre and the European Union's civil protection and humanitarian assistance operations.

Another example of the successful functioning of a lawyer network in wartime, documented by experts from the Danish Refugee Council (2024), is the assistance provided to an IDP from Donetsk region who moved to Cherkasy to seek shelter as her own home was destroyed. The woman received information support from the Cherkasy Human Rights Centre, whose specialists checked her documents and instructed her on the next steps to get the help she needed. Having all the necessary documents and following the algorithm of actions suggested to her, the IDP was able to obtain a certificate of her destroyed property from the Cherkasy Administrative Services Centre and register for temporary housing. As of 2023, the woman has temporary accommodation in Cherkasy and may receive compensation for her property destroyed in Donetsk region in the future. As in the previous case, obtaining the necessary assistance became possible due to the interdisciplinary cooperation of the Cherkasy Human Rights Centre and EU institutions aimed at creating a lawyer network to protect the rights and freedoms of citizens in adverse conditions.

In the context of martial law, it is also important to protect the right to education, as thorough knowledge is the key to sustainable development and rapid development of society after the end of war actions (Kyrychok *et al.*, 2024). One of the cases of successful protection of the right to education is the story of a native of Lyman, Donetsk region, who was a student at the National Academy of Law in Kharkiv, Kharkiv region, at the beginning of the full-scale invasion. In the first days of the full-scale invasion, the young man's family decided to move to Poltava in search of shelter from the constant shelling. Understanding the family's financial difficulties, the young man decided to exercise his right to free education guaranteed to IDPs by Resolution of the Cabinet of Ministers of Ukraine No. 1202 "Some Issues of Implementation of Legislative Acts in the Field of Migration Under Martial Law" (2022). At the stage of submitting documents to the Poltava branch of the academy, the IDP had to provide a certificate of registration in Lyman, which proved impossible given that the city was in the area of hostilities and all state institutions in it had ceased to operate. In turn, representatives of the Poltava branch insisted that the young man had to submit the necessary documents within three working days in order not to lose his right to free education.

The young man turned for legal assistance to the NGO Caritas Mariupol, whose specialists helped the IDP obtain an electronic copy of the certificate and informed him of the illegality of the requirements of the Poltava branch of the academy. Following the advice of the specialists, the IDP submitted the necessary documents and exercised his right to study at public expense. Thus, qualified and timely legal aid is a guarantee of the realization of one of the fundamental rights of a citizen – the right to education.

In contrast to the examples analysed above, the case of an elderly person who evacuated to Zakarpattia region from the temporarily uncontrolled territory illustrates the ability of the national legal aid system to adapt to changes and find effective solutions in the most difficult situations. After moving to Zakarpattia region, the IDP applied for a pension, but was denied by the Zakarpattia Pension Fund on the grounds

that her salary certificate was issued by a company located in the temporarily uncontrolled territory (Danish Refugee Council, 2024).

The woman sought legal assistance from one of the partners of the Danish Refugee Council, which filed a lawsuit. Relying on the "Decisions entered into the Unified State Register of Court Decisions from February 2022 to September 2024", the lawyer argued that the inability to verify information received from institutions located in the temporarily uncontrolled territory cannot be a ground for denial of pension benefits (Supreme Court of Ukraine, 2024). The court accepted the lawyer's arguments and ruled in favour of the IDP, who, as of 2023, was receiving pension benefits to meet her needs at her new place of residence. The success of this case was due to the cooperation between the Sich Human Rights Group and the Danish Refugee Council. Funding received from the EU through its civil protection and humanitarian assistance channels was also an important component of the success achieved.

Thus, these examples prove that, despite the initial shock caused by the full-scale invasion, the Ukrainian bar network demonstrates the ability to adapt and develop sustainably in the changed realities. In February 2022, an extensive network of lawyers has emerged in the country, whose members provide legal assistance in protecting the rights and freedoms of citizens under martial law. As of 2023, many cases of successful defence of fundamental rights, including the right to healthcare, housing and education, have been documented. The analysis of these cases proves that the effective functioning of the Ukrainian Bar Association in the context of military aggression requires expert, financial and other support from international partners. The members of the Ukrainian Bar Association are ready for training and continuous improvement of skills, interdisciplinary cooperation and sustainable development in the face of challenges.

Challenges for the legal profession under martial law and ways to overcome them. The cases analysed above also indicate that the functioning of the Ukrainian legal profession under martial law involves finding long-term solutions to various challenges, including physical security and ethical issues. Ensuring physical security is one of the priority tasks in the context of armed aggression, which is delegated, among other things, to representatives of the Ukrainian bar community. However, the implementation of this task is difficult due to the presence of obstacles caused by the context of armed aggression. One of these obstacles is the restriction of certain rights and freedoms of citizens during the martial law regime. For the period of martial law, the rights of citizens provided for in Articles 30-34, 38, 39, 41-44 and 53 of the Constitution of Ukraine (1996) may be restricted. The restrictions that apply during the legal regime of martial law are presented in Table 1.

Table 1. Restrictions on the rights and freedoms of citizens during the martial law regime

Rights/ freedoms	Restrictions for the period of martial law	Notes
Freedom of movement	Restrictions on the choice of place of residence/stay, restrictions on the movement of vehicles, intensified document checks, and curfews are imposed for the period of the legal regime of martial law	Restrictions apply to citizens, foreigners and stateless persons
The right to property	During the wartime legal regime, property may be expropriated in favour of the state	The implementation of this restriction involves preliminary or subsequent full compensation for the alienated property
Choosing an activity	During the wartime legal regime, military commanders and other authorities may impose labour service and engage citizens in public works	The labour service applies to able-bodied citizens who are not involved in the defence sector or certain enterprises. Citizens subject to conscription retain their workplace. Citizens under the age of 15; women with children under 3 years of age; and pregnant women are not subject to labour service, provided that the work poses a threat to their health

Source: compiled by the author based on the Constitution of Ukraine (1996) and Law of Ukraine No. 389-VIII "On the Legal Regime of Martial Law" (2015)

The problems of physical security during military aggression are also reflected in academic sources that analyse different national contexts (Symonova, 2024). A.A. Shorrab *et al.* (2024), in particular, studied the impact of hostilities in Gaza in 2023 on the health of the region's residents. According to the researchers, the peculiarity of this impact is its long-term effect, which is evident not only in the context of the present but also of future generations. A similar opinion was proposed in the study by D. Hryhorczuk *et al.* (2024), who estimated that Russia's military aggression has caused more than USD 56.4 billion in damage to Ukraine's environment, meaning that the consequences will be felt for many years to come. The inability to ensure physical security, including access to food, during an armed conflict can worsen the health of the nation even after it ends (Galchynskyi, 2024). Confirmation of this view was found in the report of the NGO Safeguarding Health in Conflict (2023), which compared the impact of living under martial law on the level of physical security citizens from different countries who had experienced combat. Studying, in particular, the security situation in Ukraine, experts documented 394 cases of violence against or obstruction of healthcare in 2023. According to the same report, the number of such cases in 2022 was 885, suggesting that the state is adapting and responding effectively to the security challenges posed by the introduction of martial law. Confirmation of this view was also found in the study by S. Sberro-Cohen *et al.* (2023), according to whom representatives of various public services, including healthcare, adapt to changed realities over time, demonstrating resilience and effectiveness in overcoming physical challenges.

Guaranteeing the right to physical security is a complex task that, according to experts of the Danish Refugee Council (2024), can be solved by introducing state compensation and rehabilitation support programmes for civilians who have suffered bodily injuries or lost family members due to armed aggression. One of the tasks of the advocacy community is to search for information and draw attention to cases of violations of civilians' rights to a safe environment and adequate compensation for damages caused by the violation of this right (Kanaryk, 2024). One of the cases of successful advocacy in this area is the assistance to a family from Vovchansk, Kharkiv region, in obtaining a certificate for a child born when the city was under occupation. Thanks to the cooperation of Caritas Kharkiv lawyers and specialists from the Danish Refugee Council, the parents received a birth certificate for their child, which provides access to medical services, financial assistance and other support aimed at ensuring the child's health and safety.

Members of the Ukrainian bar community inform citizens about existing opportunities and help them take advantage of them. An example is the story of a woman who was evacuated from Sievierodonetsk, Donetsk region, to Zakarpattia region. While living in the government-controlled territory, she used the services of lawyers to provide free secondary assistance to IDPs. Experts from the NGO helped the woman document the destruction of her property in the temporarily uncontrolled territory and submit an application to the Main Department of the National Police in the Zakarpattia region. Thus, the IDP has the opportunity to compensate for the losses incurred, which is a guarantee of her property rights.

For people affected by armed aggression, legal security is also important, which is manifested in the timely receipt of IDP status, the availability of a comprehensive legal model of restitution and compensation, access to key legal services, access to civil documentation services for all groups of the population and access to information on free legal aid. In conformity with M. Kaptan (2024), legal security issues arise because the country's legal aid network is at a stage of development that involves a gradual transition to European standards of legal aid. This transition, however, is extremely difficult in the context of a changing political and socio-economic landscape, outflow of human resources and limited functioning of partners. M. Chiam *et al*. (2024) also emphasised that a factor of legal insecurity is the lack of awareness of citizens about available legal opportunities: laws, regulations, programmes, initiatives, etc. Experts from the Danish Refugee Council (2024) suggest increasing the level of legal security through personnel training, including through the introduction of courses and short-term trainings for employees of the public social sector, and programmes to ensure effective interaction between the most vulnerable groups of the population, including the elderly and persons with disabilities, and providers of administrative and legal services. An example of such interaction is the case of an elderly IDP who turned to the Kalush Community Law Centre after receiving a refusal from the local pension fund to calculate her pension. Having studied the IDP's case, the lawyer found out that the Pension Fund had underestimated about 10 years of work experience, which was the reason for the refusal to pay pension benefits. Using the specialist's legal assistance, the woman filed a claim with the court, which ruled in her favour.

Thus, the Ukrainian legal community proved to be ready to protect the rights and freedoms of citizens under martial law and demonstrated the potential for sustainable development. These achievements were made possible, in particular, by international support and cooperation, which has become a source of material resources, knowledge, and innovation. As of 2023, the country's legal community needs long-term solutions in the areas of physical, material and legal security. Such solutions can be offered on the basis of successful legal cases, which have already been sufficiently documented in the two years since the full-scale invasion.

Conclusions

At the beginning of the full-scale invasion, the Ukrainian legal community was undergoing a transformation phase aimed at increasing its effectiveness by empowering human rights defenders. The stage of uncertainty was followed by a period of adaptation, during which a significant number of Ukrainian lawyers changed their profile to focus on providing free legal aid to the most vulnerable, including IDPs, the elderly, and people with disabilities. The adaptation included the creation of the Ukrainian National Bar Association to accumulate intellectual, economic, physical, technical and other resources and their subsequent equitable distribution among different population groups. At this stage, it also became apparent that although the functioning of the state under martial law imposes certain restrictions on its citizens, including freedom of movement, the right to property and choice of activities, the protection of key rights and freedoms is a prerequisite for preserving society, rebuilding it quickly after the end of hostilities and supporting sustainable development. Using the autonomy regulated by the Law of Ukraine No. 5076-VI "On the Bar and Practice of Law", representatives of the National Bar Association have the opportunity to protect the fundamental rights and freedoms of citizens during the martial law legal regime. The fundamental rights and freedoms, recognised at the national and international levels, which require guarantees during the period of full-scale military aggression, include the right to life and health, housing, education, employment, fair distribution of resources, etc. Some of these rights and freedoms may be restricted by the provisions of the Law of Ukraine No. 389-VIII "On the Legal Regime of Martial Law". Guided by these legal acts, members of the Ukrainian Bar guarantee the observance of these rights by providing timely, qualified and accessible legal aid to citizens in need.

The survival, growth, and development of the national legal community under martial law was made possible by the financial and informational support of international partners, including the Danish Refugee Council, which operates in more than 40 countries and whose experts have accumulated unique experience in assisting internally displaced persons. Cooperation with Ukrainian legal aid centres allowed us to develop a five-day retraining programme to increase the number of lawyers in the field of humanitarian law; create a platform for more effective interaction between human rights defenders and citizens in need of their assistance; and attract international investment to help restore the rights and freedoms of people affected by military aggression. The cases analysed in this study prove the effectiveness of the transformations taking place in the country's human rights sector despite the challenges of a full-scale invasion. Despite significant progress, the provision of legal aid under martial law still requires long-term

solutions to overcome obstacles such as physical, material and legal insecurity. These issues may be considered in a future study in the form of a comparative analysis of the Ukrainian experience with the experience of other countries whose territories were annexed by the Russian Federation or other states.

Acknowledgements

None.

Conflict of interest

None.

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Адвокатура в системі захисту прав і свобод людини в умовах воєнного часу

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Анотація. Метою дослідження було встановлення ключових аспектів функціонування адвокатури, її ролі та механізмів у забезпеченні ефективного захисту прав і свобод людини в умовах воєнного стану. Для досягнення цієї мети був використаний метод кейс-стаді, що полягав в аналізі практичної взаємодії національної адвокатської мережі із представниками міжнародних місій з метою гарантії прав громадян на охорону здоров'я, навчання, відшкодування збитків та соціальне забезпечення. Було виявлено, що за умов воєнного часу викликами для адвокатської спільноти України є відсутність прозорості і підзвітності професійної практики, особливо на тимчасово непідконтрольних територіях; несистемний характер документування та пошуку правових рішень проблем, що виникають під час реалізації прав та свобод громадян; верифікація даних та довідок, виданих на тимчасово окупованих територіях; відсутність єдиної бази даних та доступу до інформації, особливо на територіях, що знаходяться у зоні проведення бойових дій, тимчасово окуповані тощо. Спираючись на проведений аналіз були запропоновані стратегії підвищення ефективності адвокатської діяльності у захисті прав та свобод громадян в умовах воєнного стану. До таких стратегій, зокрема, належить створення єдиної цифрової платформи для забезпечення взаємодії між членами адвокатської спільноти країни та тими, хто потребує правової допомоги; систематичне документування матеріальних та моральних збитків, спричинених військовою агресією; робота із громадянами по інформуванню щодо існуючих можливостей правового захисту; міжнародне партнерство з метою постійного вдосконалення якості та підвищення доступності правого захисту

Ключові слова: повномасштабна військова агресія; гуманітарна допомога; внутрішньо переміщена особа; тимчасово окуповані території; анексія

UDC 343.1+004.9
Doi: 10.32518/sals4.2024.222

Соціально-правові студії. 2024. Т. 7, № 4
Social & Legal Studios. 2024. Vol. 7, No. 4

Innovative potential of 3D technologies in crime investigation

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Abstract. The relevance of this study is conditioned by the need for constant updating of the specialised knowledge of criminalists and introduction of the latest technologies into the crime investigation. The purpose of this study was to critically examine the best practices of using 3D technologies in crime investigation. Through a systematic review of scientific studies that present various methods of using 3D technologies in crime investigation, it was proved that the scientific discourse is experiencing a revival of the discussion on the use of 3D technologies. Researchers note a series of benefits from the use of such technologies: 3D scanners allow creating a digital model of a crime scene; 3D reconstructions allow determining the sequence of actions, establishing cause and effect relationships, and restoring the original appearance of damaged objects; 3D printed models clearly demonstrate certain features of objects. The analysis of the available literature on the subject helped to systematise the use of 3D technologies in crime investigation and to identify three key areas of application of 3D technologies in the practice of crime investigation: (1) visualisation of the scene; (2) classification, identification, and diagnosis of objects; (3) reconstruction of objects or events. The speed, accuracy, safety, non-destructive impact, and many other criteria noted by researchers suggest that 3D innovations can become an indispensable auxiliary tool for criminalists, investigators, and prosecutors. At the same time, the findings of the analysed tests demonstrated certain limitations and problems that accompany the practice of using these innovations. As a result of the review of scientific literature, it was concluded that the transfer of 3D technologies in law enforcement is impossible without understanding the economic and social benefits of innovative investment. The study defined the content of these benefits, and the system of measures aimed at intensifying innovation processes in this area. The practical significance of this study is that its findings can be used by technical and forensic support units and pre-trial investigation bodies in developing the latest tactics for collecting evidence, recording, processing, and using information on criminal offences for the needs of criminal justice

Keywords: 3D innovations; virtual model; pre-trial investigation; evidence; crime scene; digital documentation

Suggested Citation

Article's History: Received: 14.08.2024 Revised: 16.11.2024 Accepted: 23.12.2024

Dufeniuk, O., Melnyk, N., Nahorniak, Yu., & Melnyk, S. (2024). Innovative potential of 3D technologies in crime investigation. *Social & Legal Studios*, 7(4), 222-230. doi: 10.32518/sals4.2024.222.

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Introduction

The study of the introduction of 3D technologies in the field of crime investigation is significant from a practical standpoint, since without innovative development, it is impossible to effectively address the task of combating crime and maintaining the rule of law. 3D technologies are developing rapidly and are confidently proving their advantages in various industries, including forensic science, which is the primary supplier of innovative products to the courtroom. A prerequisite for the development of a high-quality practice of applying 3D technologies is the availability of developed conceptual frameworks and methodologies for introducing innovations, which confirms the value of the present study in the theoretical context

L. Shymanovskaya-Dianych *et al.* (2021) proposed to understand the concept of "innovative potential" as "the ability to change, develop, improve, progress, it is a source of development... everything that leads to innovative development has innovative potential". Of professional interest is the study where V. Hnatkivskyi (2023) identified the forms of innovative investment. The proposed approach is suitable for expanding the capabilities of 3D technologies for collecting, evaluating, researching, and using evidence in criminal proceedings.

A. Haleem *et al.* (2022) detailed the principle of operation and types of 3D scanners, stages of application, data processing parameters, and the significance of innovation for industrial development. M. Javaid *et al.* (2021) made an analogous focus, describing sixteen areas of application of 3D technologies in the manufacturing sector. These studies confirm two facts: firstly, the trend of 3D innovations is undeniable and it is scaling in multiple directions; secondly, human activity under the influence of this trend is changing substantially, improving its quality and speed, but changing the configuration of jobs and the requirements for the competence of specialists.

R.H. Home *et al.* (2024) substantiated the outstanding potential of 3D technologies for Bloodstain Pattern Analysis (BPA) and presenting such evidence in court and concluded that innovations are useful not only from the standpoint of technical value but also for ethical reasons, since such evidence does not have the traumatic emotional impact on judges and jurors that real photos from the scene would have. S. Mânica *et al.* (2024) and B. Beltrame *et al.* (2024) confirmed the suitability of 3D technologies for identifying people by teeth and teeth marks (bites). J. Pérez *et al.* (2024) proposed a methodology for cost-effective tools that could be used by any police team to efficiently capture, measure, process, and generate 3D models of the environment and 3D reconstructions of road traffic accidents. These and many other studies give an idea of the relevance of the needs of pre-trial investigation, expert research, and the broad prospects for the introduction of 3D innovations.

There are no specialised monographs or dissertations in Ukrainian science that would cover the issue of transferring 3D technologies to the sphere of criminal proceedings. Y.P. Poliak (2022) confirmed that the national scientific doctrine of criminal procedure and forensics does not have any thorough research on the specific features of the use of technical means during investigative actions and the use of their findings during pre-trial investigation. At the same time, Y.P. Poliak only briefly mentioned 3D models, 3D scanning, and 3D printing technologies, presenting them rather to illustrate certain theoretical hypotheses than to provide a thorough discourse on the methodology, advantages, and problems of application. There are also few professional publications in Ukrainian periodicals in this area. An exception may be the publication where R.I. Blahuta *et al.* (2020) focused on highlighting the benefits of using 3D scanning in criminal proceedings, but did not explore in detail the issues of 3D reconstructions or 3D printing, nor did it present the risks and challenges that may arise in connection with the testing of the latest tools in crime scene investigations. The above calls for a comprehensive analysis of the innovative potential of 3D technologies for a specific area of investigation. This is viewed as a response to the ever-growing need in modern conditions to meet the social demand for public safety, effective crime prevention, and fair justice.

The purpose of this study was to form the basis for a decision on the significance of attracting investments in the development of 3D technologies in the field of criminal proceedings, which will contribute to the performance of crime prevention tasks and, as a result, strengthen public security and legal order. To fulfil this purpose, it was necessary to implement the following tasks: firstly, to investigate the significance and determine the primary areas of application of 3D technology in the practice of crime investigation; secondly, to find the economic and social benefits of investing in the transfer of 3D technology in the practice of crime investigation.

These objectives were achieved through a systematic review of the scientific literature on the subject. This helped to consider various aspects of the use of 3D technologies in crime investigation, including methods, tools, technical characteristics, and areas of application. The systematic analysis helped to identify key findings and prioritise research areas. By synthesising the results of various studies, a comprehensive view of the potential of 3D technologies in crime investigation was obtained. A comparative analysis of the literature helped to understand which methods are most effective in concrete situations and how to optimise their use. Summarising the findings of the study and practices of using 3D technologies in crime investigation helped to identify general principles and strategies that may be useful for the further development of this field. Using these methods, three blocks of research on the subject were analysed. The first block included publications relevant to the concept of "innovation potential" in science in general and forensics specifically. The second block included sources that present the basics of functioning and prospects for the introduction of 3D technologies in the global economy, industrial production, construction, medicine, etc. The third block was the most numerous. It included studies that focused on various aspects of the introduction of 3D technologies directly into law enforcement.

Significance and primary areas of application of 3D technologies in the practice of investigating crimes

The analytical documents on global trends until 2030 (Gaub, 2019) and 2040 (Global Trends 2040..., 2021) note that understanding the nature of modern transformations and strategic forecasting of future changes in the geopolitical, geo-economic, and geotechnological order give grounds for a reasonable conclusion that in the coming decades, 3D technologies will continue to be in prominent positions in the ranking of global innovations due to their potential to transform various spheres of life, increase productivity, and

integrate the achievements of other sciences. This proves that the intensification of investment processes in this area is economically feasible and strategically expedient.

3D technologies are actively gaining key positions in many areas of human activity. Industrial production, art history and archaeology, plastic surgery, dental and orthopaedic medicine, architecture, engineering and construction, the film industry, animation, and video game creators all use 3D scanners. The technologies allow for reverse engineering of parts, which enables fast and accurate production of products, such as a prosthetic limb of such quality that will provide maximum comfort, movement, and pain relief for the patient. Automation of quality control during production and the need for increased productivity through the use of electronics are considered key reasons for the growth of this market (Haleem *et al.*, 2022).

The essence of 3D technologies is based on the creation of a cloud of points of a scanned physical object, each of which has three-dimensional coordinates (x, y, z). As a result, the physical object is recreated as a virtual model of a concrete object or virtual reality representing the situation in an open area or indoors. The resulting three-dimensional objects can be investigated using additional data processing tools (measurements, reconstruction, study of the characteristics of certain objects, their relative position, etc.) or a copy can be printed using a 3D printer. In the context of this study, the concept of "3D technology" was applied as a generalisation to various activities based on the principle of creating a three-dimensional virtual model of an object and various forms of data processing: 3D scanning, 3D reconstruction, 3D cartography, 3D animation, 3D modelling, 3D printing, etc.

Naturally, such broad innovative capabilities have aroused professional interest among practitioners involved in crime prevention and criminal investigation. A series of applied studies have emerged that prove the advantages of using 3D technologies in documenting crimes compared to traditional methods of recording information. Such conventional methods include verbal description in the investigative report, photography and video recording, drafting a diagram, and sometimes making plaster or silicone casts and copies. The advantages of 3D innovations include scanning speed, data reproduction accuracy, portability of tools, saving procedural resources due to the absence of the need for detailed verbal descriptions of the crime scene environment, as well as the removal of certain restrictions (e.g., vehicle movement due to the recording of a traffic accident), safety of use, multifunctionality of technologies, and the possibility of combining them with achievements in other fields of science and technology (Blahuta *et al.*, 2020; Vargas *et al.*, 2021; Haleem *et al.*, 2022)

The innovative potential and practical significance of 3D technologies in crime investigation is evidenced by field studies. Polish scientists M. Adamczyk *et al.* (2017) tested the methodology of scanning real crime scenes after the information had been recorded in the conventional way. In three of the seven cases, the documentation of 3D technology specialists was attached to the criminal proceedings, which confirmed the high quality of the work performed. Danish experts C. Villa *et al.* (2024) and Italian forensic scientists M. Esposito *et al.* (2023) have already gained many years of experience in adapting 3D technologies to the needs of crime investigation. D. Errickson *et al.* (2022) provided numerous cases of the use of 3D printing in the criminal justice system in England and Wales. The positive experience of using 3D technologies in the courtroom was presented by American scientists (3D Laser Scanning..., n.d.). Based on the generalisation of scientific literature, three primary areas of application of 3D technologies in criminal proceedings can be distinguished: visualisation of the scene of an event; classification, identification, and diagnosis of objects; reconstruction of objects or events.

In many cases, especially when it comes to grave crimes (murder, fire, terrorist attack, plane crash, road traffic accident with many victims, violations of international humanitarian law, such as significant destruction of civilian infrastructure as a result of rocket or artillery fire, etc.), it is of utmost significance to record the situation quickly, fully, and accurately. Inspection of the scene is an urgent procedural action that determines the success of the subsequent investigation and collection of evidence. The presence of a massive number of traces, significant destruction or damage results in a considerable amount of time and resources spent on recording them using conventional methods. Their use is undoubtedly important, but no description in the report or photograph allows investigators, prosecutors, witnesses, or judges to "return to the scene" after a certain amount of time has passed. However, the 3D scanner provides a digital product that will reproduce the details of the scene with great accuracy, providing the ability not only to move into this virtual, dynamic, safe, and controlled environment, but also to perform certain analytical operations and research. The technology provides free navigation and 360-degree movement in the point cloud of the scanned scene, segmentation of various parts of the cloud, extraction of parts of the point cloud, their translation into 2D, improvement of the point cloud visualisation by increasing or decreasing the density of points, colour correction, etc. Additionally, 3D technologies can revolutionise the way information about the crime and its participants, data on traces found, information about means and tools, etc., is presented in court.

The second area relates to the ability to classify objects, solve diagnostic problems, and establish individual identities of objects that would otherwise be unsuitable for research or require excessive efforts to identify identifying features of objects. This includes, for instance, the ability to scan footprints or vehicle tracks on a loose surface (sand, specific dry soil). No high-quality forensic photograph can produce an image like the 3D scanner's visualisation. Likewise, a static plaster or silicone cast will not provide correct information, if at all, if it is possible to make it on a fragile base. However, the non-destructive and non-contact method of applying 3D technologies provides not only high-quality capture of the characteristic pattern of the detected object (trace), but also the possibility of reverse engineering. This enables the creation of a three-dimensional "reverse" model that can serve as an effective auxiliary tool for further solving identification, classification, and diagnostic tasks (Colwill, 2016; Bennett & Budka, 2018). An analogous technology is used to identify bite marks on the human body and study bodily injuries (characteristics of wounds, abrasions, etc.) (Beltrame *et al.*, 2024). A. Brough *et al.* (2019) emphasised the benefits of medical imaging and 3D modelling in forensic anthropology, stressing that in the current context, forensic anthropologists can use these technologies in every aspect of their forensic research: from documenting the scene to analysing the smallest bone fragment.

While the previous two areas were mainly concerned with the recording and study of objects in different projections, virtual reconstruction involves the construction of a moving model that represents the dynamics of change and the cause-and-effect relationships of an event. Based on the entered data, situational tasks are solved in the form of computer animations. This approach can be used to investigate the sequence of actions, such as the movement of vehicles in a car accident, or to study the mechanism of blood traces (patterns) on a wall (BPA) or to establish the trajectory of a bullet (Griffiths *et al.*, 2021; Stevenson & Liscio, 2024). Such information can be used by investigators and prosecutors to confirm or refute versions; to verify the testimony of witnesses, victims, suspects, and accused; to plan further procedural steps in the investigation algorithm.

Another method of reconstruction refers to the restoration by modelling the appearance of an object (e.g., post-mortem reconstruction of the face of an unidentified corpse with a head injury, mutilated facial soft tissue) or a material representation of a particular object resulting from the production of a polymeric copy (e.g., a crime weapon, fragments of a broken bone, etc.) by 3D printing (Vargas *et al.*, 2021; Jakobsen *et al.*, 2023). Firstly, such reconstruction can serve as a valuable tool for identification through the distribution of relevant orientation, checking against records, and presentation for identification. Secondly, printed polymer analogues of means, tools, bones, etc., can be delivered to the courtroom and contribute to a more realistic perception of the circumstances of the event by interested parties to criminal proceedings, as well as a better understanding of the conclusions of forensic experts.

At the same time, when assessing the prospects for widespread adoption of innovations, one cannot ignore the issue of shortcomings and limitations that have been identified and are currently being studied by experts. B.F. Vargas *et al.* (2021), A. Haleem *et al.* (2022), S. Kottner *et al.* (2023) identified the following as the "weaknesses" of 3D technologies:

- some parts of the scanned objects may be falsely reflected due to the presence of shiny surfaces, polished materials, or very dark surfaces that distort the signal to the scanner;
- transparent surfaces (e.g., glass) can also be problematic for technical processing, as the scanner scans through glass without distinguishing it in a given environment;
- the need for direct visibility of objects due to the optical nature of the scanning technology;
- substantial difficulties with details of small objects with complex geometry, as well as with details placed on a specific background (e.g., grass) due to the effect of "information noise";
- climate conditions (temperature, humidity) and lighting substantially affect scan quality;
- polymer copies printed using 3D printing technologies may be fragile, have varying degrees of grooves and other features that are accompanying components of the technological process and may render further identification impossible;
- a mandatory component of 3D technologies is special software, the use of which by various entities (investigator, expert, prosecutor) may lead to compatibility issues, as well as mandatory periodic calibration of all devices.

Economic and social benefits of investing in 3D technology transfer in crime investigation practice. The conventional process of documenting information at the scene of an incident is usually complex and time-consuming. However, the attractive features of the 3D documentation technology are not at all attractive, which may be an obstacle to the introduction of the innovation on a large scale. G. Vidoli *et al.* (2020) presented valuable research findings. The researchers conducted a survey to analyse the cost-effectiveness of different methods of recording information about a crime. The study involved 461 respondents, including both forensic experts and laypeople. The study found that hand-drawn maps are the most affordable means of capturing crime information, with an average cost of USD 0.79 per minute, but only 2.4% of respondents chose this method as the best method of capturing forensic information. Two-dimensional topographical diagrams had an average accuracy of over 70% and cost approximately USD 300 per minute to produce, but only 3.1% of respondents preferred this method. Photography was half the price (at a cost of USD 126 per minute), but only 23.4% of respondents reported that it was their preferred method. Finally, 67.8% of respondents named 3D scanning as the best method of documenting information about a criminal event, but the cost per minute of using this technology exceeds USD 800 (Vidoli *et al.*, 2020). Ground-based scanners cost between USD 20,000 and USD 70,000, which is a high price for typical law enforcement budgets. Hand-held scanners are lower priced (cost range of USD 5,000 to USD 18,000), but this amount is still too high for many CSI units (Tredinnick *et al.*, 2019).

Therefore, to achieve productive results, investment is required, which can be implemented in various forms: (1) investment under individual investment agreements (contracts); (2) grant investment at the expense of resources, assets, innovations, funds of international organisations, intergovernmental organisations, international institutions, state authorities, or local self-government; (3) crowdfunding; (4) investment through the creation of joint ventures; (5) public procurement; (6) investment within the activities of specialised infrastructure entities of the innovation system (technopolises, technoparks, science parks, business incubators, etc.) (Hnatkivskyi, 2023).

In a comparable study of the cost-effectiveness of 3D scanning technology in crime scene investigation, R. Tredinnick *et al.* (2019) considered the following indicators in the cost-benefit analysis algorithm:

- purchase of new or upgrade of computers powerful enough to process and visualise scanned data;
- upgrading of the server infrastructure for storing and backing up scan data, which forms a large file repository;
- fixed costs, such as software licensing fees;
- environmental limitations, such as the inability of some 3D scanners to work outdoors in very bright sunlight or in bad weather;
- expenditures on training employees in the use of technology and data.

In a situation where a small number of crimes are committed in the service area of a particular unit that has spent money on 3D scanning equipment, the benefits of saving time at the scene, restoring traffic due to road accidents, etc., are negligible. However, in a scenario where the equipment is used frequently, innovative investments are economically substantiated. An illustrative example is the fluctuation of net benefits from USD 13,809 in Montana, where the use of 3D scanners was infrequent, to USD 799,541 in California, where the use of 3D scanners was systematic (Tredinnick *et al.*, 2019).

The social benefit of using such innovations is to build public confidence that information about a crime will be documented quickly, fully, and efficiently, and that this process will have a logical conclusion in the form of holding the perpetrators responsible and restoring justice. The use of innovations creates a positive image for law enforcement agencies, especially when it comes to technologies that are used, as it were, "in front of the public" at the scene of a crime. This is a sign that the criminal procedure system is adapting to the latest trends and updating its methods and forms of work in the context of technological advancement.

The prospects for the development of digital documentation are viewed in the gradual reduction in the cost of these technologies. The rapid movement in this area is evidenced by a study that demonstrated that in an artificially simulated crime situation, even a mobile phone with a special application programme can be used to scan a garage or parked car within a few minutes without special preparation. S. Kottner *et al.* (2023) tested the Recon-3D application based on typical crime scenarios and confirmed that a mobile device such as a smartphone or tablet can be used as an optical 3D scanner with the addition of a LiDAR sensor to digitally document the scene. The resulting spatial information has a sufficiently high resolution, although this depends on the distance to the objects, increases the amount of data and lengthens the time for the software to process the information (Kottner *et al.*, 2023). S. Stevenson and E. Liscio (2024) obtained analogous findings on the rather high efficiency of iPhone LiDAR and Recon-3D in the study of the mechanism of blood traces formation. The scientists stated that, compared to more complex ground-based laser scanning systems, such portable devices allow obtaining sufficiently accurate results of scanning stains and other traces of blood at the scene. The error varies at the level of 3 mm. Maiese *et al.* (2022) also confirmed the suitability of portable tools for virtual autopsies.The second significant aspect of further development of innovations is their combination with other technologies, such as drones and 3D technologies, which allows for aerial surveys and mapping (Galvin, 2020; Addo & Jayson-Quashigah 2021; Lee *et al.*, 2024). The combination of computed tomography and 3D technologies allows creating a virtual 3D animation of the entire body and visualising damage to internal organs or the skeleton (Maiese *et al.*, 2022; Gupta, 2023; Villa *et al.*, 2024). Scientists are discussing the possibilities of combining 3D scanning and virtual reality (VR), including the prospects of creating repositories of 3D digitised crime scenes. These resources will be available to specialists who, within the framework of their cooperation and assistance during the investigation, will be able to conduct online research on virtual 3D reconstructions (Rinaldi *et al.*, 2022)

The conducted systematic literature review convincingly proves that attention to the innovative potential of 3D technology will only increase in the near future. According to G. Baldino *et al.* (2023), this refers to a doorway to the future virtual reality and innovative "metaverse". This global trend has already proved its effectiveness and usefulness in many areas of human activity, which substantially influences the economic potential and employment. At the same time, the capabilities of 3D technologies are being tested with great caution in the field of crime prevention. Recently, there has been an intensification of discussions on the use of 3D scanners during crime scene inspection to create a virtual picture of the crime scene, 3D reconstructions during research and examination to determine the sequence of actions, establish cause and effect relationships, etc., and printed 3D models to demonstrate certain features of objects relevant to the investigation. Table 1 summarises the key areas of application of 3D technologies in crime investigation.

Table 1. Areas of application of 3D technologies in crime investigation

Scope	Potential applications 3D technologies	Examples of research
Visualisation of the scene	Creation of digital models of the scene of an incident for the purpose of ensuring: ➨ recording and visualisation of the crime scene; ➨ creation of an interactive environment where objects are available for viewing and studying in different projections; ➨ transferring judges, lawyers, prosecutors, jurors, and other participants in criminal proceedings to the virtual environment of a crime scene.	V. Rinaldi *et al.* (2022); A. Ospina-Bohórquez *et al.* (2023); S. Kottner *et al.* (2023).
Classification, identification, and diagnostics	Study of object features for further identification, classification, and diagnosis: ➨ examination of teeth marks (bite marks) and other bodily injuries; ➨ examination of shoe sole marks; ➨ investigation of vehicle tracks (traces); ➨ investigation of tool marks.	R. Bennett and M. Budka (2018); B. Vargas *et al.* (2021); C. C. Villa *et al.* (2024).
Reconstruction of facilities and/or events	Visual reconstruction For example, the reconstruction of facial fragments of a mutilated unidentified corpse.	R.M. Carew *et al.* (2021); B.F. Vargas *et al.* (2021); S.R. Jakobsen *et al.* (2023).
	Material reconstruction For example, 3D printing of bones and weapons.	
	Situational reconstruction For example, modelling of: ➨ the mechanism of road traffic accidents; ➨ the mechanism of blood traces (BPA); ➨ the mechanism of gunshot injuries.	

Source: compiled by the authors of this study

The forecast for the further development of 3D technologies is so optimistic that it gives grounds to discuss the emergence of a new field – "3D Forensic Science" (3DFS), which combines approaches and methods, investigating the experience and best practices of using 3D technologies for the needs of criminal justice (Carew *et al.*, 2021). The combination of conventional methods of capturing information (photography, video recording, verbal description) and 3D information processing methods opens new opportunities for working with evidence, modelling the mechanism of a crime, and presenting essential information in court. The speed, accuracy, safety, non-destructive effect, multifunctionality, and many other criteria suggest that 3D innovations can become a valuable addition to the work of criminalists, forensic scientists, investigators, and prosecutors.

There are two scenarios to consider: (1) the outcomes of implementing 3D technology; (2) the consequences of not implementing the technology. Under the first scenario, one can expect to see a strengthening of positions in digital documentation of illegal activities; improvement of the quality of collecting relevant information about the crime and criminals; and increased efficiency in the courtroom when presenting evidence to judges and jurors. At the same time, it is likely to increase the workload of law enforcement officers, who, along with conventional methods, will be required to use 3D innovations; it will not always be possible to guarantee a high-quality result, as the technological process of 3D scanning, 3D reconstruction, or 3D printing has certain conditions and limitations; it will be necessary to agree to reallocate financial resources in such a way as to provide the relevant units with equipment and software, which will likely result in a reduction in investment in other innovative programmes (b). In the first scenario, if it were to be remarkably successful, there would likely be a transformation of jobs, with some staff being laid off, but new jobs being created for specialists ready to work with these technologies (Gaub, 2019).

In the second scenario, conventional methods of recording and investigating information about crimes and methods of collecting evidence will continue to be used, but there will be a risk of technological lagging behind criminals themselves, who are increasingly using the innovative potential of technology as a resource to fulfil their criminal intentions (e.g., using 3D printing to make disposable tools of crime, such as bullet shooters or lock pickers (de Almeida, 2020; Daly *et al.*, 2021; Listek, 2023). In such circumstances, a criminal justice system that is unable to adapt to the new conditions of operation will be unable to perform its core functions.

Thus, it is vital to intensify innovation processes and introduce incentives for innovative investment. G. Jani *et al.* (2021) rightly pointed out the need to develop standardised working protocols for the 3D scanning process, setting 3D modelling parameters for printing (layer height, temperature, speed), post-processing procedures to create accurate copies of evidence, and defining legal and ethical principles for their use. Analogously, D. Errickson *et al.* (2022) are convinced that to make tangible progress in the integration of 3D technologies into the criminal justice system, it is crucial that academics and practitioners are united by the shared goal of developing national guidelines. Additionally, it is necessary to create favourable conditions for scientific collaboration in clusters that include both scientists and practitioners-stakeholders (target audience) to conduct further research; optimise international mobility of researchers and practitioners; develop universal methods of work in different situations of crime, in different types of crime scenes; invest in infrastructure (special equipment, software, maintenance, and repair) and specialised training of personnel; study the best foreign practices of using and new achievements of 3D technologies.

Considering the specifics of the use of the latest technologies, extensive financial resources and a certain amount of time to master special skills in working with equipment and software, it appears advisable to implement a pilot project – the creation of a separate Special Innovation Support Unit (SISU) at the regional headquarters of the National Police. The specialists of this unit could be involved in preparing addenda to the protocols of procedural actions using 3D scanners, drones, and other modern equipment. The task of providing special training and relevant equipment for each regional centre is more realistic in the short term than making such technologies available to each territorial police unit. According to O. Dufeniuk (2023), the activities of SISUs should be regulated by separate regulations, for instance, by analogy with the regulation of forensic laboratories. This will require supplementing Decree of the Ministry of Internal Affairs of Ukraine No. 1339 (2015) with a separate section III-I of the Instruction on the procedure for engaging employees of pre-trial investigation bodies of the police and the Expert Service of the Ministry of Internal Affairs of Ukraine as specialists to take part in the examination of the scene.

Conclusions

Considering the spread of the general global trend of digitalisation and development of 3D technologies, the issue of using their innovative potential in criminal proceedings to perform the tasks of combating crime and strengthening public security is of considerable interest. Based on a systematic thematic analysis of scientific sources, periodicals in the field of innovative technologies and forensic science, the study identified numerous scientific and applied studies which reasonably prove the expediency of expanding the practice of using 3D technologies in law enforcement activities. The findings of the study became the basis for differentiating three primary areas of application of 3D technology in the practice of crime investigation: visualisation of the scene; classification, identification, and diagnostics of objects; reconstruction of objects or events.

At the same time, attention was drawn to the identified risks and "weaknesses" of 3D technologies, such as the falsity of certain reflections, difficulties with intricate details, or climatic limitations. The transfer of 3D technologies to law enforcement is impossible without understanding the economic and social benefits of innovative investment. The findings of this study provided grounds for in-depth reflection on the feasibility of introducing 3D technologies in small towns, as there is less probability of their use and, therefore, the net benefit will be lower compared to such an investment in a large city, which has a larger population, a greater number of crimes committed, a greater need to document events and collect evidence, and, therefore, the net benefit will increase substantially. Social benefit is difficult to monetise, to express in economic terms. This refers to building public confidence in the criminal justice system, confidence that information about a crime will be documented quickly,

fully, and efficiently, and that this process will have a logical conclusion in the form of bringing the perpetrators to justice through due process.

The proposed study presented a view of two scenarios (when 3D technologies are introduced and when they are not) and identified a set of measures aimed at intensifying innovation processes in this area. Their clear understanding and broad discussion on various discussion platforms is an essential prerequisite for the successful implementation of the state's innovation policy and technology transfer in the criminal justice sector, the ultimate beneficiary of which is society. Promising areas for further research include the systematic development of the foundations of three-dimensional forensics as a unique branch of scientific knowledge, the subject of which is theoretical provisions and practical recommendations on the use of 3D technologies for the collection (detection, recording, seizure, storage), research, evaluation, and use of evidence in criminal proceedings.

Acknowledgements

None.

Conflict of interest

The authors of this study declare no conflict of interest.

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Інноваційний потенціал 3D технологій у розслідуванні злочинів

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Анотація. Актуальність статті зумовлена необхідністю постійної актуалізації спеціальних знань криміналістів та впровадження новітніх технологій у діяльність розслідування злочинів. Метою цього дослідження було критичне вивчення передового досвіду застосування 3D технологій у розслідуванні злочинів. Шляхом системного огляду наукових досліджень, в яких репрезентовано різні методики застосування 3D технологій у розслідуванні злочинів доведено, що в науковому дискурсі спостерігається пожвавлення дискусії про застосування 3D технологій. Вчені відзначають ряд переваг від застосування таких технологій: 3D сканери дозволяють створити цифрову модель місця злочину; 3D реконструкції дають змогу визначити послідовність дій, встановити причинно-наслідкові зв'язки, відновити первинний вигляд пошкоджених об'єктів; друковані 3D моделі наочно демонструють певні ознаки об'єктів. Аналіз наявної літератури з тематики дозволив систематизувати застосування 3D технологій у розслідуванні злочинів та виокремити три головні напрями застосування 3D технологій у практиці розслідування злочинів: (1) візуалізація місця події; (2) класифікація, ідентифікація та діагностика об'єктів; (3) реконструкція об'єктів чи подій. Швидкість, точність, безпечність, неруйнівний вплив та багато інших критеріїв, які зазначають вчені вказують, що 3D інновації можуть стати важливим допоміжним інструментом для криміналістів, слідчих, прокурорів. Водночас результати проаналізованих випробувань демонструють певні обмеження та проблеми, які супроводжують практику застосування цих інновацій. В результаті проведеного огляду наукової літератури зроблено висновок, що трансфер 3D технологій у діяльності правоохоронців неможливий без розуміння економічних та соціальних вигод інноваційного інвестування. Визначено зміст цих вигод та система заходів, спрямованих на інтенсифікацію інноваційних процесів у цьому напрямі. Практичне значення дослідження полягає в тому, що отримані результати можуть бути використані підрозділами техніко-криміналістичного забезпечення та органами досудового розслідування під час розробки новітньої тактики збирання доказів, фіксації, обробки та використання інформації про кримінальні правопорушення для потреб кримінального правосуддя

Ключові слова: 3D інновації; віртуальна модель; досудове розслідування; докази; місце злочину; цифрове документування

UDC 347.965:343.121.5
Doi: 10.32518/sals4.2024.231

Соціально-правові студії. 2024. Т. 7, № 4
Social & Legal Studios. 2024. Vol. 7, No. 4

Legal obligations of a lawyer and standards for the protection of minors in juvenile justice

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Abstract. This paper examined the legal duties of a lawyer in the context of protecting the rights and interests of minors in juvenile justice. The purpose of the study was to critically analyse the standards of legal aid provided to minors and to determine the role of an attorney-at-law in modern processes related to the protection of their rights. The research methodology included an analysis of international standards for the protection of the rights of minors, a comparative study of Ukrainian legislation, and the study of practical cases from court cases related to the protection of children's rights. The main results showed that there are significant differences in approaches to protecting the rights of minors. In EU countries, such as Germany and France, the participation of a lawyer at all stages of the process is mandatory, as well as strict standards of confidentiality and child protection. In these jurisdictions, there are clear legal provisions that provide guarantees for minors. In Ukraine, however, there are gaps in legislation that complicate the protection of children's rights and lead to a lack of legal awareness among lawyers. The study also analysed the impact of juvenile protection standards on the overall state of juvenile justice and law enforcement in Ukraine. It was found that the lack of legal awareness of lawyers and the absence of clear regulations lead to violations of children's rights. This pointed to the need to improve the juvenile justice system in Ukraine. The findings highlighted the need to integrate European standards such as the mandatory participation of a lawyer at all stages of the judicial process, the protection of the confidentiality of minors, the observance of the principle of the best interests of the child, and the provision of access to legal aid regardless of social status. The implementation of these standards can significantly improve the human rights protection of minors and ensure effective legal assistance in private law disputes related to the protection of their rights and interests

Keywords: legal aid; defence of children's rights; lawyers' ethics; private interests; litigation

Introduction

The problem of legal defence of minors in the context of the development of juvenile justice is of particular relevance in Ukraine as of 2024. Minors, as one of the most vulnerable social groups, need adequate legal protection, as their rights and interests can often be violated due to insufficient legal aid and awareness of protection mechanisms. When a country faces numerous challenges on the path of European integration, it is vital to rethink approaches to the protection of children's rights in judicial proceedings, particularly in private law disputes. In the context of current changes and reforms in Ukraine's legal system, it is necessary to pay particular attention to the role of lawyers representing the interests

Suggested Citation

Article's History: Received: 21.08.2024 Revised: 25.11.2024 Accepted: 23.12.2024

Ospanova, D., Moroz, S., & Niyazova, A. (2024). Legal obligations of a lawyer and standards for the protection of minors in juvenile justice. *Social & Legal Studios*, 7(4), 231-239. doi: 10.32518/sals4.2024.231.

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of minors in court. In this context, it is essential to emphasise that providing quality legal aid to children requires a comprehensive approach that includes not only knowledge of legal provisions, but also the ability to work with minors in psychological and social aspects. Lawyers must have special skills to interact effectively with children, understand their needs, and ensure proper communication with the court.

The significance of the legal defence of children lies not only in protecting their rights, but also in laying the foundations for their future integration into society. Juvenile justice, as a justice system that is tailored to the specificity of juvenile offenders, should provide not only punishment, but also rehabilitation and re-socialisation of young people (Yusupova, 2022). However, there are currently major problems in Ukrainian legislation that impede the exercise of children's rights and their legal protection. Specifically, the inconsistency between various legal acts and the lack of clear standards governing the work of lawyers in juvenile cases can lead to negative consequences for children.

Studies of the legal duties of lawyers in juvenile proceedings have been the subject of attention of many researchers, but the issues are still understudied, especially in the context of Ukrainian legislation. For example, M. Tyminski (2021) emphasised that the participation of lawyers at all stages of the judicial process is critical to ensure the rights of children, since the lawyer not only represents the interests of their client, but also plays an integral role in communication between the court and the minor. L. Abrams *et al.* (2019) emphasised that training for lawyers working with children should include aspects of psychology and social work to better protect the rights of the child. Furthermore, R. Khanyk-Pospolitaka and T. Fedosieieva (2023) noted the need to integrate European standards of child advocacy into Ukrainian justice practices. These studies emphasised the significance of exploring international practices in juvenile justice, as they can serve as a basis for reforming Ukrainian legislation.

It is also worth mentioning the studies by S. Kokkalera *et al.* (2021), who noted that in many European countries the lawyers representing children receive specialised training, which enables them to better understand the needs of their clients. S. Larner and H. Smithson (2023) addressed the role of ethical standards for lawyers working with juveniles as this can dramatically affect the quality of defence of children's rights in court proceedings. Thus, there is an urgent need to improve standards for the protection of children's rights in Ukraine, especially in the aspect of ensuring their legal aid in private law disputes.

An analysis of European practices by T. Bettens and H. Cleary (2024) showed that countries such as Germany have clearly defined standards for lawyers working with minors. Lawyers are required to provide not only legal defence but also to be sensitive towards the psychological aspects that may affect the child during the trial process. Comparable standards are also present in the UK, where lawyers working with children must have specialised training (Birckhead, 2016).

One of the key contributors to the defence of children's rights is L. Abrams *et al.* (2019), who stresses the significance of legal aid for minors in processes related to the distribution of property. They claimed that in the absence of adequate legal aid, there is a high probability that a child's fair trial rights would be violated. At the same time, C.M. Berryessa and J.A. Chandler (2020) emphasised that the lawyer should not only act as a defender, but also as a counsellor for the minor, explaining rights and obligations during the proceedings.

The purpose of this study was to critically analyse the role of lawyers in defending the rights of minors in juvenile proceedings and to examine the legal duties that lawyers must perform in this area. The objectives of the study were as follows:

- to critically analyse the current scientific concepts of the role of lawyers in juvenile proceedings;
- to propose clarifications to the existing theoretical constructs on the duties of a lawyer in juvenile proceedings;
- to examine the terminological problems of Ukrainian legislation on legal aid for children.

Literature review

Juvenile justice is a significant branch of law that is constantly changing in the context of contemporary social, legal, and ethical challenges. The role of lawyers in the defence of juvenile rights is acquiring new forms and dimensions through the development of legislation, the latest technologies, social, and psychological factors. Analysing the existing literature on this topic allows exploring the key aspects of lawyers' practices, their approaches to the defence of juvenile rights, and the contemporary challenges they face. L. Abrams *et al.* (2019) focused on the moral challenges arising in the work of advocates with juvenile offenders. They emphasised the need for ethical standards and moral responsibility of lawyers in the context of protecting the rights of juveniles, particularly considering their vulnerability and need for a special approach to defence.

C.M. Berryessa and J.A. Chandler (2020) explored the effects of neurobiological studies on judicial decisions regarding juvenile offenders. Their findings showed how scientific research can change legal approaches and processes affecting the lives of juveniles. This is an example of the growing influence of interdisciplinary research on legal practice. T. Bettens and H. Cleary (2024) noted the necessity of considering the age and psychological characteristics of adolescents during trials. They underscored the role of psychological training for lawyers and the use of modern scientific approaches in working with juveniles. This is essential in the context of developing specialised programmes to prepare lawyers for work in the juvenile justice field (Abdrasulov *et al.*, 2023).

T. Birckhead (2016) addressed the social stigmatisation of juvenile offenders and how lawyers can help minimise this impact. The researcher also highlighted the significance of social justice in the juvenile system and the role of advocates in achieving it. Other researchers, notably E. Buss (2000), noted the significance of participation of juveniles in court proceedings. E. Buss stressed that juveniles are entitled to take an active part in the decision-making process concerning their cases and lawyers play a key role in protecting these rights.

B. Feld and S. Schaefer (2010) considered the juvenile justice system in comparison to the adult system. They emphasised that juveniles require specific legal defence that is tailored to their age and psychosocial characteristics. This is an approach that requires advocates to possess not solely legal expertise, but also a profound understanding of developmental psychology. I. Kalinina (2023) explored the role of the latest technologies in legal aid for minors. The researcher noted the value of using digital tools to enhance the protection of children's rights, which is particularly relevant in

the current era of digitalisation. R. Khanyk-Pospolitaka and T. Fedosieieva (2023) emphasised innovative approaches to the legal defence of minors. They addressed the need to integrate social, psychological, and legal aspects into the law enforcement process to ensure comprehensive protection of the rights of minors.

J. Lesnick *et al.* (2023) examined the re-socialisation of juvenile offenders after trials. They emphasised the vital role of lawyers in this process and noted the need to ensure that juveniles are provided with legal aid even after trials are concluded. B. Mathews (2022) pointed out the ethical standards in the work of lawyers with juveniles, especially in the context of personal data protection and confidentiality of information. This issue is crucial because minors are a particularly vulnerable group in the legal system (Yakymenko, 2023). The study by M. Tyminski (2021) analysing the influence of lawyers in overcoming the school-prison pathway deserves special mention. The researcher emphasised that lawyers working with LGBTQ+ minors must be sensitive to their specific needs and concerns to ensure a fair legal defence.

N.T. Padgaonkar *et al.* (2020) investigated the neuropsychological aspects of juvenile delinquency. Their findings are valuable in understanding how the psychological state of adolescents may influence their behaviour and court decision making. T. Remley *et al.* (2020) highlighted the significance of specialised education for lawyers to work with juveniles, noting the need to incorporate psychological aspects into training programmes. M. Welner *et al.* (2023) emphasised the value of an integrated approach to the defence of juvenile offenders, combining legal, psychological, and social aspects. They noted that the work of lawyers should include cooperation with other professionals to ensure the comprehensive protection of children's rights. Thus, the existing literature suggests the significance of a multidimensional approach to the work of lawyers with juveniles.

Materials and methods

The theories of children's rights and juvenile justice provided the conceptual framework for this study, which allowed focusing on the specific features of the legal defence of minors in Ukraine. In this context, M. Tyminski (2021), R. Wright and J. Roberts (2022) emphasised the value of introducing innovative legal aid methods that meet the individual needs of children. This study reviewed academic works highlighting the core concepts of children's rights, juvenile justice, and advocacy practice. The study focused on a critical review of the available theoretical approaches to the legal defence of juveniles. The reviewed studies of authors such as M. Welner *et al.* (2023) helped in forming a theoretical framework for further conclusions.

Such documents as Law of Ukraine No. 3460-VI "On Free Legal Aid" (2023) are key laws that regulate access to free legal aid for all citizens, including children. These laws set out the right to defend the interests of minors and define the rules for the provision of legal aid by advocates. Draft Law of Ukraine "On Child Friendly Justice" (2021) is a legislative act aimed at creating special conditions for the protection of children in the legal system. This law emphasises the value of a child-friendly approach to children in court and ensures that their rights are exercised in an age-appropriate manner. The Law of Ukraine No. 5076-VI "On Advocacy and Advocate's Activity" (2012) is a regulation that governs the activity of lawyers in Ukraine, including their obligations and rights in the defence of minor clients. This law establishes standards for the professional activities of advocates who specialise in juvenile justice. The Code of Ukraine on Administrative Offences (1996) establishes legal provisions on the liability of minors for administrative offences and defines special conditions for the protection of their rights in administrative proceedings. The Convention on the Rights of the Child (1989) (Convention) is the principal international instrument for the protection of children's rights. The explanatory memorandum to the Draft Law of Ukraine No. 5617 "On Child Friendly Justice" (2021) is an analytical document outlining the aims and objectives of the future law, which is aimed at improving the legal defence of children in the judicial system of Ukraine. The Rules of Advocacy Ethics (2012) regulates the professional and ethical standards of lawyers, including their obligations regarding minor clients. This document is a significant benchmark for professionalism and ethical standards in juvenile justice.

The study also examined the practice of protecting children's rights in Ukraine. The key sources that formed the basis of the study were the Case No. 4287/19 "Bezotecheska v. Ukraine" (2019), a notable precedent in the field of juvenile rights protection at the international level. This judgement of the European Court of Human Rights illustrates issues related to the violation of children's rights and is an important reference point for Ukrainian juvenile justice. The "Vadym Melnyk v. Ukraine" Cases Nos. 62209/17 and 50933/18 (2022) provide another example of the European Court of Human Rights judgement that illustrates the issues related to the violation of children's rights and is a significant reference point for Ukrainian juvenile justice.

These sources helped to examine the existing legal framework for the protection of minors' rights and to identify gaps in current practice, which became the basis for developing recommendations to improve the juvenile justice system in Ukraine.

Results

Advocates working with minors must observe not only the general principles of advocate's ethics, but also specific norms regulating their activities. Advocates must use all legal methods available to protect the rights of their clients. This includes filing appeals, attending hearings, and initiating lawsuits, if necessary. According to international standards, advocates must always consider the best interests of children under the Convention on the Rights of the Child (1989). Lawyers are obliged not only to protect the rights of children, but also to teach them and their parents about those rights. This obligation includes holding information sessions, developing manuals and guidelines. Analysis of documents such as the Code of Ukraine on Administrative Offences (1996) and the Law of Ukraine No. 3460-VI "On Free Legal Aid" (2023), revealed the need for further improvement of legislation in this area. Recommendations based on the findings include the introduction of new legal aid methods, as well as the development of information materials and training sessions for children and their parents.

The legal responsibilities of lawyers in the field of juvenile justice include several key aspects. Firstly, lawyers must ensure the right of minors to a defence that provides them with information and legal aid (Law of Ukraine..., 2012). Secondly, lawyers must protect the interests of clients, acting in their best interests and considering the individual

needs of children (Clarification of the Ministry of Justice of Ukraine No. n0008323-12, 2012). In addition, a lawyer must ensure client confidentiality, which is one of the core ethical standards of the profession (Rules of Advocacy..., 2012). Finally, liaising with other services, such as social services and educational institutions, to ensure that the interests of minors are comprehensively protected is a crucial obligation (Explanatory Note to the Draft Law of Ukraine "On Child Friendly Justice" (2021).

Advocates should consider that working with minors has its specific features. For instance, the use of non-violent methods of communication is an important aspect, as children can be very sensitive to stressful situations. According to T. Birckhead (2016), advocates must adapt their methods of work according to the age and emotional state of the child. E. Buss (2000) also addressed the need to provide softer communication during the court process, which will help to avoid further stress for children.

An essential element of working with children is to involve them in the decision-making process. J. Fagan (2008) noted that advocates must explain to children the legal aspects of their case, as well as consider their views and concerns. This approach, according to B. Feld and S. Schaefer (2010), can greatly increase children's trust in the advocate and the justice system overall. In the opinion of the author of the present study, J. Fagan's assertion is particularly important in the context of ensuring children's involvement in decision-making, as it can strengthen their legal defence. The inclusion of psychologists in the advocacy process is an essential aspect that can improve the quality of defence of juvenile rights. According to K. Finlay *et al.* (2023), psychologists help advocates to better understand the emotional needs of children, which enables lawyers to better formulate a defence strategy. J.F. Rice (2023) also emphasised the role of psychologists in preparing children for court hearings, which helps to reduce children's anxiety levels. Advocates' active use of modern technology such as electronic databases and communication platforms has proven successful in providing legal aid to children. I. Kalinina (2023) found that the use of video communication during the COVID-19 pandemic made legal services more accessible. R. Khanyk-Pospolitaka and T. Fedosieieva (2023) highlighted that such innovative solutions improve communication between advocates and their clients, which positively affects the effectiveness of defence.

A study by J. Lesnick *et al.* (2023) found that lawyers who are active on social media can improve their image and develop closer ties with juvenile clients. It was also emphasised that preparing attorneys to work with children requires not only legal knowledge but also emotional sensitivity and the ability to build trusting relationships. It was found that lawyers play different roles at each stage of the juvenile process. In Ukraine, the legal defence of minors is a crucial aspect of justice.

For example, in the Cases Nos. 62209/17 and No. 50933/18 "Vadym Melnyk v. Ukraine" (2022), the advocate raised the issue of violation of the right to a fair trial, which includes the right to an objective and impartial tribunal. The defence argued that the minor was not given the opportunity to present his case during the trial, which resulted in a biased decision. This case emphasised the significance of due process rights to ensure equal access to justice for children.

Another relevant precedent is Case No. 4287/19 "Bezotecheska v. Ukraine" (2019), where the advocate pointed out the violation of a minor's right to take part in proceedings concerning their personal interests. This right guarantees that children are allowed to express their views on matters that affect them, including their defence in court proceedings. It was also noted that the minor had not been adequately informed of the consequences of their actions and of the right to legal aid. For example, in Case No. 28253/11 "Timchenko v. Ukraine" (2021), the advocate appealed against the court's decision, arguing that the minor's rights had not been respected during the investigation stage. Specifically, it was the right to defence, which implies that a minor should be allowed to be represented by an advocate at all stages of the proceedings. The defence lawyer also emphasised the minor's right to be informed of their rights, which should include an explanation of all procedural actions related to their case. Thus, advocates in Ukraine play a key role in protecting the rights of minors by ensuring their right to legal aid and defence at all stages of the judicial process. The use of international human rights standards, particularly in cases where minors are suspected of having committed an offence, is becoming increasingly relevant in Ukrainian practice. One important aspect is the advocate's ability to explain legal terms and procedures in an understandable language. Many lawyers note that they use simple examples and analogies to facilitate the perception of information by juvenile clients (Fagan, 2008; Feld & Schaefer, 2010). This strategy helps children better understand complex legal terms and procedures, which then encourages minors to become more involved in the defence of their rights.

Sometimes advocates who actively work to create a comfortable atmosphere during meetings get better results in communicating with clients. This includes attention to detail, such as the physical environment where counselling takes place, as well as the use of non-verbal communication tools that foster a trusting relationship (Rice, 2023; Larner & Smithson, 2023).

To demonstrate the significance of advocates' attention to details such as the physical environment and non-verbal communications, concrete examples of judicial practice can be cited where these aspects have played a significant role in ensuring that the rights of juveniles are adequately protected. In the Case "J.D.B. v. North Carolina" (2011), an attorney argued that the conditions of the juvenile's interrogation, particularly the physical environment where he was interrogated (the interrogation was conducted in a classroom without a parent or guardian present), significantly interfered with his ability to express himself freely. The judge held that the adolescent's age and environment must be considered when determining whether their rights were violated. This emphasises the value of considering the physical environment when communicating with minors.

Based on the findings of this study, a series of evidence-based recommendations can be formulated to improve the juvenile justice system in Ukraine. Specifically, Article 18 of the Law of Ukraine No. 5076-VI "On Advocacy and Advocate's Activity" (2012) should be supplemented with a provision on compulsory completion of specialised courses on juvenile justice. An analogous approach is used in the UK, where lawyers working in this area are required to undergo specialised certification (Rice, 2023). Development of electronic platforms for legal aid: to increase the

accessibility of legal services, it is advisable to create electronic platforms that enable minors to receive counselling online. During the COVID-19 pandemic, such systems were proven to be effective (Kokkalera *et al.*, 2021). The legislative basis for this already exists, for instance, Article 7 of the Law of Ukraine No. 3460-VI "On Free Legal Aid" (2011) can be supplemented with provisions on the introduction of electronic counselling for minors.

To ensure comprehensive protection of minors' rights, it is necessary to create teams consisting of advocates, psychologists, and social workers. This approach has already been successfully implemented in Germany, where lawyers collaborate with other child protection professionals (Birckhead, 2016). This will ensure a comprehensive approach to solving the problems of juvenile clients. Setting standards for advocacy: it is necessary to clearly regulate the requirements of advocates in the field of juvenile justice. Article 4 of the Law of Ukraine No. 5076-VI (2012) should be supplemented with a provision on the development of standards of advocacy in cases involving minors. The establishment of uniform criteria would improve the quality of services and ensure homogeneity of practice.

Activities to develop educational programmes for juveniles and parents have also proven effective in Canada, where educational programmes for young people about their rights are in place (Feld & Schaefer, 2010). In Ukraine, it is possible to create such programmes based on Article 3 of the Law of Ukraine No. 2145-VIII "On Education", supplementing it with provisions on mandatory legal education of minors in schools. Each of the above recommendations is supported by the experience of other countries and scientific data, which indicates their feasibility and possibility of implementation in Ukraine. Each of these factors has its specifics and may be key to the development of a successful advocate's practice in juvenile justice. The professional training of a defence lawyer plays a critical role. Advocates working with minors must have not only knowledge of the law, but also an understanding of the psychological aspects of working with children. As T. Birckhead (2016) noted, specialised education and training in working with juveniles helps attorneys better understand the emotional and social needs of their clients. Additionally, K. Finlay *et al.* (2023) emphasised that attorneys with emotional sensitivity and communication skills can work more effectively with children. Modern technology opens new opportunities for attorneys to effectively consult clients through electronic platforms. E. Buss (2000) showed that the use of digital solutions considerably increases the availability of legal aid for young people, which is particularly significant in resource-limited settings. T. Bettens and H. Cleary (2024) argued that technology allows for improved communication between lawyers and juvenile clients, which can lead to more effective advocacy. Establishing a trusting relationship with minors is a vital aspect of advocacy work. Children should feel comfortable seeking help. According to J. Fagan (2008), the ability of the defence lawyer to establish trust with the client positively affects the quality of the interaction and facilitates more open discussion of sensitive topics.

Counsel's experience in juvenile justice also significantly influences their effectiveness. B. Feld and S. Schaefer (2010) showed that the number of years of experience of a defence lawyer is related to their ability to solve cases, as experience allows for a more accurate assessment of the situation and finding the most suitable solutions. The inclusion of parents in the child advocacy process is crucial to ensure a comprehensive approach to legal issues. J.F. Rice (2023) noted that active parental involvement improves case outcomes because parents can provide considerable support to their children during difficult times. Cooperation with psychologists and social workers is also an essential aspect. I. Kalinina (2023) emphasised that an interdisciplinary approach enables lawyers to consider various aspects of the child's situation, ensuring a more complete understanding of the child's needs and problems.

Finally, the level of awareness of minors and their parents of their rights greatly increases the chances of a successful resolution of the case. J. Fagan (2008) argued that a high degree of legal literacy among youth and their families promotes greater participation in defence processes, which improves advocacy outcomes. Thus, comprehensive attention to these factors can substantially improve advocacy outcomes in juvenile cases, making the child advocacy process more effective and efficient.

Research shows that the use of digital technologies and electronic platforms can greatly improve advocates' performance. For example, E. Buss (2000) emphasised that the introduction of technology into the legal aid process allows lawyers to be more flexible in responding to changes in legislation and client requirements. As T. Bettens and H. Cleary (2024) pointed out, the integration of interdisciplinary teams, including lawyers, psychologists, and social workers, provides a more comprehensive approach to the protection of juvenile rights, which also requires innovative methods of interaction. An analysis of current trends in juvenile justice confirms the need to train attorneys to use new tools and approaches to stay effective in an environment where conventional strategies may not produce the desired results. It is vital that advocates not only possess knowledge of legislative changes but are also prepared to adopt new approaches based on the principles of flexibility and adaptability (Feld & Schaefer, 2010). This is particularly relevant considering the rapid changes in public perceptions of juvenile rights and the growing role of technology in the legal field.

Psychosocial factors play a critical role in the juvenile justice process because they directly influence juveniles' interactions with advocates and the outcomes of their cases. Having a supportive environment in both the family and school greatly improves the ability of attorneys to create trusting relationships with children (Spytska, 2023). It is essential to understand that children in stressful situations, such as legal problems, need emotional support and understanding from adults.

J. Fagan (2008), as well as B. Feld and S. Schaefer (2010) emphasised that support from the family and educational institution not only improves the child's emotional well-being, but also increases the child's level of trust in the lawyer. This trust facilitates the communication process and enables the advocate to more accurately assess their client's needs and concerns. Schools also become valuable allies in juvenile justice because they have direct contact with minors and can play a key role in raising awareness of their rights. For example, Ukraine implements legal education programmes in schools, such as "The Right to Education". It is part of a broad education reform that began with the adoption of the new Law of Ukraine No. 2145-VIII "On Education" (2017). This law establishes the rights and obligations of

participants in the educational process and emphasises access to quality education. A vital purpose of programmes such as "Right to Education" is to improve the legal literacy of students and develop their awareness of their rights and responsibilities in the educational system. The programme was approved by the Ministry of Education and Science of Ukraine within the framework of the implementation of the national strategy of legal education aimed at improving legal culture and ensuring equal opportunities for all students. The programme has already shown its effectiveness: according to a survey of students who have taken part in such programmes, some 70% have become more aware of their rights and obligations. The involvement of lawyers in workshops in educational institutions enables children to receive accessible information about legal aid and familiarise themselves with legal terms in an informal setting, making it much easier for them to communicate with lawyers when necessary. Furthermore, communities can play a crucial role in building a support network for juveniles. Programmes that facilitate collaboration between lawyers, social workers, and community-based organisations can create a safe environment for children. Lviv has a successful Safe School programme designed to make the school environment safer and prevent juvenile delinquency. This initiative involves cooperation between law enforcement agencies, educational institutions, and community organisations aimed at creating a safe and secure environment for children. As noted in Nashe Misto, the programme includes joint initiatives aimed at preventing delinquency among youth (Tanchenko, 2020). One of the key elements of the programme is free courses for children and their parents to discuss the issues of legal responsibility. Through educational and informational initiatives, children and their parents become more aware of their rights and responsibilities, which contributes to a safe environment. It is also important for lawyers working with minors to receive specialised training covering psychosocial aspects. Such training enables them to better understand the emotional needs of their clients and to adapt approaches to the defence of their rights, which is critical in the context of juvenile justice.

Discussion

The findings of the study of advocacy strategies in juvenile justice significantly influence the understanding of the effectiveness of legal defence for juveniles. The analysis showed that the integration of mediation as an alternative dispute resolution method reduces stress for young people and improves the outcome of their cases. This is in line with findings from other countries indicating the positive effects of mediation on young people's social adjustment (Kokkalera *et al.*, 2021). In a study analysing mediation practices in juvenile cases, the researchers noted that mediation facilitates better understanding between the parties and the development of more constructive relationships.

Furthermore, the findings of the study emphasise the value of incorporating psychosocial factors into the process of legal representation. They indicate that lawyers who actively engage with their clients' families and consider their social contexts can achieve better results in the defence of children's rights. This is consistent with the findings of J.F. Rice (2023) who noted the significance of family support in juvenile justice processes. Involving parents and guardians in the process can foster a more supportive environment for juveniles. The results point to the need for increased awareness of ethics and professional responsibility among advocates. This is essential since the decisions of defence lawyers in juvenile justice can have long-term consequences on the lives of juveniles. Research emphasises that adherence to ethics and professional standards is key to ensuring quality advocacy for children (Kokkalera *et al.*, 2021; Lesnick *et al.*, 2023). Thus, advocates must not only be aware of the legislation, but also recognise their moral responsibility to their clients and society.

Advocates must be aware of the consequences of their decisions and actions for their clients, because their decisions can significantly affect the future of young people (Apakhayev *et al.*, 2024). Access to justice for minors is a separate issue. Despite existing legislative initiatives aimed at ensuring this access, the findings of the study suggest the presence of substantial barriers to the exercise of these rights. This is confirmed by the findings of I. Kalinina (2023) indicating problems of inadequate legal support for minors in conflict with the law. Further discussion of the findings should consider how the proposed approaches and conclusions relate to existing research in the field of juvenile justice. For example, the findings emphasising the significance of psychosocial factors and technology are consistent with those of S. Larner and H. Smithson (2023), who also emphasised the value of the moral responsibility of advocates in juvenile cases. At the same time, differences may arise in interpreting the role of social media in juvenile justice processes. While many researchers note the positive influence of social media on young people's awareness of their rights, others emphasise the risks associated with misinformation (Kokkalera *et al.*, 2021). A critical analysis of existing models of advocacy practice shows that some of them may be ineffective in the context of the Ukrainian juvenile system. For instance, approaches used in countries with developed legal defence systems for children, such as Sweden or the Netherlands, may not always be applicable in Ukraine without considering specific cultural and social features (Maksymenko, 2024). This emphasises the need to adapt international practices to local conditions. Thus, the findings of the study not only confirm already existing ideas about the need for a comprehensive approach in juvenile justice, but also expand them by adding new aspects, such as the use of mediation and modern technologies. This opens new perspectives for further investigations aimed at improving advocacy practice in juvenile justice and protecting the rights of juveniles. The study highlighted the relevance of an interdisciplinary approach to legal representation in juvenile justice, which includes the collaboration of lawyers with psychologists, social workers, and other professionals. This approach provides a deeper understanding of clients' needs and a comprehensive assessment of the juvenile's situation. For example, J. Fagan (2008) confirmed that advocates working in interdisciplinary teams can develop more holistic defence strategies, which leads to improved case outcomes and reduced stress for youth interacting with the juvenile system. Additionally, findings from the study by B. Feld and S. Schaefer (2010) also showed that such collaboration fosters a more supportive environment for juveniles, which is an essential factor in the legal defence process. This emphasises that interdisciplinary approaches not only improve the quality of services provided, but also greatly enhance the effectiveness of the protection of juvenile rights.

Furthermore, the analysis considered the impact of cultural and social contexts on lawyers' practice in juvenile justice. In Ukraine, as in other countries, there is a need to adapt advocates' working methods to the specific conditions and needs of diverse ethnic and social groups. N.T. Padgaonkar *et al.* (2020) emphasised that cultural sensitivity when working with juveniles can substantially improve the outcomes of defence.

The issue of human rights and their defence is another crucial aspect that emerged in the study. Defence lawyers should not only defend the rights, but also be human rights advocates covering not just legal but also moral and ethical aspects. Furthermore, the findings indicate the need for further training of advocates in the field of juvenile justice. As the situation in this field is constantly changing, it is essential for advocates to be aware of the latest methods, technologies, and legislative developments. The study highlighted the significance of introducing training programmes that focus on soft skills such as communication and empathy. This is in contrast to conventional approaches that emphasise solely on legal aspects, which may attract criticism. T. Remley *et al.* (2020) pointed to the lack of training of lawyers in emotional intelligence, which may lead to a lack of understanding of the needs of juvenile clients. This supports the need to move towards a more interdisciplinary approach that integrates knowledge from multiple fields including psychology and social work.

Comparing the various approaches, one can see that S. Larner and H. Smithson (2023) emphasise the value of the emotional competence of advocates. Their findings are consistent with the conclusions that soft skills are critical to improving interactions between defence lawyers and juvenile clients. However, the question arises as to exactly how these skills can be integrated into existing advocate training programmes. The answer to this question requires more in-depth analyses and further research. In addition, B. Feld and S. Schaefer (2010) demonstrated that approaches to emotional support may vary depending on the social context of minors. This necessitates the need for advocates to develop adaptive strategies that are tailored to the unique characteristics of their clients. However, the lack of standardised methods for assessing these factors in advocacy practice continues to be a genuine problem. Finally, M.F. Nazim *et al.* (2024) emphasised the significance of continuing professional development for lawyers. The researchers argued that advocates must be actively involved in shaping policies to protect the rights of minors. This emphasises the need for lawyers not only as human rights defenders but also as activists, which opens new avenues for professional practice.

Thus, the findings emphasised the need for an integrated approach to advocacy practice in juvenile justice. The integration of modern approaches and technologies, soft skills development, emotional support, and interdisciplinary collaboration can drastically improve juvenile rights advocacy, which is supported by a plethora of existing research. However, further studies are required to understand how best to put these strategies into practice and how they can be adapted to the dynamically changing juvenile justice context. The integration of soft skills such as communication and empathy, as well as ongoing professional development for attorneys, are critical to improving the quality of juvenile legal defence. Furthermore, successful implementation of these approaches requires adaptation to unique social contexts and active involvement of advocates in shaping legal policy, which will contribute to a better understanding of clients' needs and safeguarding their rights.

Conclusions

This study investigated the role of advocates in juvenile justice with a focus on their influence in protecting the rights of juvenile offenders. The purpose of this study was to analyse how advocacy can positively influence the outcome of cases involving children and whether certain goals in ensuring a fair process can be achieved. The study covered several phases, including analyses of legislation, advocates' practice, and statistical data on trial outcomes. At all stages, the impact of advocates on case outcomes, their role in protecting children's rights, and the challenges they face were analysed.

The findings showed that the involvement of lawyers greatly improves the outcome of court cases, contributing to a fairer treatment of juvenile offenders and their further social recovery. Defence lawyers play a key role in ensuring the protection of children's rights, which emphasises the need for their active engagement in juvenile justice. They not only represent the interests of juveniles but also facilitate their rehabilitation in society, which is a crucial aspect of their work. Furthermore, the study found that advocates often face challenges in accessing necessary information and resources, which can compromise the quality of their work. This underscores the significance of ensuring that advocates have the necessary tools and resources to advocate for children's rights in court effectively. Public education and outreach can considerably increase understanding of the value of protecting children's rights and supporting advocates in this endeavour. Discussing advocates' strategies and approaches can help create a more knowledgeable society that supports the rights of minors.

The findings of this study have major implications for the protection of children's rights in juvenile justice. The participation of defence lawyers greatly contributes to improving case outcomes and rehabilitation of juveniles, which emphasises their role as mediators between children and the legal system. These findings emphasise the need for further research to improve legal aid for juveniles.

Future studies should focus on more qualitative methods, such as interviews with advocates and judges, to better understand the role of defence lawyers in juvenile justice. Analyses of international practices may also be useful for improving national standards for the protection of juvenile rights.

Acknowledgements

None.

Conflict of interest

None.

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Правові обов'язки адвоката та стандарти захисту неповнолітніх у ювенальній юстиції

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Анотація. У роботі досліджено правові обов'язки адвоката в контексті захисту прав та інтересів неповнолітніх у ювенальній юстиції. Мета дослідження полягала у критичному аналізі стандартів правової допомоги, що надається неповнолітнім, та у визначенні ролі адвоката в сучасних процесах, що стосуються захисту їхніх прав. Методологія дослідження включала в себе аналіз міжнародних стандартів захисту прав неповнолітніх, порівняльне дослідження законодавства України, а також вивчення практичних кейсів із судових справ, що стосуються захисту прав дітей. Основні результати засвідчили наявність значних відмінностей в підходах до захисту прав неповнолітніх. У країнах ЄС, таких як Німеччина та Франція, обов'язковою є участь адвоката на всіх етапах процесу, а також дотримання суворих стандартів конфіденційності та забезпечення прав дитини. У цих юрисдикціях існують чіткі правові норми, які забезпечують гарантії для неповнолітніх. Натомість в Україні спостерігаються прогалини в законодавстві, що ускладнюють захист прав дітей і призводять до недостатньої правової обізнаності адвокатів. У дослідженні також проаналізовано вплив стандартів захисту неповнолітніх на загальний стан ювенальної юстиції та правозастосування в Україні. Виявлено, що недостатня правова обізнаність адвокатів та відсутність чітких регуляцій призводять до порушень прав дітей. Це вказало на необхідність удосконалення системи ювенальної юстиції в Україні. Висновки підкреслили необхідність інтеграції таких європейських стандартів, як обов'язкова участь адвоката на всіх етапах судового процесу, захист конфіденційності неповнолітніх, дотримання принципу найкращих інтересів дитини, а також забезпечення доступу до правової допомоги незалежно від соціального становища. Впровадження цих стандартів може значно поліпшити правозахист неповнолітніх і забезпечити ефективну правову допомогу в приватноправових спорах, пов'язаних із захистом їхніх прав та інтересів

Ключові слова: правова допомога; захист прав дітей; адвокатська етика; приватні інтереси; судові процеси

UDC 153.96:351.74a
Doi: 10.32518/sals4.2024.240

Соціально-правові студії. 2024. Т. 7, № 4
Social & Legal Studios. 2024. Vol. 7, No. 4

Modern understanding of stress factors in police work in scientific research

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Abstract. In the context of dynamic changes in Ukrainian society, it is extremely relevant to summarise international practices of preventing stress factors in the activities of police officers. The purpose of this study was to analyse the state of scientific developments in the field of the impact of stress factors on police officers' professional skills. The study employed a series of general scientific and sectoral methods, specifically, methods of systematisation such as analysis, synthesis, comparison, the method of alternatives, and grouping. The review of a wide range of scientific sources helped to establish that the professional activity of police officers is characterised by a strenuous and extreme nature, which leads to a weakening of the body's defence functions, the development of psychogenic disorders and the phenomenon of professional deformation. It was found that the issue of stressful experience is extremely relevant in the scientific literature. Researchers state that the ability to prevent and overcome it is transforming into a total problem. The study, based on a thorough analysis of the scientific developments of researchers, characterised four groups of stress factors, namely: operational; organisational; external; and individual. Based on the analysed material, the study proposed a system of measures that would help to overcome elevated levels of stress and reduce the effects of stress factors on the activities of police officers. The findings of this study can be used for further scientific research on the outlined issues, as well as in the context of developing practical recommendations for the development of stress resistance in police officers

Keywords: law enforcement officers; stress factor; psychological factors of occupational stress; mental health; hazard; high-risk working conditions

Introduction

The liberalisation of social relations in Ukraine and the modification of the guidelines for the actions of the National Police of Ukraine from repressive to service-oriented ones require continuous improvement of the level of their professional activity, development of interaction and partnership relations between law enforcement agencies and the public. This is because ensuring public security and law and order, constitutional rights and freedoms of human and citizen, as well as the needs of society and the state, and combating crime are among the suppressive vectors of national security. An adequate level of public security and law and order means protection of vital interests of individuals and citizens, society, and the state, and ensures sustainable development of civil society, prompt manifestation, prevention, and counteraction of existing or emerging risks to national interests.

Suggested Citation

Article's History: Received: 24.08.2024 Revised: 01.12.2024 Accepted: 23.12.2024

Balynska, O., Kisil, Z., & Blikhar, V. (2024). Modern understanding of stress factors in police work in scientific research. *Social & Legal Studios*, 7(4), 240-247. doi: 10.32518/sals4.2024.240.

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The National Police of Ukraine is tasked with serving the public by ensuring the protection of fundamental rights and freedoms of citizens, combating crime, maintaining public safety and legal order (Law of Ukraine No. 580-VIII, 2015), whose professional actions are among the most challenging and are characterised by an extreme level of danger and risk. Police officers' professional actions are always accompanied by a significant level of psychological and emotional stress, professional unpredictability, psychological trauma, a great degree of conflict, and in many cases the degree of tension is beyond the limit, as police officers are confronted with criminal actions of both individuals and criminal groups on a daily basis.

In the context of preventing and counteracting unlawful acts, police officers' professional actions in most cases are implemented under extremely unfavourable circumstances. D. Shvets (2024a) rightly believes that modern police officers' professional actions are inherently subject to professional stress, as they are characterised by a significant level of compliance, responsibility, the rhythm of professional functions, the need for strict control and self-control over personal actions, as well as the need to make informed and adequate decisions in the context of a lack of necessary information and time. The professional actions of police officers are always accompanied by an extreme level of both psychological and emotional stress, hazardous and dangerous circumstances, professional stress, and psychological shocks. The stressful nature of police officers' official acts and their negative components lead to the negative phenomenon of "emotional burnout"; loss of the positive type of official motivation; development of negative anxiety reflexes; and the emergence of physical and mental health disorders.

The consequences of police officers' actions under extremely intensive stress factors are often fatal. Thus, S. Maksimenko and V. Medvedev (2018) rightly point out that according to various estimates, of police officers who have used firearms to kill, approximately 70% leave the service within five years, with the motive being psychological trauma. Most police academics believe that a unit involved in a mass casualty incident is likely to lose up to 20% of its personnel in the next three to five years due to a disruption in mental adaptation. Thus, a survey of this category of personnel found a high prevalence of post-traumatic stress disorders (over 60% of respondents reported that the incidents significantly affected their mental state and future life, and only 35% did not experience any negative psychological consequences).

A thorough analysis of scientific research by Ukrainian and foreign researchers suggests that the professional activity of police officers is not easy in terms of simultaneity, multidimensionality, ruthlessness, and sometimes escalation of the disruptive behaviour declared against them. The increased degree of interaction of the positioned factors in the context of their interaction with opposing determinants creates a situation where police officers act in the mode of a specific course of mental processes and testing their personal qualities. At the same time, the more complex and responsible the professional task, the more dangerous and conflictual the circumstances in which a police officer must make professional actions, the more accurate the assessment of not only the degree of their professional knowledge, skills, and abilities, but also the inherent internal potential of their personality and body, moral and volitional qualities.

H. Douglas and A. Gatens (2022) argued that due to the high-stress nature of police work, police officers may experience a series of stress-related psychological problems. Stigmas about mental health, the masculinity of police culture that does not recognise change, concerns about lack of confidentiality and time constraints create barriers to police officers actually seeking help for stress. H. Douglas and A. Gatens (2022) noted that despite this circumstance, a considerable number of departments provide a range of counselling services that are designed to address these issues. Furthermore, according to the researchers, professional training of police officers helps them to recognise the symptoms of stress and improve their resilience to stressors. H. Douglas and A. Gatens (2022) showed that police officers are more likely to seek treatment if they feel encouraged and supported by their colleagues, and therefore it is crucial to develop a police environment that does not judge mental health problems.

O. Sashurina (2023) noted that police work is a highly stressful profession that requires stress resilience and adaptation to unforeseen circumstances. The relevant risks of "professional burnout" and the adverse impact of stress on the mental state itself are relevant to scientific research aimed at investigating the dissipation of psychological resourcefulness in the context of police officers' service and professional growth. In modern society, police actions play a prominent role in the context of maintaining civil order and security and preventing crime. Professional activity in the police involves a strong level of responsibility, interaction with conflict and stressful circumstances, as well as the constant presence of psychological stress and traumatic events. O. Sashurina (2023) rightly concluded that the ability of police officers to effectively overcome various professional challenges and stressful situations plays a fundamental role in their professional success, and at the same time in their physical and mental well-being.

R. Wijayanti and H. Fauzi (2020) noted that police officers are vulnerable to stress on duty, regardless of the area or functions they perform. The researchers identified factors that influence police officers' job stress, namely the suitability of individuals to cope with stress; role contradiction; existing role conflict; existing overload; disposition to critical incidents; manifestations of discrimination in the service; lack of established cooperation among colleagues; dissatisfaction with the service; lack of organisational justice in the service; low degree of motivational orientation; past trauma or injury; low level of psychological strength and control over stress; low level of influence on the coping used.

M. Lohvynenko (2024) reasonably claimed that the actions of law enforcement agencies are inextricably linked to the growth of various types of crime, including organised and transnational crime, acts of terrorism, corruption, drug addiction, cybercrime, and arms trafficking. For Ukraine, an added factor is the manifestation of armed aggression by a neighbouring state. The above aspects lead to an increase in the number of fatalities; injuries, traumas, or mutilations; mental disorders; and suicides among law enforcement officers. The rapid increase in the number of crimes and incidents of violence constantly threatens the quality and safety of police officers' lives, while at the same time increasing the risks to their mental health and performance.

A review of the available studies revealed a lack of fundamental research that directly addresses the problematic

quests related to the effects of stressors on police officers' professional learning. In this regard, the purpose of this study was to analyse the issues and practices of professional stress in the work of police officers.

To fulfil the purpose of the study, a series of survey research methods were employed. The systematic method was used to select and systematise a set of studies on the stated issues. The descriptive method helped to reveal the key positions of researchers, outline their findings and conclusions of theoretical significance. The method of comparison allowed for an analytical approach to the study of scientific developments and a comparison of the positions and results under study. This method became the basis for the use of the method of alternatives, which was employed to select and present the most thorough studies with a broad evidence base. The application of the methods of grouping and systematisation helped to identify four groups of stress factors that were analysed in the studies under review. The synthesis method was used to formulate the conclusions of the study.

Specifics of modern police activity

First of all, it was necessary to analyse the specifics of police actions, organisation, and activities that potentially cause professional stress in police officers. Firstly, professional actions of a police officer involve not only emotional interactions but also actions of direct confrontation with other subjects, up to and including the use of police coercive measures. J. Noppe *et al.* (2019) and O. Sashurina (2023) considered the right to use force or the threat of its use to be a key structural element of the social role of a police officer, as stipulated in the legislation. At the same time, the constant use of coercive measures and force as part of their actions, according to A. Verhage *et al.* (2018), the constant use of coercion and force as part of their work is sometimes extremely stressful and emotionally burdensome for police officers. H. Douglas and A. Gatens (2022) noted that police officers rarely recall danger, acts of violence, or human suffering as sources of their stress.

Secondly, the elevated level of responsibility for police officers' actions, the high margin of error, and sometimes the life of a person, act as an existing stressor. According to A. Verhage *et al.* (2018), "policing is an essential function in society, but as a police officer, it can be challenging to meet everyone's expectations. One wrong decision by a police officer can affect both the life of the officer and the citizen". In the context of a survey of US police officers, J. Violanti *et al.* (2021) found that the main source of stress is the need to take personal responsibility in the performance of professional duties. At the same time, this responsibility is also inherent in those structural units that do not directly confront criminals on the streets but approve decisions to issue a notice of suspicion, apply preventive measures, charge, etc. Thirdly, as rightly argued by A. Verhage *et al.* (2018), a police officer must make a considerable number of decisions quickly, in circumstances of information uncertainty, as well as under the influence of a series of factors. Fourthly, the specifics of police work cause such stress factors as acts of overt confrontation, clashes with antisocial elements, contradictions to their will, aspirations, intentions, and delinquent acts. H. Douglas and A. Gatens (2022) considered professional risk, involvement in dangerous incidents, which, in contrast to the above category, pose a threat to the life or health of the police officer.

B. Tuttle *et al.* (2018) also distinguished the presence of external stressors that occur in the context of the influence of political conditions, public opinion, media interpretation of law enforcement activities, etc. According to the researchers, there is also a group of internal, personal stressors, such as existing family conflicts, lack of friends, existing levels of stress, depression, emotional or professional burnout, etc. However, this analysis is primarily focused on acute stress, as opposed to chronic stress. B. Chopko *et al.* (2019) rightly noted that acute stress occurs in the context of a traumatic event, critical circumstances and is more dramatic, overwhelming, and can easily overcome the person's usual ability to handle the situation. B. Chopko *et al.* (2019) provided examples of correlated stressors faced by police officers: "... physical injuries while on duty, officer-involved shootings, the death of a colleague, hostage situations, and officer suicides". According to M. Maurya and M. Agarwal (2018), "acute stress is associated with a serious life event or situation that threatens a person's safety and triggers a "do or die" response, while chronic stress is defined as the cumulative load of minor daily stress". Furthermore, most researchers who investigate stress in police work tend to believe that chronic stress itself is large and dangerous, caused by everyday seemingly non-acute factors. In this regard, J. Violanti *et al.* (2017) noted that "descriptions of police work tend to emphasise the risk factors inherent in the task, but police officers themselves do not tend to mention danger as a stressor".

The current ambiguous "four-part model of stress", wherein "exposure and response are located in an integral concept", makes it difficult to classify stressors, but J. Violanti *et al.* (2017) considered it reasonable to divide stressors into two groups, namely: traumatic, acute, unexpected, and destructive; and everyday, patterned, accumulating over time, and causing a slow pathological effect.

It is necessary to characterise the stress conditions inherent in police actions and classify them. Thus, Y. Rachma and H. Fauzi (2020), in the context of a scientific study of the factors that influence work stress among police officers, found that police officers themselves do not tend to consider danger as a stressor. J. Violanti *et al.* (2017), contrary to the general perception of hazardous professional situations that cause the most destructive stress in the professional activities of police officers, found the dominant influence of stereotypical, everyday factors that shape the conditions for the development of chronic stress in police officers, which subsequently leads to emotional burnout and professional deformation. Furthermore, researchers found that the actual impact of stressors classified as organisational (shift work, lack of time, lack of support from management, etc.) has a 6.3 times greater effect on the overall level of stress than acute stress factors that occur in the context of hazardous or emergency circumstances.

M. Maurya and M. Agarwal (2018) identified a group of operational stressors, which are caused by the actions of police officers (unpredictability of circumstances and the need to act extremely quickly; acts of violence, crimes; the need to use police coercion, firearms, etc. L. Baka (2015) also considered it expedient to apply the term "job demands" to these positioned groups of stressors, which is reasonable according to A. Bakker *et al.* (2023), who identified the theory of "police stress" as a part of the generally accepted theoretical job demands-resources model (JD-R model), which interprets the essence of occupational stress.

A. Lancione (2015) and B. Tuttle *et al.* (2018) also identified external stressors that are developed in the context of the influence of the current political climate, public opinion, media positioning of professional practices of law enforcement agencies, etc. According to the researchers, there is also a group of internal, individual stressors, namely: family conflicts, lack of friends, already existing levels of stress and depression, professional burnout, etc.

Operational stress factors in police work

The classification of stressors according to this four-component architectonics is a crucial further task, although the positioned model of stress is ambiguous. At the same time, the outcome of stress itself becomes an internal stressor at the next stage, while it outlines the true nature of stress, which is not a static phenomenon, but a dynamic process.

Operational stress factors are the factors arising in the context of the very quintessence of the police as an executive body whose principal task is to protect the rights, freedoms, and legitimate interests of citizens and society up to the use of police coercion. Experts identify a variety of factors as stressors. Firstly, police coercive measures and confrontational interaction with citizens. Thus, an elevated degree of operational stress is directly related to the regularity of the use of police coercive measures, and therefore this stressor is included first (Devroe *et al.*, 2019). The name and scope of the stressor can be characterised in different ways. For example, according to E. Devroe *et al.* (2019), it can be limited to the detention of a person who resists; or to the wording of the detention of suspects, the choice of preventive measures, confrontational interaction with citizens. The range of the latter interaction includes, inter alia, interrogation or questioning of a suspect or witness of a tort. Secondly, the elevated degree of responsibility and the cost of mistakes is extremely closely related to the above. The extreme nature of police powers to use coercive measures, such as the use of force, special means, and firearms, always corresponds to a prominent degree of responsibility for such actions. Therefore, according to R. Pereira *et al.* (2023), there is the fear of injuring or killing someone in the implementation of police actions. At the same time, according to R. Anders *et al.* (2022), a stressor can be the response to receiving disturbing calls from citizens and appearing in court.

A. Bakker and E. Demerouti (2017) identified the encounter with interpersonal violence in society as a stressor, while A. Lancione (2015) identified the threat of human deprivation as a stressor. At the same time, the stressful impact is likely to be not only related to the delinquent, but also to the encounter with the victims in various ways, namely: communication, observation, protection, care, etc. At the same time, A. Bakker and E. Demerouti (2017) considered emotionally intense encounters with victims of crimes and accidents to be a stressor, while C. Queirós *et al.* (2013) also noted the uncertainty and diversity of citizens' demands.

Overall, researchers considered the death or injury of colleagues to be particularly acute stressful circumstances that are related to encounters with antisocial individuals and manifestations of their behaviour (Lancione, 2015); hostage-taking; acts of violence, observation of corpses, victims of crimes and emergencies, especially incidents involving the injury or death of children (Bakker & Demerouti, 2017), etc. Q. Hu *et al.* (2017) noted that occupational risk, i.e., the danger of injury, illness, or death, even with full compliance with precautions and all requirements for personal safety, is inherent in police officers as a result of their involvement in hazardous incidents. J.M. Violanti *et al.* (2021) also included participation in shootings and detention of criminals as such hazardous situations.

A series of professional situations, in the context of everyday actions of police officers (patrolling the streets; responding to calls; carrying out a series of measures to protect a physical facility or mass events; detaining delinquents; performing a series of search activities and other intelligence gathering and investigative actions) are inherently subject to information uncertainty. J.M. Violanti *et al.* (2021) rightly described the external professional environment of a police officer as uncertainty. J. Li *et al.* (2019), based on a random sample of 514 male and female Hong Kong police officers, found that constructive coping was positively related to job stress and negatively related to actual engagement.

The need to control one's personal emotional state is not an influential stressor, but the need for emotional detachment was mentioned in the study by R. Wijayanti and H. Fauzi (2020). E. Demou *et al.* (2020) and the interviewed police officers considered the need to suppress some emotions and the conflict between manifested emotions and feelings to be a stressor. This stressor may appear to be attributed to organisational stressors, i.e., those that are not related to the quintessential police functions, but this is not the case, since controlling emotions (e.g., anger) constitutes an essential prerequisite for the productive and objective exercise of police officers' powers. Therefore, this stressor should be attributed to operational stressors that are directly inherent in police functions.

Organisational factors of stress in the work of law enforcement officers

The second group of stress factors includes organisational stressors – factors within the police team that lead to negative emotions and are cognitively understood and assessed by police officers as obstacles to their functioning and/or dispelling them. At the same time, there are differences of opinion among researchers concerning a series of organisational stressors for police officers, sometimes expressing factors that are quite unusual for developed countries, such as discrimination by superiors.

The analysis of scientific publications suggests that the list of organisational stressors is the largest. The first factor is the existing understaffing, overtime, and lack of free time. B.R. Van Gelderen *et al.* (2017) included understaffing in the group of organisational stressors, which correlates with an increase in workload and overtime. According to M. Maurya and M. Agarwal (2018), police officers perceive the existing understaffing and lack of free time as a stress factor. R. Wijayanti and H. Fauzi (2020) found that overwork was one of the principal factors that caused stress among police officers. E. Demou *et al.* (2020) found that lack of free time for family and close friends is a major stressor for police officers. The second factor is shift work. In highly developed Western countries, police officers, according to J. Bertilsson *et al.* (2019) and A. Purba and E. Demou (2019), constantly complain about the existing understaffing, which leads to overtime work, and there are also complaints about shift work and the fact that they are forced to work on night shifts. The third factor is the existing problems with direct and immediate supervisors. There

are a lot of correlated stress factors de facto. For instance, P. Allison *et al.* (2019) included pressure from the leadership, C. Queirós *et al.* (2020) included inadequate leadership style in solving and overcoming existing problems, which further causes stress in the police system, which is characterised by a rigid militarised hierarchy.

A. Purba and E. Demou (2019) rightly pointed out that the phenomenon of stigmatisation and hypertrophied criticism complained about by police officers deserve the status of stressors. Specifically, P. Allison *et al.* (2019) noted the fear of being exposed or the fear that the management will deprive the police officer of their badge and weapon due to stress or personal problems as a stressor. Furthermore, C. Queirós *et al.* (2020) noted excessive administrative tasks and lack of support from the organisation. B. Basinska and A. Dåderman (2019) included a lack of communication among police officers as a stress factor.

The fourth factor is the presence of bureaucracy. Such stressors as bureaucracy and a considerable number of impersonal regulations were mentioned by R. Wijayanti and H. Fauzi (2020), A. Purba and E. Demou (2019), L. Baka (2015). A. Lancione (2015) noted the need to adhere to strict deadlines, while P. Allison *et al.* (2019) noted the considerable number of prohibitions and limited scope of control.

Inadequate financial support is also a significant stressor. In theid study on the satisfaction of Ukrainian police officers with their professional activities, R. Valieiev *et al.* (2019) showed a prominent degree of dissatisfaction among the police officers with their salaries and bonuses for productivity and quality of work. M. Castro *et al.* (2019) rightly pointed out that Brazilian police officers believe that low salaries are a stressor, while L. Baker *et al.* (2023) found that American police officers have an extremely negative perception of the lack of reward for quality work.

Group of external stressors. External stressors originate from outside the police structure. J. Sadulski (2018), B. Bano and P. Talib (2017) referred to external stressors, first of all, as low level of image and support of the police among citizens; L. Baker *et al.* (2023) referred to hostile attitude and negative assessment of police officers by citizens, verbal abuse by citizens. E. Demou *et al.* (2020) noted that the leniency of courts to delinquents is one of the stress factors for police officers. This factor is also recognised as a stressor by Ukrainian police officers.

Group of individual stressors. Personal stressors are individual for each police officer and can be related to the degree and specificity of their professional training, cognitive independence, personal growth, emotionality, stress resistance, emotional burnout, cynicism, maladjustment, sense of unproductivity, depression, deprivation, coping strategies, family relationships, etc. I. Botnarenko (2023) rightly noted that the prevention of psychophysical exhaustion of police officers is one of the leading guidelines of public policy in foreign countries. According to the researcher, prevention of emotional burnout syndrome should be carried out at both the personal and organisational levels. To maintain the professional well-being of police officers, apart from a series of prevention measures aimed at developing mechanisms to prevent and counteract burnout syndrome, which improve the quality of life and professional actions of police officers, the full conviction of the value of personal health and professional health specifically gain particular significance.

The complex geopolitical circumstances in Ukraine create new challenges for law enforcement officers and increase the relevance of ensuring the personal security of police officers. M. Lohvynenko (2024) revealed that the issue of ensuring the personal security of a police officer in the context of military operations is currently not sufficiently addressed in modern scientific research. The researcher showed that in the current scientific discourse, this issue is positioned only in view of the existing shortcomings of standard education (training) programmes for law enforcement officers, which are currently unable to ensure their safety. The lack of a theoretical component, in the researcher's opinion, creates the urgency of finding ways to exercise the right of a police officer to perform their duties safely.

V. Lytvyn and V. Ahmadov (2024), in the context of their empirical study, concluded that since the declaration of martial law in Ukraine, the scope of risks to the life and health of police officers who perform their professional duties under the stressful circumstances of military conflict has greatly expanded, which can be considered a significant collateral damage to the population (Uludag, 2024). This necessitates improving the existing system of professional and psychological support and training for police officers.

It is not without reason that the actions of police officers are classified as hazardous and stressful. At the same time, society hopes that, despite an extremely wide range of stressors, police officers will always be fit for productive and high-quality work. To achieve this, a series of measures should be taken, including the introduction and application of innovative achievements of practical psychology; psychological support for professional and service training; permanent monitoring of the degree, factors, and consequences of stress, while providing adequate psychological care and taking a series of measures to mitigate stressors; adaptation and application in Ukraine of the Police Stress Questionnaire Operational (PSQ-Op) and the Police Stress Questionnaire Organisational (PSQ-Org).

Conclusions

The purpose of this study was to systematically analyse the literature on the influence of stress factors on police officers' professional actions, to analyse the issues and practices of professional stress in police work. The study obtained the findings that form a holistic view of the state of scientific developments on the topic and the key areas of research in this field. Therewith, this allowed systematising the data obtained in empirical studies and make meaningful theoretical generalisations based on them.

Summarising all the above, police officers in the context of performing their professional tasks are exposed to a considerable number of adverse factors, diverse in nature and forms of manifestation, which negatively affect their emotional well-being. The development of professional stress in police officers is determined by the most diverse factors in nature, which are caused by the specific conditions of their professional actions, including rescue of hostages; counteraction to armed delinquents; injury or wounding in the context of professional functions; constant interaction with representatives of criminal subculture; elevated level of personal responsibility for decisions; pronounced degree of stress, danger, and risk of tasks performed; use of police coercion measures in professional actions, etc. Therefore, in this context, professional and psychological capability

becomes crucial as a basis for the prevention of professional stress and the dispelling of maladaptive reactions.

A thorough analysis of the scientific findings of foreign researchers helped to establish that sometimes researchers focused on the methodological foundations of stress analysis, mostly using the transactional model of stress by R.S. Lazarus, the concept of burnout by K. Maslach, and the JD-R model. Most researchers agree on the existence of four groups of stress factors, namely: 1) operational (use of police coercive measures, confrontational interaction with citizens; elevated degree of responsibility and cost of mistakes; encounters with delinquent acts and their victims; service risk and uncertainty of circumstances; the need to control personal emotions), 2) organisational (understaffing, overtime and insufficient free time, shift work, problems with direct and immediate supervisors, bureaucracy, inadequate remuneration), 3) external, and 4) individual.

The findings of the study outlined above can be used as a basis for further research to solve debatable issues related to understanding the stressors of police work, as well as to develop practical recommendations for building stress resilience in police officers.

Acknowledgements

None.

Conflict of interest

The authors of this study declare no conflict of interest.

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Сучасне розуміння стресогенних чинників роботи поліцейських у наукових розвідках

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Анотація. В контексті динамічних перемін в українському соціумі вкрай актуальним питанням є узагальнення міжнародного досвіду запобігання стрес-факторам в діяльності співробітників поліції. Мета дослідження полягала в тому, щоб проаналізувати стан наукової розробки проблематики впливу стресових чинників на професійні учини поліцейських. У контексті наукової розвідки застосовано низку загальнонаукових та галузевих методів, зокрема, методи систематизації аналізу, синтезу, порівняння, метод альтернатив та групування. Вивчення широкого кола наукових джерел допомогло встановити, що професійній діяльності співробітників поліції притаманний напружений й екстремальний кшталт, що у свою чергу призводить до ослаблення захисних функцій організму, утворення розладів психогенного штибу, розвиткові феномену професійної деформації. Під час дослідження також здійснено системний теоретико-методологічний аналіз наукових розвідок стосовно стресових чинників, котрі впливають на діяльність співробітників поліції в процесі реалізації службових завдань. Встановлено, що в науковій літературі питання стресового досвіду є вкрай актуальним. Вченими констатується, що вміння превентувати й подолати його трансформується у тотальну проблему. У статті, на підставі ґрунтовного аналізу наукового доробку учених, схарактеризовано чотири групи стрес-факторів, а саме: операційних; організаційних; зовнішніх; індивідуальних. На основі проаналізованого матеріалу, було запропоновано систему заходів, які сприяли б подоланню високого рівня стресу та зменшення впливу стресових чинників на діяльність співробітників поліції. Результати наукової розвідки можуть бути використані задля подальших наукових розвідок з окресленої проблематики, а також в контексті розроблення практичних рекомендації щодо формування стресостійкості у співробітників поліції

Ключові слова: правоохоронці; стрес-фактор; психологічні чинники професійного стресу; психічне здоров'я; екстремальність; ризиконебезпечні умови діяльності

UDC 343.6
Doi: 10.32518/sals4.2024.248

Соціально-правові студії. 2024. Т. 7, № 4
Social & Legal Studios. 2024. Vol. 7, No. 4

Compliance of criminal legislation of the EU and Ukraine in the field of combating human trafficking with the *acquis communautaire*

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Abstract. The European course of Ukraine and the beginning of negotiations on its membership necessitate the implementation of the EU acquis into national legislation. One of such requirements is to amend the criminal law policy of Ukraine regarding the establishment of liability for human trafficking and bringing its principles closer to the requirements of a series of EU acts, including the Directive No. 2011/36/EU. The absence of the possibility of applying criminal sanctions to legal entities in connection with human trafficking in Ukrainian legislation is a drawback that will prevent Ukraine from obtaining EU membership. In this regard, the purpose of this study was to examine the forms of legal liability of legal entities for trafficking in human beings in the laws of EU Member States and candidate countries and to develop proposals for amending Ukrainian legislation to bring it into line with the requirements of Directive No. 2011/36/EU. The study employed the following methods: methods of analysis and synthesis, comparative legal method, and questionnaire method. The study analysed and summarised the legislation of all EU Member States and EU candidate countries in terms of establishing liability of legal entities for trafficking in human beings; the study also examined the specific features of criminal law means and forms of establishing such liability of legal entities in the above countries (in criminal codes, in separate regulations, or in the absence of such a provision). As a result of the analysis of the empirical base, the study concluded on the necessity of establishing the possibility of holding legal entities liable for trafficking in human beings in the current criminal legislation of Ukraine and proposed several options for implementing the requirements of Directive No. 2011/36/EU. The practical value of the findings lies in the fact that the legislators can further use one of the described options and amend the Criminal Code of Ukraine, enabling not only the application of criminal law measures to legal entities in connection with human trafficking, but also the fulfilment of the EU requirements and acquisition the EU membership for Ukraine

Keywords: criminal liability; criminal law measures against legal entities; legal entities; human trafficking; EU *acquis*

Introduction

By signing the EU-Ukraine Association Agreement (the Agreement), one of Ukraine's obligations is to bring its national legislation in line with the provisions of the EU *acquis* (Article 56(2)(i) of the Agreement) (Association Agreement Between…, 2014). The main purpose of such implementation is to bring Ukrainian legislation closer to EU standards, principles, and practices, which will result in a common legal space with other EU Member States. The signing of the Agreement (2014) served as the basis for legislative reforms aimed at bringing Ukrainian legislation closer to the EU *acquis*. The EU *acquis* itself is a rather complex and extensive system of regulations, the requirements of each of which must be addressed by the candidate state, which is subsequently verified by the Commission.

During the initial assessment of Ukraine's implementation of the EU *acquis*, it was found that the current legislation does not reflect certain tools for combating human trafficking, namely, there is no option to apply criminal law

Suggested Citation **Article's History**: Received: 11.09.2024 Revised: 02.12.2024 Accepted: 23.12.2024

Pasyeka, O., & Vyshnevska, I. (2024). Compliance of criminal legislation of the EU and Ukraine in the field of combating human trafficking with the *acquis communautaire*. *Social & Legal Studios*, 7(4), 248-259. doi: 10.32518/sals4.2024.248.

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to a legal entity for committing human trafficking in its interests or by an entity authorised to act on its behalf. Failure to follow this requirement may be an obstacle to Ukraine's EU membership, which raises the need to explore the ways to stipulate this requirement in the legislation of states that have already become EU members and to formulate proposals to address this shortcoming.

Among modern Ukrainian researchers in the field of criminal law, there are a small number of publications devoted to the harmonisation of national criminal law with the requirements of the EU *acquis*. Specifically, I. Dir (2024) and Yu. Ponomarenko (2022) analysed approaches and methods of standardisation of criminal legislation with EU legislation, among which the researchers distinguished both the method of literal reflection of certain provisions and reflection of the provisions of the EU *acquis*, considering the practices of a particular country (such an approach would require a separate explanation to the Commission regarding the deviation from the provisions of the act).

There are also a few publications by researchers whose subject matter was the implementation of the EU *acquis* in the field of combating human trafficking. Such publications include the study by T. Syroid (2022), who analysed the regulatory framework for combating human trafficking in the EU and noted that stipulating the requirements of these acts in Ukrainian legislation would allow factoring in all the latest practices in this area.

Other publications have mostly focused on the analysis of objective signs of human trafficking. For example, Yu. Zabuha *et al.* (2022) analysed medical exploitation, which the researchers identified as a form of human trafficking. A. Ricard-Guay (2017) and A. Rose *et al.* (2021) proposed to distinguish such a form as domestic exploitation.

However, the area of liability of legal entities for committing criminal offences is also understudied. The doctrine of criminal law of Ukraine has a comprehensive study, including at the monographic level, on the liability of this subject (Grishchuk & Paseka, 2011), but the issue of applying criminal law measures to legal entities for committing human trafficking has stayed largely unaddressed by researchers, which only confirms the relevance of this subject.

The purpose of this study was to examine the EU *acquis* in the field of combating human trafficking, and to analyse the practices of the EU Member States in stipulating the possibility of applying criminal law measures to legal entities for committing human trafficking.

Materials and methods

The study consisted of the following stages: analysis of EU *acquis* legislation in the field of combating human trafficking; a survey among representatives of the legal community; analysis of the legislation of EU Member States regulating the application of criminal law measures to legal entities for committing human trafficking; formulation of conclusions and proposals. The purpose and algorithm of the study determined the choice of research methods. The methods of analysis and synthesis were employed to identify the key act which currently shapes the EU policy in the field of combating human trafficking – Directive of the European Parliament and of the Council No. 2011/36/EU (2011). The comparative legal method was used to analyse the legislation of the EU Member States and EU candidate countries on the possibility of applying criminal law measures to legal entities for committing human trafficking. This helped to identify three forms of stipulating the possibility of applying criminal law remedies to legal entities for committing human trafficking: 1) stipulated in the Criminal Code; 2) stipulated in other legal acts; 3) not stipulated.

The questionnaire method was employed to survey the representatives of the legal community on the need to introduce the above criminal law measures into national legislation and to identify shortcomings in the current legislation on combating human trafficking; the deduction method was used to formulate conclusions. Thus, a survey of 50 respondents was conducted, the selection criterion for which was their activity in the field of criminal justice. The questionnaires were sent to potential respondents both through electronic communication (based on contacts from scientific events) and by posting the questionnaire in the public domain on Facebook. This study was conducted in full compliance with the ethical principles set out in the Law of Ukraine No. 848-VIII "On Scientific and Technical Activities" (2015) (Article 7) and the Regulations on the organisation of scientific activity at Lviv State University of Internal Affairs (2017). All survey participants provided informed consent to take part in the study, and their confidentiality and anonymity were ensured following the established standards.

The survey itself was conducted online using Google Form. The respondents included 2 groups of people with a total of 50 people: 1) theoreticians (researchers and academics) and 2) practitioners (representatives of law enforcement agencies, prosecutors, judges, and lawyers). The first block of the questionnaire concerned the respondents' assessment of the effectiveness of current legislation in terms of combating human trafficking and the application of criminal law measures to legal entities. The second block included a series of questions related to amendments to the Criminal Code of Ukraine (2001) to implement the requirements of Directive of the European Parliament and of the Council No. 2011/36/EU (2011) and to predict the effectiveness of the application of these provisions in practice.

Results

Ukraine's path to EU membership began in 2007 with negotiations between Ukraine and the EU on a new agreement. The next major step in strengthening cooperation was the signing of the political part of the Agreement (2014), and the economic part of the Agreement on 27 June 2014. It was from the moment of its ratification that Ukraine began to perform its obligations, which were supposed to bring the country closer to EU membership.

The text of the Agreement (2014) repeatedly emphasises the significance of compliance of national legislation with the EU *acquis*. Specifically, the Preamble prescribes Ukraine's obligation not only to gradually adapt its legislation to the EU *acquis* in the relevant areas, but also to ensure its effective application. Such legislative approximation is carried out in the areas of economy, trade, energy, transport, crime, migration, and border management, etc. However, before proceeding to the review of acts in the field of combating human trafficking, it is necessary to analyse what exactly the term "EU *acquis*" covers.

The definition of "EU *acquis*", as stated in the Venice Commission's report "The impact of the enlarged European Union on new member states and prospects for further enlargement" (2005), is derived from two EU regulations,

namely Article 2 of the "Act Concerning the Conditions of Accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia, and the Slovak Republic and the Adjustments to the Treaties on which the European Union is founded" (2003) and Article IV-438 of the Draft Treaty Establishing a Constitution for Europe (2004). Summarising the texts of the above-mentioned regulatory provisions, it can be concluded that the EU *acquis* is a set of the following elements: 1) agreements on the functioning of the EU or the Community and other acts related to their activities; 2) declarations, directives, resolutions, and other acts of the EU institutions; 3) inter-institutional agreements; 4) agreements between the Member States concluded based on treaties and acts; 5) judicial practice of the Court of Justice (the Court). An identical definition of the EU *acquis* is given in the Glossary of the European Parliament (Glossary of summaries, n.d.), according to which the EU *acquis* should be understood as a set of common rights and obligations common to all EU Member States, covering the content and principles of EU agreements; legislation adopted based on these agreements; the judicial practice of the Court of Justice; EU declarations and resolutions; legal instruments of the Common Foreign and Security Policy; agreements between the Union and/or Member States, the subject of which is activity within the EU. Thus, the states applying for EU membership are obliged not only to harmonise their national legislation with the EU *acquis*, but also to consider the Court's judicial practice.

One of the areas that needs to be brought into line with the EU *acquis* is combating human trafficking. At the international level, this area has been repeatedly recognised as a priority and one that requires constant strengthening of international cooperation to prevent and investigate human trafficking. As rightly emphasised by A. Voytsihovskyi (2022) and J.J. Van Rij (2023), EU institutions have adopted an increasing number of regulations aimed at introducing new standards, mechanisms for preventing human trafficking, defining the limits of its punishability, etc.

The normative component of the EU *acquis* in the field of combating human trafficking is quite significant in terms of its number, as human trafficking has been repeatedly recognised by the European Council as a serious problem in the EU that requires increased attention, as this crime is characterised by cross-border nature, high level of latency, a large number of cases of its commission and, as a result, a large number of victims. It is the elevated degree of danger of this crime that has led to the adoption of a series of EU directives aimed at combating it, such as Directive of the European Parliament and of the Council No. 2011/36/EU (2011) or Directive of the European Parliament and of the Council No. 2012/29/EU (2012). S. Nordquist's (2024) study of individual EU directives allows stating the effectiveness of the legislation, with the researcher noting that the EU *acquis* in the field of combating human trafficking needs to be reformed and improved, including by addressing new forms of human trafficking and developing relevant means to counteract them.

One of the key acts in the field of anti-trafficking policy is Directive of the European Parliament and of the Council No. 2011/36/EU (2011) (the Directive), which defines the forms of human exploitation, recommendations on the type and amount of punishment for trafficking in human beings, certain aspects of the use of arrest and confiscation of property for committing this crime, compensation for victims of trafficking, certain procedural aspects, etc. The provisions of the Directive relating to the prosecution of legal entities are of the greatest interest for the present study. Thus, Articles 5 and 6 regulate certain aspects of the liability of legal persons for trafficking in human beings. These provisions establish the obligation of the EU Member State (and candidate Member State) to provide for and take the necessary measures to legal persons liable for trafficking in human beings if such a crime was committed by a person in the interests or on behalf of a legal person. According to these articles, criminal law remedies may be applied to legal entities if human trafficking was committed by a person holding a managerial position based on authority 1) to represent such a person; 2) to make decisions on its behalf; or 3) to exercise control within the legal entity. At the same time, a legal person, according to the provisions of Part 4 of Article 5 of the Directive, is any legal person having legal personality under applicable law, except for three categories of entities: states, public authorities, and international organisations.

According to the provisions of Article 6 of Directive of the European Parliament and of the Council No. 2011/36/EU (2011), the sanctions to which a legal entity is subject may be both criminal and non-criminal (e.g., civil or commercial liability measures). Currently, the following types of sanctions against a legal entity are prescribed: 1) deprivation of the right to state benefits or support; 2) deprivation of the right to engage in commercial activities (fixed-term or indefinite); 3) placement under judicial supervision; 4) judicial liquidation; 5) closure of a legal entity (fixed-term or indefinite). Analogous provisions on the liability of legal entities are contained in Articles 4 and 5 of Council Framework Decision No. 2002/629/JHA "On Combating Trafficking in Human Beings" (2002). However, these types of penalties are not mandatory, and it is at the discretion of states to stipulate their list in national legislation. In this regard, the orientation function of this list should be noted since it defines only some types of means of influence on legal entities in case of committing this unlawful act. This suggests the possibility of EU states to define other criminal law measures, and not only, in relation to legal entities within the framework of national legislation.

These provisions, according to sub-section 3 of section 24 of the "The report based on the results of the initial assessment will become the implementation of the EU *acquis*" (A4U, 2022), are the ones that indicate incomplete implementation of the EU *acquis*, since the current criminal legislation of Ukraine does not prescribe the liability of legal entities for unlawful acts related to human trafficking. Admittedly, the grounds for which legal entities may be subject to criminal liability – Part 1 of Article 96-3 of the Criminal Code of Ukraine (2001) – do not mention the commission of the offence under Article 149 of the Criminal Code of Ukraine "Trafficking in Human Beings". At the same time, other provisions, specifically regarding the subjects (legal entities of private or public law) to whom such measures may be applied, and the list of sanctions, generally follow the requirements of the above acts. In the latter case, legal entities may be subject to such criminal law measures as fines, confiscation of property, and liquidation – part 1 of Article 96-6 of the Criminal Code of Ukraine (2001).

Considering the need to establish the position of representatives of the legal community on the effectiveness of legislation in the field of combating human trafficking, the advantages and disadvantages of the prospect of applying criminal law measures to legal entities for committing human trafficking, a survey was conducted, in which 50 respondents took part, including 37 academics and 13 practitioners (law enforcement officers, advocates, and prosecutors).

The survey revealed a lack of unanimity among respondents in assessing the effectiveness of current legislation in the field of combating human trafficking and the effectiveness of the application of criminal law measures to legal entities. Thus, 72% of respondents (36 people) see the need to amend the provisions of the Criminal Code of Ukraine (2001) and current legislation in the field of combating human trafficking, while 28% (14 people) consider the current legislation to meet the needs of practice.

However, the respondents' assessment of the effectiveness of the application of the measures under study to legal entities showed a predominant recognition of their ineffectiveness and inadequacy. The respondents were asked to assess the effectiveness of their application on a 5-point scale, where 1 is absolutely ineffective and 5 is completely effective. Most respondents (27 people) rated it as completely ineffective (Fig. 1). An analogous assessment of this institution was given by P. Fries (2015) in his publication, citing the following reasons for the ineffectiveness of the application of criminal law measures to legal entities: 1) superficial formation of the list of criminal offences for which remedies may be applied to legal entities, which do not include criminal offences that are most often committed in such cases in practice; 2) difficulty in proving the causal link between the act of an authorised person, the functioning of a legal entity, and the relevant consequences of the act; 3) too limited list of remedies that may be applied to a legal entity. To the question "Would it be effective to introduce criminal sanctions against legal entities for committing human trafficking?", 60% (30 people) of the respondents answered in the affirmative, while 40% (20 people) denied such expediency. Respondents were given the opportunity to provide arguments in favour of their position, which are summarised in table 1. Among the potential risks of implementing the requirements of Directive of the European Parliament and of the Council No. 2011/36/EU (2011) to the Criminal Code of Ukraine (2001), the respondents mentioned: 1) problems of proving the commission of a crime in the interests or on behalf of a legal entity; 2) mistakes in law enforcement due to the lack of relevant practice; 3) corruption component; 4) non-application of such a rule in practice.

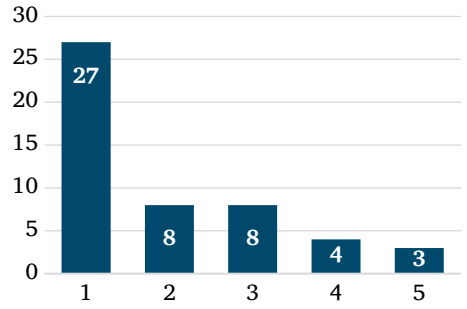

Figure 1. Evaluation of the effectiveness of the application of criminal law measures to legal entities
Source: compiled by the authors of this study based on the survey findings

Table 1. Results of respondents' answers to the question: "Will the introduction of criminal law measures against legal entities for trafficking in human beings be effective?"

Reasons for the objection (40%)	Substantiation for the affirmative answer (60%)
➨ Unnecessary criminalisation of means prescribed in the current legislation of Ukraine is sufficient to combat human trafficking and bring perpetrators to justice ➨ In practice, criminal remedies will not be applied to legal entities	➨ In most cases, legal entities are involved in human trafficking ➨ The number of cases of human trafficking will decrease ➨ Such measures will promote international cooperation and EU accession.

Source: compiled by the authors of this study based the survey findings

The problematic nature of the application of criminal law remedies is not new, and it is primarily conditioned by the specific content of this term, as well as by the established criminal law institutions for defining the elements and signs of a criminal offence. Other researchers also address this feature. Thus, D. Skromnyi (2022) noted that it is quite challenging, considering the provisions of various legal systems, to discuss the liability of legal entities, which are a kind of artificial entities, since the criminal laws of most countries of the world link criminal liability with physical behaviour and the corresponding mental state, which are either impossible to apply to legal entities at all, or if possible, then rather conditionally.

Considering this, the legislation of many countries of the world declares somewhat different models of liability of legal entities for committing criminal offences. The legislation of certain countries establishes options for bringing legal entities to criminal liability, others – to quasi-criminal liability, while others do not allow such a possibility, but the legislation prescribes the possibility of applying criminal law measures to legal entities. The latter option is reflected in Ukrainian legislation. Overall, all models of liability of legal entities for criminal offences make provision for a kind of substitution of actions of a legal entity by actions of its authorised individuals, provided that such actions are committed on behalf of the legal entity or in its interests. The introduction of such liability in the legislation of foreign countries, as well as the possibility of responding to criminal offences committed on behalf of a legal entity by criminal law in the legislation of Ukraine, has become a major step in the fight against crime and the implementation by EU Member States, as well as current or potential candidates for membership, of the requirements of a series of international legal acts and EU acts.

Despite the relative prevalence of liability of legal entities in the criminal legislation of the EU Member States,

its regulation sometimes differs rather substantially, which does not quite correspond to the EU's policy of harmonising the legislation of its members. On the one hand, a Member State or Candidate State factors in the general requirements of a particular directive. On the other hand, despite considering the legal traditions of the development of legislation of a particular state, there are substantial differences.

A review of the legislation of foreign countries, namely the European Union, shows that among the 27 Member States, all but Bulgaria, the legislation establishes the liability of legal entities (Belgium, Croatia, Cyprus, Denmark, Estonia, Finland, France, Greece, Ireland, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Hungary, Sweden, Hungary, Finland, and the Czech Republic) (Table 1). In this case, this refers to those EU Member States whose legislation specifically establishes criminal liability of legal entities. Furthermore, in some EU Member States, the legislation prescribes the so-called quasi-criminal (administrative-criminal) liability of these entities (Austria, Italy, Spain, Germany) (Table 2). Considering the above, 26 out of 27 EU states (96%) stipulate the possibility of applying criminal law measures to legal entities in one form or another (Table 2). At the same time, the possibility of applying criminal sanctions to legal entities for trafficking in human beings is also declared in the legislation of almost all of the listed states (in 25 out of 27 EU states – 93%). At the same time, a direct reference to the possibility of prosecuting a legal entity for human trafficking is contained in the legislation (usually in the criminal code, in rare cases – in a special law) of the following states: Estonia, Ireland, Lithuania, Poland, Portugal, Slovakia, France, and Spain. In other states, the legislator has defined the so-called "open" list of criminal offences, provided that such an act is committed on behalf of a legal entity, in its interests, in its favour, etc. This method of legislative establishment of the list suggests that a legal entity will also be subject to criminal liability for committing human trafficking. Considering the above, the legislation of the EU Member States, except for some of them, generally follows the requirements of the *acquis communautaire* in terms of establishing the liability of legal entities for human trafficking.

Table 2. Criminal liability concerning the legal entities and for the offence of human trafficking in the legislation of EU Member States

No.	Name of the country (EU Member State)	Availability of criminal liability/legal remedies for legal entities	Legal liability of legal entities for trafficking in human beings	Source
1	Austria[1]	+ (separate law on liability of legal entities)	+	Consolidated Federal Law of Austria (2005)
2	Belgium[1]	+ (Article 5 of the Criminal Code)	+	Criminal Code of Belgium (1867)
3	Bulgaria[2]	–	–	Criminal Code of Bulgaria (1968)
4	Greece[3]	+ (a series of laws on liability of legal entities)	–	Criminal Code of Greece (2019)
5	Denmark[1]	+ (Section V of the Criminal Code)	+	Criminal Code of Denmark (2009)
6	Estonia[4]	+ (Article 14 of the Criminal Code)	+ (Article 133(3) of the Criminal Code)	Penal Code of Estonia (2001)
7	Ireland[4]	+ (separate law on liability of legal entities)	+ (separate law on the liability of legal entities for human trafficking)	Companies Act of Ireland (2014); Criminal law (Human trafficking) act of Ireland (2008)
8	Spain[1]	+ (§ 31 bis 1 Criminal Code)	+	Criminal Code of Spain (1995)
9	Italy[1]	+ (separate law on liability of legal entities)	+	Legislative Decree of Italy (2001)
10	Cyprus[1]	+ (Article 2(78) of the Interpretation Act)	+	Criminal Code of Cyprus (1959); The Interpretation Act of Cyprus (1989)
11	Latvia[1]	+ (Article 12 of the CC and Chapter VIII-1 of the CC)	+	Criminal Law of 1995 and the updated Criminal Code of Latvia (1998)
12	Lithuania[4]	+ (Article 20 of the Criminal Code)	+ (Article 147(4) of the Criminal Code)	Criminal Code of the Republic of Lithuania (2000)

Table 2, Continued

No.	Name of the country (EU Member State)	Availability of criminal liability/legal remedies for legal entities	Legal liability of legal entities for trafficking in human beings	Source
13	Luxembourg[1]	+ (Articles 34-39 of the Criminal Code)	+	Penal Code of Luxembourg (1994)
14	Malta[1]	+ (Article 23B of the Criminal Code)	+	Criminal Code of Malta (1854)
15	Netherlands[1]	+ (Article 51 of the Criminal Code)	+	Criminal Code of the Netherlands (1881)
16	Germany[1]	+ (§ 14 of the Criminal Code)	+	Criminal Code of Germany (1871)
17	Poland[4]	+ (separate law on liability of legal entities)	+ (Article 189a)	Law of Poland No. 197 No. 88 (1997), Law of Poland No. 197 (1997)
18	Portugal[4]	+ (Article 11 of the Criminal Code)	+ (Article 160 of the Criminal Code)	Criminal Code of Portugal (2024)
19	Romania[1]	+ (Article 135 of the Criminal Code)	+	Criminal Code of Romania (2009)
20	Slovakia[4]	+ (separate law on liability of legal entities)	+ (§ 3 of the law)	Law of Slovakia No. 91/2016 (2015)
21	Slovenia[1]	+ (separate law on liability of legal entities)	+	Law of Slovenia "On the Liability of Legal Persons for Criminal Acts (LPCPA)" (1999)
22	Hungary[1]	+ (separate law on liability of legal entities)	+	Law of Hungary "On Criminal Measures Against Legal Persons" (2001)
23	Finland[1]	+ (section 9 of the Criminal Code)	+	Criminal Code of Finland (1889)
24	France[4]	+ (Article 225-24 of the Criminal Code)	+ (Articles 225-4-1 to 225-4-9 of the CC)	Criminal Code of France (1992)
25	Croatia[1]	+ (separate law on liability of legal entities)	+	Law of Croatia No. 114/23 (1997)
26	Czech Republic[1]	+ (separate law on liability of legal entities)	+	Law of the Czech Republic No. 146/2011 (2011)
27	Sweden[1]	+ (section VII of the Criminal Code)	+	Criminal Code of Sweden (1965)

Note: [1] – the legislation does not establish a clear list of criminal offences for which a legal entity may be subject to criminal liability but does not exclude the liability of this entity for human trafficking; [2] – the law does not prescribe the possibility of applying criminal law remedies to legal entities; [3] – the law prescribes the possibility of applying criminal law measures to legal entities, but there is no such possibility for human trafficking; [4] – the law clearly defines the possibility of applying criminal sanctions to legal entities for trafficking in human beings

Source: compiled by the authors of this study based on the review of the legislation of the listed countries

Within the framework of the current study, it is also essential to analyse the legislation of the EU Candidate States, including Ukraine. That the legislation of almost all EU Candidate States already prescribes the possibility of applying criminal law remedies to legal entities in case of a criminal offence committed in their favour or by entities authorised to act on their behalf, namely: Albania, Bosnia and Herzegovina, Georgia, North Macedonia, Moldova, Montenegro, Ukraine, Serbia, and Ukraine (Table 3). In most (seven out of eight) states, the legislation prescribes the possibility of applying criminal sanctions to legal entities for trafficking in human beings. In five of the seven states, this possibility is clearly defined by law (Bosnia and Herzegovina, Georgia, Moldova, North Macedonia, Serbia) (Table 3).

In two others (Albania, Montenegro), the legislation does not contain a list of acts for which legal entities will be held liable (Table 3). This means that legal entities can be held criminally liable for any criminal offence, including human trafficking, if all the necessary conditions are met. Only one state, Ukraine, despite the presence of Section XIV-1 of the Criminal Code of Ukraine (2001), which regulates criminal law measures against legal entities, does not prescribe the possibility of their application to this entity for trafficking in human beings. Accordingly, the criminal legislation of Ukraine does not fully meet the requirements of the *acquis communautaire*.

Table 3. Criminal liability for legal persons and for the offence of human trafficking in the legislation of the EU candidate countries

No.	Name of the state (EU Candidate)	Availability of criminal liability/ criminal law measures against legal entities	Legal liability of legal entities for trafficking in human beings	Source
1.	Albania[1]	+ (separate law on liability of legal entities)	+	Law of Albania No. 9754 (2007)
2.	Bosnia and Herzegovina[2]	+ (section XIV of the Criminal Code)	+ (Article 186 of the Criminal Code)	Criminal Code of Bosnia and Herzegovina (2003)
3.	Georgia[2]	+ (Section VI-1 of the Criminal Code, Chapter XVII-1)	+ (Article 143-1)	Criminal code of Georgia (1999)
4.	Moldova[2]	+ (Article 21(3) of the Criminal Code)	+ (Article 165 of the Criminal Code)	Criminal Code of the Republic of Moldova (2002)
5.	North Macedonia[2]	+ (Articles 28a-28c of the Criminal Code)	+ (part 6 of Article 418-a of the CC)	Criminal Code of the Republic of Macedonia (1996)
6.	Serbia[2]	+ (separate law on liability of legal entities)	+ (Article 2 of the Law)	Law on the liability of legal entities for criminal offences (2008)
7.	Ukraine[3]	+ (section XIV-1 of the Criminal Code)	–	Criminal Code of Ukraine (2001)
8.	Montenegro[1]	+ (Article 31 of the Criminal Code, as well as a separate law on liability of legal entities)	+	Criminal Code of Montenegro (2003)

Note: [1] – the legislation does not establish a clear list of criminal offences for which a legal entity may be subject to criminal liability but does not exclude the liability of this entity for human trafficking; [2] – the law clearly defines the possibility of applying criminal sanctions to legal entities for trafficking in human beings; [3] – the law prescribes the possibility of applying criminal law measures to legal entities, but there is no such possibility for human trafficking

Source: compiled by the authors of this study based on the review of the legislation of the listed countries

Considering the above, as well as Ukraine's choice of the European integration vector of its development, it is necessary to bring the provisions of criminal law into line with the EU *acquis* at the legislative level. In the doctrine of criminal law, the necessity of establishing the possibility of applying criminal law measures to legal entities for human trafficking has already been declared in the current Criminal Code of Ukraine (2001). Thus, V.K. Grishchuk and O.F. Paseka (2011), in the proposed wording of Article 2-1 of the Criminal Code of Ukraine (2001), in its part 2, considered it possible to bring legal entities to criminal liability for a fairly wide range of criminal offences, including human trafficking. Accordingly, this idea is not new in the scientific field.

Furthermore, the provisions of the EU *acquis* regarding the application of criminal law measures to legal entities for human trafficking are considered in the Draft of the New Criminal Code of Ukraine (2024), which was developed by the Working Group on the Development of Criminal Law. Thus, Article 3.11.2 (grounds for applying criminal law measures to a legal entity) stipulates that if, due to improper control of an authorised person of a legal entity under private law (since, according to the draft, legal entities under public law are not subject to such measures), one of the crimes against humanity prescribed in Articles 4.4.6, 4.5.4-4.5.9, 4.11.4 is committed, the legal entity will be subject to criminal law measures (item 2, part 1). Therewith, Article 4.4.6 of the document prescribes liability for human trafficking. Moreover, this item does not limit the application of criminal law measures to a legal entity for human trafficking, as item 1 of part 1 of Article 3.11.2 states that one of the grounds for applying criminal law measures to this legal entity is the commission of any of the crimes of 3-9 degrees of gravity by an authorised person on its behalf and in its interests. According to the provisions of the aforementioned Article 4.4.6. of the Draft of the New Criminal Code of Ukraine (2024), human trafficking is a crime

of the 5th degree of gravity, and therefore, if committed by an entity authorised to act on behalf of and in the interests of a legal entity, criminal law measures are also applied. Thus, the authors of the Draft of the New Criminal Code of Ukraine (2024) have addressed the requirements of the EU *acquis* in its provisions, and therefore the proposed changes should be considered by the legislature at least in this part.

Considering the above, it can be assumed that there are at least three possible solutions to this situation. The first solution is to supplement the list of crimes defined in the current version of Article 96-3 of the Criminal Code of Ukraine (2001) (grounds for application of criminal law measures to legal entities) with Article 149 of the Criminal Code of Ukraine (2001), which would allow applying such measures to legal entities. However, in this case, despite Ukraine's compliance with the requirements of the EU *acquis*, such a decision would not cover a comprehensive approach to the regulation of criminal law measures against legal entities, and, accordingly, the solution to one of these problems does not solve the host of others.

The next solution is to define in the provisions of Article 96-3 of the Criminal Code of Ukraine (2001) the entire list of acts for which a legal entity may be subject to criminal liability, including trafficking in human beings. This solution is one of those most commonly found in the criminal legislation of EU Member States, but it is not without its drawbacks, at least considering the fact that criminalisation or decriminalisation of an act will always require amendments to the Article containing the grounds for applying criminal law measures to legal entities.

The last and most optimal solution, which is also reflected in the legislation of a series of EU countries and the Draft of the New Criminal Code of Ukraine (2024), is the possibility of applying criminal law measures to legal entities for committing any of the crimes (in the draft – crimes of 3-9 degrees of gravity), provided that the conditions specified by legislation are met (the act is committed by an authorised person, on behalf of and in the interests of a legal entity, etc.)

Discussion

As noted at the outset, the issue of applying criminal law measures to legal entities, specifically for committing human trafficking, has been understudied. The researchers have repeatedly investigated the EU anti-trafficking policy and its fundamental principles. For instance, E. Symeonidou-Kastanidou (2016) and M.-A. Huemer (2023) analysed the provisions of Directive of the European Parliament and of the Council No. 2011/36/EU (2011), which is the primary focus of this study. These researchers concluded that, despite the fundamental significance of this act for the EU's anti-trafficking policy, it requires major improvement, particularly in terms of criminal law. They noted that the number of crimes committed is not decreasing, while the number of persons (including legal entities) avoiding responsibility is growing. S. Marchetti *et al.* (2022) also concluded that the provisions of the Directive must be improved after analysing 10 years of experience in applying the act in practice. The researchers noted that, although the Directive established a certain framework for combating trafficking in human beings, it has not been effective enough in practical application. They emphasised that stricter measures and control mechanisms must be introduced to ensure that all perpetrators, including legal entities, are effectively held accountable.

In the context of the Lithuanian practices of implementing the provisions of Directive of the European Parliament and of the Council No. 2011/36/EU (2011), A. Urbelionytė (2012) fairly noted that the provisions of this act considerably increase the penalty for committing human trafficking, which is aimed at minimising the commission of this crime. This opinion was also supported by other researchers, including D. Corina (2021), who emphasised the significance of a tougher approach to punishment for this type of crime. Supporting the concept of toughening the punishment, as well as bringing legal entities to criminal liability, it appears even more reasonable to stipulate this provision in the criminal legislation of Ukraine. This will ensure a more effective fight against human trafficking and strengthen the legal basis for bringing to justice those who commit this crime.

In terms of improving the international and national legislation of EU Member States and EU Candidate States, according to V. Shcherbatiuk *et al.* (2024), the scientific potential was most often directed towards the investigation of more precise aspects of human trafficking, namely its forms. Thus, in their study of more common forms of human trafficking, such as sexual, labour, and child exploitation, K. Bracy (2021) and G. Martinho *et al.* (2022), while emphasising the key role of criminalising these acts, also highlighted the shortcomings in the policy to combat them.

Other researchers, such as A. Ricard-Guay (2017), A. Rose *et al.* (2020), and Yu. Zabuha *et al.* (2022), identified new forms of human trafficking, such as medical exploitation and domestic exploitation. Undoubtedly, the study of certain forms of human trafficking helps to understand the vector of development of criminal legislation to combat human trafficking. At the same time, a legal entity may be involved in any form of human trafficking (including those that have emerged in recent years), which only underscores the expediency of developing and introducing provisions on its liability into the national legislation of Ukraine.

Studies also show that the involvement of legal entities in human trafficking is not uncommon. For example, large corporations can be involved in labour exploitation by providing jobs with inadequate working conditions and insufficient pay. In the area of medical exploitation, legal entities may be involved in the illegal donation of organs or the exploitation of vulnerable groups for medical purposes. Analogously, in cases of domestic exploitation, private employment agencies may act as intermediaries, facilitating the labour exploitation of domestic workers.

Thus, considering the expansion of forms of trafficking in human beings and the involvement of legal entities, the need to improve legislation and include provisions on the liability of legal entities is evident, as emphasised by S. Rodríguez-López (2017), S. Marchetti *et al.* (2022), and T. Muhammad Safar *et al.* (2024). This will ensure a more comprehensive approach to combating human trafficking and help bring all perpetrators to justice, regardless of their status or form of involvement in the crime. The most relevant to the topic of this the present study is the monographic study by V.K. Grishchuk and O.F. Paseka (2013), who repeatedly emphasised the necessity of expanding the list of criminal offences (as of the date of publication – crimes) for which criminal law remedies can be applied to a legal entity by officials. Researchers proposed to include human trafficking (Article 149) as one of such crimes in the Criminal Code of Ukraine (2001). Notably, these studies consider a wider

range of issues that only partially include the subject matter of this study. At the same time, it is advisable to support such proposals of scientists because human trafficking must be included in the list of criminal offences for which legal entities may be subject to criminal law measures. Furthermore, this will enable Ukraine to perform all the requirements for adapting its legislation to the requirements of the EU *acquis* and to become a member in the future.

Conclusions

The impossibility of applying criminal law measures to legal entities for committing human trafficking in Ukrainian legislation is a major obstacle to Ukraine's EU membership. This study analysed the approaches to establishing liability of legal entities for human trafficking in the laws of EU Member States and Candidate States.

The study of the criminal legislation of the EU Member States and candidate countries, including the legislation of Ukraine, in terms of establishing the possibility of applying criminal sanctions to legal entities for human trafficking, showed that it generally follows the requirements of the *acquis communautaire*. Except for certain states (specifically Belgium), most EU Member States and candidate states stipulate the possibility of applying criminal law measures to legal entities, including for human trafficking.

It was found that among all the EU Candidate States, only Ukraine has not performed the requirements of the EU *acquis* in this part, since the Criminal Code of Ukraine (particularly, Section XIV-1) does not prescribe the possibility of applying criminal law measures to legal entities for human trafficking. This issue is an essential aspect of harmonising Ukrainian legislation with European standards. The necessity of establishing such remedies in the Criminal Code of Ukraine, as well as the benefits of this legislative solution, were confirmed by the results of a survey involving experts (theoreticians and practitioners). Most respondents stressed the relevance of introducing liability for legal entities, as this would contribute to a more effective fight against human trafficking, ensure adequate punishment for crimes committed, and strengthen Ukraine's international standing as a state governed by the rule of law and ready for EU integration.

To some extent, the issue of applying criminal sanctions to legal entities for human trafficking is regulated in the New Criminal Code of Ukraine. At the same time, the presence of this provision in the draft law will unfortunately not have any consequences when assessing the adaptation of Ukrainian legislation to the EU acquis, as only existing regulations are subject to assessment.

The purpose of the analysis of European legislation WAS to make a comparative analysis of different regulatory models and, based on this, to determine the best model of Ukraine's compliance with the requirements of Directive No. 2011/36/EU in the implementation of the EU *acquis* and to harmonise it with EU standards. Thus, the study proposed that national legislation (the Criminal Code of Ukraine) should establish general conditions for the application of the investigated remedies to legal entities, such as the commission of a criminal offence in the interests of a legal entity or by a person authorised to act on its behalf, which will enable the application of these remedies to legal entities.

Promising areas for further research include an in-depth comparative analysis of legislative approaches to criminal liability for both human trafficking and other criminal offences, an assessment of the implementation of the requirements of the EU *acquis* into Ukrainian legislation, as well as a study of the effectiveness of the application of these regulatory frameworks in practice, considering the challenges and prospects for their further improvement to harmonise with European standards.

Acknowledgements

None.

Conflict of interest

The authors of this study declare no conflict of interest.

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Відповідність кримінального законодавства держав ЄС та України в сфері протидії торгівлі людьми до *acquis communautaire*

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Анотація. Європейський курс України та початок перемовин щодо набуття нею членства зумовлює необхідність впровадження *acquis* ЄС в національне законодавство. Однією з таких вимог є внесення змін в кримінально-правову політику України щодо встановлення відповідальності за вчинення торгівлі людьми і наближення її засад до вимог ряду актів ЄС, одним з яких є Directive No. 2011/36/EU. Відсутність в законодавстві України можливості застосування щодо юридичних осіб засобів кримінально-правового характеру у зв'язку із вчиненням торгівлі людьми є недоліком, що стане перепоною отриманні Україною статусу держави-члена ЄС. У зв'язку із цим метою цього дослідження було вивчення форм закріплення в законодавствах держав-членів та держав-кандидатів у члени ЄС відповідальності юридичних осіб за вчинення торгівлі людьми та розроблення пропозицій щодо внесення змін в законодавство України з метою приведення його до відповідності вимог Directive No. 2011/36/EU. Протягом дослідження використовувались наступні методи: методи аналізу і синтезу, порівняльно-правовий метод, метод анкетування. В межах статті було проаналізовано та узагальнено законодавство всіх країн-членів ЄС та країн-кандидатів в члени ЄС в аспекті закріплення відповідальності юридичних осіб за вчинення торгівлі людьми; було досліджено особливості кримінально-правових засобів та форм закріплення такої відповідальності юридичних осіб в наведених країнах (в кримінальних кодексах, в окремих нормативно-правових актах або відсутність такого закріплення). В результаті аналізу емпіричної бази було зроблено висновок про необхідність встановлення в чинному кримінальному законодавстві України можливості притягнення до відповідальності юридичних осіб за вчинення торгівлі людьми та запропоновано декілька варіантів щодо впровадження вимог Directive No. 2011/36/EU. Практична цінність результатів обумовлена тим, що подальше використання законодавцем одного з описаних варіантів та внесення змін до Кримінального Кодексу України дозволить не тільки застосовувати до юридичних осіб засоби кримінально-правового характеру у зв'язку із вчиненням торгівлі людьми, а й виконати вимоги ЄС та набути Україною статусу держави-члена ЄС

Ключові слова: кримінальна відповідальність; засоби кримінально-правового характеру до юридичних осіб; юридичні особи; торгівля людьми; *acquis* ЄС

UDC 342.9:344.3
Doi: 10.32518/sals4.2024.260

Соціально-правові студії. 2024. Т. 7, № 4
Social & Legal Studios. 2024. Vol. 7, No. 4

Conceptual principles of ensuring the rights of servicemen in administrative proceedings

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Abstract. The relevance of this topic is stipulated by the need to improve judicial mechanisms for the protection of the rights of servicemen, taking into account changes in legislation related to martial law, the need to harmonise national legislation with international standards, and the growing public demand for transparent protection of the rights of servicemen. The purpose of this study was to comprehensively examine the approaches to ensuring the rights of servicemen in the administrative proceedings. The study used a comparative method of analysing the legislative provisions and court practice governing the administrative protection of military personnel's rights. A systematic analysis of court decisions in cases involving military personnel is carried out. The author identifies the main obstacles to effective protection of the rights of this category of persons, among which is the lack of special procedural guarantees. Recommendations are made to improve the legal framework to enhance the level of judicial protection of the military. The study also analysed the international experience of such countries as the United States, the United Kingdom, Canada, Turkey, and Israel. The study showed that in the United States, the rights of the military are protected through specialized military courts, as well as through civilian courts, where the rights of military personnel are protected under human rights laws and federal legislation. In the UK and Canada, case law actively promotes the protection of the military in administrative proceedings.

Suggested Citation

Article's History: Received: 08.09.2024 Revised: 26.11.2024 Accepted: 23.12.2024

Shvets, D., Radchuk, A., Korniienko, M., Galaj, A., & Bilak, N. (2024). Conceptual principles of ensuring the rights of servicemen in administrative proceedings. *Social & Legal Studios*, 7(4), 260-271. doi: 10.32518/sals4.2024.260.

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In Turkey and Israel, the existence of military courts allows for prompt resolution of discipline and service issues. At the same time, the protection of the rights of servicemen in these countries is based on national human rights legislation, and only the member states of the Council of Europe that have ratified the European Convention on Human Rights take into account the precedents of the European Court of Human Rights in their case law. The findings of the study confirmed the importance of adapting the best international practices to build an effective system of administrative judicial protection of the rights of servicemen in Ukraine, in particular through the implementation of international standards and the creation of specialized legal institutions for the military

Keywords: disciplinary liability; social protection; appeal against decisions; territorial centre for recruitment and social support; protection against discrimination; martial law

Introduction

Ensuring the rights of servicemen in the current situation is of particular importance, given the threat to Ukraine's national security and stability caused by the war. The armed forces are crucial for national defense, protecting the country's sovereignty and territorial integrity. The military, as a special group of citizens, must comply with additional service restrictions and norms due to the specifics of their activities and the increased risk of performing their duties in wartime. This, in turn, creates the need to introduce special legal guarantees and protective mechanisms, especially in situations where the military face administrative disputes in the course of performing their duties.

The existing legal framework does not always fully cover the aspects of protecting the rights of this category of citizens in administrative proceedings. The procedure for reviewing administrative cases involving military personnel often does not take into account the specifics of their activities, which leads to restrictions on access to judicial protection. In addition, military personnel often have difficulties in appealing against decisions, actions, or inaction of state authorities and their officials related to social security, labour relations, the implementation of benefits, etc. (Spytska, 2023). Effective protection of the rights of servicemen in administrative proceedings is not only a matter of observance of fundamental human rights, but also an important factor for ensuring proper morale and combat capability.

The work of A.A. Radchuk (2023) is devoted to the protection of the rights of servicemen in administrative courts of Ukraine, which has become increasingly important since the beginning of Russia's large-scale aggression against Ukraine. The author emphasizes the need for a comprehensive approach to the legal protection of servicemen, including the establishment of specialized military courts, improvement of legislation and consideration of international experience, which will help to improve the effectiveness of social guarantees for servicemen and ensure law and order in Ukraine. The study by V. Teremetskyi *et al.* (2024) focuses on the social protection of the rights of servicemen through administrative proceedings. The study points out the obligation of the authorities to prove the legitimacy of their actions, the possibility of applying exemplary decisions, exemption of plaintiffs from court fees and simplified or written consideration of cases. The study by D.A. Schlueter and L. Schenck (2020) considers the possibility of limiting the discretionary powers of unit commanders to open cases and initiate litigation in cases of serious violations. The authors conclude that such a restriction is a necessary step to minimize potential conflicts of interest, ensure fairness and uphold the rule of law in military structures.

The legal aspects of the restriction of fundamental rights and freedoms of the military during martial law in Ukraine, as well as the regulations governing additional guarantees and restrictions on their rights, were studied by Y. Poltiev and L. Medvid (2023). The study concluded that additional guarantees and restrictions are needed due to the specifics of military service. A similar issue was investigated by L.I. Mazurenko (2023), who focused on the analysis of the problems of social security of servicemen and their families in Ukraine, in particular in the context of fulfilling obligations after Ukraine's accession to the EU and the armed aggression of the Russian Federation.

The risks of discharging servicemen diagnosed with chronic diseases are investigated by D.A. Nelson *et al.* (2022). The authors conclude that such diseases increase the likelihood of dismissal, which indicates possible discrimination on the basis of health status, and also requires the use of administrative and legal mechanisms to protect the rights of servicemen. A similar issue was addressed by N. McClean (2021). The author investigated the dismissal of military personnel for minor violations related to mental health issues, which disproportionately affects military personnel of darker skin colour and complicates their reintegration into civilian life. The author emphasizes the need for reforms that would take into account the collateral consequences of dismissal due to mental health problems, which is related to the topic of this study on the need for fair consideration of such cases.

The analysed works of the authors cover key aspects of legal protection of military personnel under martial law. The studies cover the issues of limiting and guaranteeing the constitutional rights of the military, social protection, legal support in criminal proceedings, as well as harmonization of national legislation with the standards of the EU and the North Atlantic Treaty Organization (NATO). The authors emphasize the imperfections of the existing mechanisms, the need to improve them, and the establishment of military justice and the introduction of specialization of lawyers. In general, the authors highlight the importance of ensuring a comprehensive approach to the protection of the rights of the military through the development of concepts and adaptation of international standards.

This study provided a comprehensive analysis of the conceptual approaches to ensuring the rights of servicemen in administrative proceedings. To achieve this goal, the following tasks were identified: to analyse the key legal documents regulating administrative proceedings against military personnel in Ukraine, the USA, the UK, Canada, Turkey, and Israel; to identify challenges and deficiencies in the legal processes related to safeguarding the rights of military personnel in the specified countries.

Materials and methods

The study of the conceptual framework for ensuring the rights of servicemen in administrative proceedings was

based on a comparative legal analysis of the legislation of Ukraine, the USA, the UK, Canada, Turkey, and Israel. The main focus of the study is on the use of the comparative legal method, which included a systematic study of legal acts, court practice and administrative procedures in these countries. The key criteria for comparison were: organization of administrative proceedings, peculiarities of regulation of disciplinary and administrative disputes, rights, and obligations of servicemen in court proceedings, peculiarities of military justice, influence of international law and standards. The study used additional methods, in particular: system analysis to study the legal framework of each country, and the method of legal comparativism, which focuses on comparing legal systems and approaches of different countries to identify common features and unique solutions in the regulation of administrative proceedings against military personnel.

For the purpose of this research, the author used the legal acts of Ukraine relating to the conceptual framework of the rights of servicemen in administrative proceedings. The Constitution of Ukraine (1996) was used to analyse the content of the fundamental rights and freedoms of servicemen, which helped to reveal the essence of constitutional guarantees and principles of protection of the rights of servicemen within the general system of human rights. The Law of Ukraine No. 2011-XII "On Social and Legal Protection of Servicemen and Members of Their Families" (1991) was used to analyse the regulation of social protection of servicemen and members of their families, which helped to reveal the content of legal guarantees, support mechanisms and social benefits. The analysis of the provisions of the Law of Ukraine No. 3551-XII "On the Status of War Veterans and Guarantees of Their Social Protection" (1993) allowed studying the issue of benefits for war veterans and guarantees of their social protection. Also, the Law of Ukraine No. 2232-XII "On Military Duty and Military Service" (1992) was studied and the concept of military duty was analysed, which helped to determine the legal status of persons performing military service and their obligations to perform their duties.

In addition, the Code of Administrative Procedure of Ukraine (2005) was analysed in terms of opening, suspending and closing of lawsuits, which helped to understand the peculiarities of judicial protection of the rights of servicemen and their ability to protect their rights through administrative courts. Also, the Law of Ukraine No. 551-XIV "On the Disciplinary Statute of the Armed Forces of Ukraine" (1999) was analysed, namely the concept of military discipline and duties, which helps to reveal the rules of conduct, relationships, and responsibilities of servicemen in the conditions of service.

In addition to Ukrainian legislation, the legal acts of the United States, the United Kingdom, Canada, Turkey, and Israel were also analysed, as these countries have a developed system of legal protection of servicemen and extensive experience in regulating their rights, which allows comparing different approaches and standards in this area. The Armed Forces Act of Great Britain (2006) helped to define the basic principles of regulating the legal status of military personnel within military jurisdiction and organizing disciplinary procedures. The Human Rights Act (1998) provided an opportunity to assess the integration of international human rights standards into the UK domestic legal system, in particular in relation to military personnel. The National Defence Act of Canada (1985) was used to study the responsibility of military courts and the guarantee of defence rights within the Canadian system of military jurisdiction.

Law of Turkey No. 353 "On Establishment of Military Courts and Tribunal Procedure" (1963) allowed analysing the peculiarities of the functioning of military courts and their role in ensuring the rights of military personnel. The analysis of Israeli Law No. 5715 "Military Justice Law" (1955) allowed studying the specifics of disciplinary and criminal procedures and to identify basic rights, including protection from discrimination. In the United States, the rights of persons liable for military service in the field of administrative justice were studied through the analysis of the Constitution of the United States (1787), the Administrative Procedure Act (1946), and the Uniform Code of Military Justice (2019). The relevant legal acts allowed defining the mechanisms for appealing disciplinary decisions, expanding the ability of servicemen to apply to federal courts and the US Military Court of Appeals to review decisions.

In addition, precedents of court cases were used for a deeper understanding of the application of the law on the protection of the rights of servicemen in administrative proceedings: Case No. 38184/03 "Matyjek v. Poland" (2007), Cases No. 71412/01 and No. 78166/01 "Behrami and Behrami v. France and Saramati v. France, Germany, and Norway" (2007), Case No. 82-167 "Chappell v. Wallace" (1983), Case "Engel and Others v. the Netherlands" (1976), Case No. 84-1097 "Goldman v. Weinberger" (1986), Case No. 10-56634 "Log Cabin Republicans v. United States, *et al.*" (2011), Case No. 71-2408 "Mindes v. Seaman" (1971), Case No. 14-556 "Obergefell v. Hodges" (2015), Case No. 4870/02 "Gül and others v. Turkey" (2010), Case No. 22103 "R. v. Généreux" (1992), Case No. 35755 "R. v. Moriarity" (2015), Case "Smith and others v. Ministry of Defence" (2013). The analysis of judicial practice helped to identify the peculiarities and shortcomings of law enforcement, as well as the main problems faced by servicemen in exercising their rights. The precedents made it possible to assess the impact of the current legislation on the protection of social and legal guarantees for military personnel and their families.

The study also used statistics on court decisions of Ukraine for the period from 24 February 2022 to June 2023 (Judiciary of Ukraine, 2024), which made it possible to assess the dynamics and nature of cases related to the protection of the rights of servicemen. The statistics allowed us to identify the most common types of court cases, their outcomes and existing problems of law enforcement.

Results

In today's environment, protecting the rights of servicemen and women is especially important given the growing risks and challenges they face. The state and society should provide reliable legal support for the military, in particular through the experience of human rights organizations, the system of free legal aid and hotlines of state institutions. However, significant shortcomings have been identified in the functioning of the military justice system, which negatively affects the ability to ensure the rights of servicemen. High-quality and transparent military justice is the basis not only for protecting the rights of the military, but also for maintaining the combat capability of the army and the trust of citizens (Herrasti *et al.*, 2021). One of the available remedies for servicemen is the hotlines of the Ministry of Defence of Ukraine, the Ukrainian Parliament Commissioner for Human

Rights, the government, and the Territorial Defence Forces Command, which allow them to file complaints, suggestions, or requests. In addition to state initiatives, NGOs play an active role in providing legal advice and assistance to the military in legal support of cases.

An analysis of the register of court cases since 24 February 2022 shows that 65% of servicemen and women apply for administrative issues related to unauthorized leaving of the unit, failure to report to the territorial recruitment centre, dismissal from service, medical issues and appeals against decisions of the military medical commission, as well as social and pension payments (Judiciary of Ukraine, 2024). Currently, there is no procedure that effectively informs servicemen about their rights and provides protection if necessary. Contacting the hotline of the Ministry of Defence of Ukraine usually involves providing advice or clarification, and in complex cases, processing within 30 days with further referral to the relevant authorized structure. The absence of a special structure for the systematic resolution of legal issues of the military indicates the insufficient effectiveness of the existing system of protection provided for by Law of Ukraine No. 551-XIV "On the Disciplinary Statute of the Armed Forces of Ukraine" (1999).

Another problem is the social hierarchy among military personnel, which creates privileges for certain categories. For example, legal services at military units are focused on supporting the command, due to their professional dependence on it (Yaselska, 2022). This limits the possibilities for independent legal assistance to military personnel who fear potential consequences for their statements. As a result, many military personnel are forced to rely on personal contacts instead of centralised legal support.

Ukrainian military personnel, including those in the Armed Forces, Security Service, Border Guard Service, and National Guard, face potential administrative and criminal liability. However, the penalties imposed may not always align with the actual harm caused by their actions (Dashkovska, 2023). Furthermore, the administrative process lacks transparency and often fails to consider the unique realities of military service, such as prolonged medical treatment or health-related limitations (Volodenkova *et al.*, 2023).

The issue of protecting the rights of servicemen and women, in particular members of vulnerable groups such as LGBTQI+, is of particular importance in the modern military environment. The right to administrative protection for such categories of military personnel is fundamental, as the rejection and discriminatory practices they often face can significantly affect their professional development and the morale of military units. N.V. Shelever (2024) notes that commanders are limited to transferring affected soldiers to other units, while perpetrators go unpunished. This indicates structural deficiencies in the current approaches to protecting the rights of servicemen and women in Ukraine and highlights the importance of establishing effective administrative protection mechanisms to prevent such situations.

One of the most important ways of protecting the rights of servicemen is through the judicial process, which is designed to ensure an objective and impartial consideration of cases concerning the legal status of the military. Administrative proceedings are focused on resolving a wide range of issues related to social guarantees, labour rights and pensions for servicemen (Mikhnevych *et al.*, 2023). However, the constant increase in the number of administrative appeals in Ukraine, which exceeded 20,000 cases in 2023 alone, places new demands on the system of legal support for the military, emphasizing the need for conceptual changes in approaches to the judicial review of such cases (Judiciary of Ukraine, 2024). The main problem is the overloading of administrative courts, which leads to delays in the consideration of cases, the lack of specialized procedures for the prompt resolution of military issues, and the insufficient number of qualified specialists who understand the specifics of military service. This requires reforming administrative justice to create more effective mechanisms to protect the rights of servicemen, such as appealing to courts of general jurisdiction.

The Constitution of Ukraine (1996) (Article 55) enshrines the right to judicial protection of every citizen, including military personnel. However, in practical terms, this right is not always fully realised due to insufficiently detailed provisions on procedural support in administrative proceedings for the military. In particular, the Law of Ukraine No. 2011-XII "On Social and Legal Protection of Servicemen and Members of Their Families" (1991), although defining social guarantees, does not contain provisions that take into account the specifics of military service in terms of access to justice in the context of hostilities or mobilisation. The provisions of the Code of Administrative Procedure of Ukraine (2005) are often inconsistent with the provisions of specialized legislation, such as the Law of Ukraine No. 2232-XII "On Military Duty and Military Service" (1992). For example, Article 12 of this law guarantees military personnel the right to defend their interests in accordance with the established procedure, but the Code of Administrative Procedure of Ukraine does not contain special procedures for the prompt consideration of cases of military personnel in crisis situations. This inconsistency limits the effectiveness of judicial protection of the military in real life.

It is also worth paying attention to the compliance of by-laws with the provisions of the Constitution of Ukraine (1996) (Article 55). For example, certain provisions of the Law of Ukraine No. 2011-XII "On Social and Legal Protection of Servicemen and Members of Their Families" (1991), which restrict the right of military to family leave unless it is provided for in a specific situation. This is contrary to the principle of equality of opportunity enshrined in the Constitution of Ukraine (1996) and can be seen as a violation of human rights. These gaps create risks of legal arbitrariness, especially in cases where the by-laws are not consistent with constitutional principles or are applied selectively, which requires amendments to address such gaps and ensure legal balance.

In addition to national legislation, the legal status of servicemen is influenced by international standards. In particular, the European Convention on Human Rights (1950) (Article 6) and the case law of the European Court of Human Rights provide guarantees of a fair trial for the military. Among such cases is Case No. 38184/03 "Matyjek v. Poland" (2007). In this case, a serviceman appealed against a decision that restricted his access to court because of his status. The Court determined that the restriction of access to justice for the military must be justified and not contradict the principles of proportionality and legal certainty. The Court noted that the exclusion of military personnel from the general jurisdiction of civilian courts must be carefully justified and provide for alternative legal mechanisms (paragraph 48 of the judgment). This case confirms that the rights of the military to access justice must be protected even in the

specific circumstances of their service. This is a benchmark for reforming administrative justice in countries, including Ukraine, to ensure effective access to judicial protection for military personnel.

Another example is the Case "Engel and Others v. the Netherlands" (1976). In this case, it was determined that disciplinary measures applied to the military should not be arbitrary. The Court emphasised the need to comply with procedural guarantees in disciplinary cases. The Court noted that "Military courts must ensure the rights to a defence and a fair hearing, especially where disciplinary measures may have serious consequences for the military personnel" (paragraph 82 of the judgment). This judgment is relevant for Ukraine as it highlights the need to improve the by-laws governing disciplinary sanctions and to introduce effective judicial oversight of their application. Another example is Cases No. 71412/01 and No. 78166/01 "Behrami and Behrami v. France and Saramati v. France, Germany, and Norway" (2007), which concerned the responsibility of the military in international operations and the determination of the jurisdiction of the courts over their actions. The Court ruled that even in difficult conditions of military service, international human rights standards must be observed. "The rights of military personnel and civilians during international missions must be ensured within the jurisdiction of the respective States" (paragraph 147 of the judgment). The judgement sets standards for the protection of the rights of military personnel performing their duties outside the national territory.

Taking into account the precedents of the European Court of Human Rights, Ukrainian legislation and administrative proceedings should ensure: real access of the military to judicial protection, including the possibility of appealing against disciplinary sanctions; proportionality of measures applied to the military with procedural guarantees; adaptation of national norms to the standards established by international case law.

Thus, the consolidation and systematisation of relevant legal acts play an important role in building a coherent system of protection of the rights of servicemen and increasing the efficiency of the functioning of military justice in Ukraine. According to the provisions of Article 294 of the Code of Ukraine on Administrative Offences (1996), a person subject to an administrative penalty has the right to appeal the judge's decision within ten days of its adoption. If the appeal is filed later than the deadline, the appellate court returns it to the applicant, unless the applicant requests an extension of the deadline or if such an extension is denied. In this case, if there are valid reasons justifying the missed deadline, the applicant may file a motion for its extension, which is usually granted by the appellate courts. The above provisions of the Code of Ukraine on Administrative Offences (1996) demonstrate the mechanism for appealing against administrative penalties, which is a key aspect for the implementation of the right to a fair trial enshrined in both national legislation and international legal standards (in particular, Article 6 of the European Convention on Human Rights (1950).

Since the beginning of the full-scale war unleashed by Russia against Ukraine, there has been an increase in the number of administrative offences among military personnel. In 2023, the courts heard more than 20,000 cases related to military offences, due to an increase in the number of military personnel. The number of appeals remains low, with only 869 cases in appeal proceedings according to court statistics, as servicemen mostly plead guilty to administrative violations (Judiciary of Ukraine, 2024). In addition, decisions on issues related to negligent performance of official duties in Ukraine often do not sufficiently explain the concept of "negligence", which makes it difficult to objectively analyse the circumstances of the case and the fairness of the decision. Court decisions in cases involving negligent performance of duties by military personnel demonstrate deficiencies in the substantiation of the concept of "negligence", which complicates objective analysis and may affect the fairness of the decisions. For example, in the Ruling of the Malynovskyi District Court of Odesa in Case No. 521/5259/22 (2022), a serviceman was found guilty of negligent performance of duty. However, the court's reasoning was limited to the guilty plea and the protocol on administrative offence, without a detailed analysis of the circumstances that could have influenced his behaviour, such as the level of training, stress factors or the duration of service during a special period.

A similar situation is reflected in the Decision of the Tysmenytsia District Court of Ivano-Frankivsk Region in Case No. 352/632/22 (2022), where falling asleep on duty was qualified as negligent attitude to service in a special period. However, the concept of "negligence" in the decisions did not receive a clear definition or assessment criteria that could take into account subjective (psychophysical state) and objective factors (organization of service, duty regime).

The lack of detail in the concept of "negligence" creates a risk of subjective interpretation of offences, complicating the unity of judicial practice. This points to the need to develop a regulatory definition of the concept and create unified criteria that will help ensure the objectivity and fairness of court decisions. The data in table 1 indicate a high level of administrative offences in the military sphere, highlighting the need to further improve approaches to the regulation and judicial review of such cases.

Table 1. Statistics of court decisions for the period from 24 February 2022 to June 2013

Article.	Number of resolutions
Article 172-10 (Refusal to comply with the lawful demands of a commander)	1105
Article 172-11 (Unauthorised leaving of a military unit or place of service)	7964
Article 172-12 (Negligent destruction or damage to military property, with material liability)	26
Article 172-15 (Negligent attitude to military service)	2974

Source: Judiciary of Ukraine (2024)

International experience demonstrates the effectiveness of different approaches to protecting the rights of servicemen. In order to study effective practices, it is important to pay attention to the experience of such countries as the USA, the UK, Canada, Turkey, and Israel. Despite the differences in historical development, socio-cultural and political

conditions, the analysis of a wide range of approaches to military justice in these countries can provide Ukraine with useful guidelines for the development of its own system. The study of different legal traditions and models helps to identify common features of military justice that can be used to develop relevant standards and practices in Ukraine.

The United Kingdom, Canada, the United States, and Turkey are all members of the North Atlantic Treaty Organization (NATO). Notably, the UK, the US, and Canada were among the founding members of NATO, while Turkey joined later in 1952. However, NATO membership mainly promotes military cooperation, and military justice standards are usually based on the domestic legislation of each country, rather than on uniform NATO norms. This leads to individual peculiarities of military justice in each of the states under consideration, in accordance with their national traditions.

The legal status of servicemen and women in different countries varies significantly depending on legal traditions and political conditions (Abdrasulov *et al.*, 2024). In the United States, this status is determined by the Uniform Code of Military Justice (2019), in particular Article 31 (10 U.S.C. §831), which guarantees the right of military personnel to legal defence and prohibits coercion to self-incrimination. It is important that the judicial institutions, namely: Court of Appeals for the Armed Forces, are independent and ensure transparency of decisions. In addition, the U.S. Court of Military Appeals is the highest court of law for military disciplinary cases (Garibian *et al.*, 2020). A similar approach can be observed in Canada, where the National Defence Act of Canada (1985), in Article 249, provides for the possibility of appealing decisions of military courts to the Supreme Court. The court specializes in reviewing disciplinary violations, administrative complaints, and oversees the implementation of military norms and standards (Mandle & Pearson, 2023). This indicates a high level of independence of judiciary. In contrast, in Turkey, control over military affairs is exercised by internal bodies through the Turkish Law No. 353 "On Establishment of Military Courts and Tribunal Procedure" (1963), which is emphasised in Article 112, which states that orders are binding without the right to appeal. This approach limits the ability of the military to defend their rights.

Conflict resolution mechanisms in different countries show significant differences. In the United Kingdom, under the Armed Forces Act of 2006, Article 42 establishes investigative procedures that meet civilian law standards. This ensures civilian oversight of military affairs, as well as the possibility of recourse to the ombudsman. In Turkey, however, military affairs remain closed to external bodies, making independent monitoring impossible and restricting the rights of those serving.

Compliance with international standards also varies. Israel, based on the Military Justice Law (1955), enshrines in Article 4 the right of the military to appeal decisions to the Supreme Court, which ensures that the principles of justice are upheld. The Israeli legal system allows soldiers to appeal decisions of lower military courts to the Military Court of Appeal in matters of discipline, dismissal, and other service matters. In cases of serious human rights violations or issues of constitutional significance, soldiers can appeal to the Israeli Supreme Court, which acts as the highest court and often guarantees their rights in complex or controversial situations (Aizenberg, 2022). In their decisions, Israeli courts often refer to international jurisprudence on the rights of the military, in particular the precedents of the European Court of Human Rights, to ensure that the protection of rights is in line with international standards (Clifford, 2019). Canada also demonstrates the integration of international law, in particular through the mechanisms for monitoring the physical and psychological health of military personnel provided for in the articles of the National Defence Act of Canada (1985). Turkey, on the other hand, faces criticism from international organizations due to the closed nature of its system and cases of human rights violations.

The approach to discipline in the United States and Turkey illustrates two opposing models. In the United States, disciplinary measures are governed by transparent procedures under the Uniform Code of Military Justice (2019), which guarantee defence rights and legal assistance to the military. Instead, in Turkey, strict requirements for the execution of orders and internal control, as enshrined in Article 112 of Turkish Law No. 353 "On Establishment of Military Courts and Tribunal Procedure" (1963), make the system less flexible and prone to abuse. Thus, Turkey demonstrates an example of strict control, while the United States emphasised a balance of discipline and military rights. This analysis highlighted that the integration of the principles of judicial independence, transparency of procedures and international standards, as in the US, Canada and Israel, can serve as a guide for improving the military justice system in Ukraine.

Case law in the UK, Canada, Turkey, the US, and Israel demonstrates different approaches to protecting the rights of military personnel, reflecting national legal traditions and international standards. In the UK, case law has significantly contributed to the protection of the military. In the Case "Smith and others v Ministry of Defence" (2013), the Supreme Court ruled that military personnel on duty abroad are entitled to the protection provided by the European Convention on Human Rights (1950). The court recognised that Article 2 of the European Convention on Human Rights (right to life) obliges the state to ensure adequate measures to protect the military, even in a war zone, if this does not contradict the legitimate interests of the state. In the same case, the court also drew attention to Article 14 of the European Convention on Human Rights (prohibition of discrimination), finding that discrimination based on sexual orientation is a violation of the rights of military personnel. These decisions became the basis for recognizing the right of the military to equal access to justice.

In Canada, judicial practice actively ensures the rights of military personnel through the mechanisms enshrined in the Canadian Charter of Rights and Freedoms (1982). In Case No. 22103 "R. v. Généreux" (1992), the Supreme Court ruled that military courts must be independent and impartial, even within the internal hierarchy of the military system. This decision emphasised the importance of a fair trial, as well as the observance of the fundamental rights of the military. In the case of Case No. 35755 "R. v. Moriarity" (2015), the court determined that the norms of military legislation should not contradict the Charter, and that servicemen have the right to equality before the law and protection of their rights in all conditions of service.

In Turkey, jurisprudence on the military is often criticised for its limited access to justice. In Case No. 4870/02 "Gül and others v. Turkey" (2010), the European Court of Human Rights found that Turkey had violated the right of a military personnel to a fair court proceeding. The Court

stressed that the closed nature of military courts in Turkey contradicts the principles of transparency and independence. This decision has become a precedent for improving the protection of military personnel's rights in countries where military justice is controlled exclusively by domestic authorities.

In the United States, the case law takes into account the uniqueness of military service, but at the same time ensures the protection of fundamental rights. In Case No. 71-2408 "Mindes v. Seaman" (1971), the court established criteria for reviewing administrative decisions related to military service. The court noted that intervention is possible only in cases where constitutional rights are violated, or serious administrative errors are committed. In Case No. 84-1097 "Goldman v. Weinberger" (1986), the Supreme Court found a restriction on the wearing of religious headgear (kippah) in the service to be lawful, but this decision later led to legislative changes that expanded the rights of religious minorities in military institutions.

For LGBT+ servicemen and women, their rights are protected in both civilian and military proceedings, where administrative courts hear cases of discrimination based on sexual orientation or gender identity. The Uniform Code of Military Justice (2019) provides basic rights for all military personnel, but certain groups, including LGBT+ service members, have faced restrictions due to previous policies, such as the Repeal of "Don't Ask, Don't Tell" (2024), which was in effect in 2011. After its repeal, LGBT+ individuals gained the right to serve openly, which guaranteed them the ability to protect their rights and challenge discrimination administratively. One of the most famous cases on the rights of LGBT+ military personnel is Case No. 10-56634 "Log Cabin Republicans v. United States, *et al.*" (2011), filed in 2004 against the "Don't Ask, Don't Tell" policy. In 2010, a federal court in California ruled the policy unconstitutional, which was an important step in ensuring the rights of LGBT+ military personnel in administrative proceedings. As a result, the policy was repealed, setting a precedent for protecting the rights of LGBT+ military personnel and creating a basis for further discrimination lawsuits. In Israel, judicial practice is focused on balancing military interests with human rights. Military courts operate under Israeli Military Justice Law No. 5715 (1955), but their decisions can be appealed to the Israeli Supreme Court, which actively integrates the principles of international law.

Comparative analysis shows that judicial practice in the UK, Canada, and the US ensures transparency, independence, and the possibility of appealing decisions. In Turkey and Israel, there is limited access to judicial protection, but international bodies such as the European Court of Human Rights play an important role in setting precedents for the protection of military personnel. Ukraine should take into account the experience of the UK and Canada to create an effective military justice system that meets international standards.

In each of the countries under consideration, the system of administrative protection of the rights of servicemen is formed on the basis of national legislation and court precedents, which allows for the adaptation of legal mechanisms to the specifics of military service. The experience of these countries can be useful for Ukraine in creating an effective system of protection of the rights of servicemen, including the development of specialized judicial institutions, strengthening the regulation of legal procedures and integrating international human rights standards. This will allow Ukraine to create a legal framework that takes into account the specifics of military service and ensures access to fair for servicemen.

Discussion

This study of the conceptual framework for ensuring the rights of servicemen in administrative proceedings is important for enhancing the effectiveness of legal protection of the military in Ukraine, especially in the context of armed conflict. The results obtained indicate the need to modernize the legal acts regulating the judicial protection of the rights of servicemen, in particular, by improving the mechanisms of administrative proceedings. The study reveals significant gaps in legal regulation that may create obstacles to the exercise of military personnel's rights in cases of conflicts with the command, discriminatory actions and other offences. Comparison with the work of authors such as D.A. Schlueter and L. Schenck (2023), who study the reform of military justice in the United States, demonstrates similar problems with abuse of power and lack of transparency in the activities of military institutions. The authors suggest reducing the influence of commanders on the judicial decision-making process to ensure the objectivity and independence of military tribunals. Their conclusions are relevant for Ukraine, where there is also a need to reduce the influence of commanders on the judicial defence of the military, especially in the context of administrative disputes. However, it is necessary to take into account the features of the Ukrainian military system, where the creation of a fully independent system of military courts may be limited by resources and require adaptation to national realities.

The findings and conclusions of this study and J. Gerhards *et al.* (2024) have similarities and differences that demonstrate different perspectives on the issue of servicemen's rights. In their conclusions, the authors emphasize that the restriction of personal autonomy of servicemen in the course of performing their duties or training can significantly affect their human dignity and moral choices. The authors conclude that in order to ensure effective protection of rights, it is necessary to reconsider approaches to military discipline, which are often based on strict hierarchy and subordination, which in turn can restrict individual rights and moral autonomy. Instead, this study aims to examine the practical mechanisms for protecting the rights of servicemen and women by comparing the legislation and case law of different countries. The conclusions emphasize that the most effective models are those that ensure the independence of military courts, access to civilian justice, compliance with international standards and the possibility of appealing disciplinary decisions. For example, the case law of the UK and Canada shows that independent judicial institutions contribute to better respect for the rights of the military, while in Turkey, the secrecy of military cases creates obstacles to legal protection (Berdar, 2023). The results of both studies agree that human dignity should be the basis for the development of legal mechanisms in the military sphere. At the same time, the conclusions highlight the need for specific institutional changes and improvement of legislation, while J. Gerhards *et al.* emphasize the need for moral and ethical transformations in the military culture. Thus, both studies complement each other, offering both conceptual and practical guidelines for improving the protection of the rights of servicemen and women.

The findings of the study also correlate with the work of S. Westergard (2019), who points out the need to protect servicemen from discrimination in the army. In the context of the study of the situation in the United States, the author focuses on the exclusion of the military from anti-discrimination legislation, in particular Title VII of the Civil Rights Act (1964), which effectively deprives them of the opportunity to challenge cases of discrimination. Although the issue of Ukrainian anti-discrimination legislation has not been studied, it is worth agreeing with the author's conclusions, as it does create gaps in the legal protection of servicemen and women who face discrimination. In the context of the Ukrainian legal system, this issue requires special attention and further research, as even without a direct study of anti-discrimination legislation, other gaps in ensuring the rights of the military, including access to court and effective protection of their rights, have been identified.

The results of this study also have some similarities with the work of C.M. Machain (2024), who studied the impact of legal and organizational mechanisms on the protection of military rights in the international context. The author argues that support for national legal instruments is much more effective in protecting the rights of the military than external programmes. This is especially important for Ukraine, where the creation and adaptation of effective domestic legal instruments is an integral part of stabilizing the social and legal system.

The study by W. Sandholtz (2016) emphasizes the importance of domestic legal mechanisms for the protection of the rights of military personnel in armed conflict. The author points out that external military assistance does not always strengthen human rights protection systems, and in some cases may even weaken national legal structures. This correlates with the findings of the current study, which also highlights the importance of improving the national administrative justice system in Ukraine. The findings of this study confirm that the establishment of an effective administrative system to protect the rights of the military is a key factor in ensuring social stability, especially in times of war. It also emphasizes the importance of adapting legal standards to the specific conditions of Ukraine without significant external interference, which is critical for the long-term strengthening of national legal structures. The analysis of S.R. Bell *et al.* (2022) demonstrates that the interaction between civilians and the military in conflict can directly affect the level of human rights protection, including the rights of military personnel. The authors point out that tensions in these relations can worsen human rights protection, and therefore propose to expand legislative oversight of the observance of military rights through administrative proceedings. This is in line with current findings that indicate the need to improve the administrative system in Ukraine to reduce the risks of violations of the rights of servicemen and women and to ensure adequate legal protection. Thus, the results of the authors' study are consistent with the findings of this study regarding the importance of improving internal mechanisms of legal protection. However, this study additionally focuses on ensuring access to court for the military in cases of discrimination, abuse of power and other offences, which is an important component of effective administrative justice in the context of current socio-political challenges.

The findings of the study by R.S. Surber (2024) point to the importance of the human dignity of military personnel as a key element of legal protection. The author considers military training as a process that potentially violates human dignity by limiting autonomous choice, in particular in relation to morally significant issues such as decisions to take a life. Using a deontological approach, the author emphasizes the need to amend international law to strengthen the protection of military autonomy.

It is worth agreeing with the author's conclusions, namely the need for global legal changes to strengthen respect for the human dignity of the military, as this study also recognizes the importance of ensuring the human dignity of servicemen and women, but shifts the focus to improving administrative justice as a means of protecting their rights. Despite the differences in approach, both studies agree that the protection of human dignity is central to ensuring the rights of servicemen and women. However, this study adds to this aspect the practical implementation through national institutions, which is in line with the specifics of the current legal situation in Ukraine.

Thus, the results obtained indicate the need for a comprehensive reform of the Ukrainian administrative justice system, in particular through the expansion of the jurisdiction of civil courts, the establishment of independent monitoring bodies and the integration of international standards. Further research should be aimed at a deeper study of the experience of countries where such reforms have already been implemented, as well as at analysing the effectiveness of these approaches in a practical context.

Conclusions

The conclusions drawn from this study emphasize the importance of effective enforcement of the rights of servicemen through administrative proceedings, which is a key element of their social and legal protection. The study made it possible to examine the conceptual framework for ensuring the rights of servicemen in administrative proceedings by comparing the legislation of Ukraine, the USA, the UK, Turkey, Israel, and Canada.

The analysis of Ukrainian legislation showed that the country's legal framework creates the necessary preconditions for ensuring the rights of the military, in particular in the areas of social protection, appealing against disciplinary decisions and protection in cases of dismissal from service. At the same time, the study revealed the need to improve the mechanisms of access to administrative justice for servicemen and women, in particular in the context of war actions.

A comparative analysis of international experience has highlighted a number of strengths of other countries' legal systems. In Israel, military personnel have the right to apply to civilian courts in cases of human rights violations, which is ensured through specialized legislation on military justice. Turkey has an effective system of independent monitoring that guarantees the observance of the rights of the military, including recourse to the courts in cases of discrimination. In the United States, the military has the possibility of appealing to the Federal Courts, which guarantees the objectivity and independence of the judicial process. British practice focuses on the rights of the military in the context of protection against discrimination through access to civilian courts. The Canadian system demonstrates an example of a clear division of jurisdiction between military and civilian courts, which increases the effectiveness of legal protection.

The results obtained allowed us to summarize several important principles that can be applied to improve the Ukrainian administrative justice system, in particular in the context of ensuring the rights of military personnel. One of these principles is the expediency of granting military personnel the right to apply to civilian courts in matters that go beyond the specifics of military service. This includes, in particular, issues of social guarantees, pensions, medical services and other aspects related to the civil rights of the military. Access to civilian courts will ensure a more objective and independent resolution of disputes, which is an important element of legal protection. It is equally important to introduce a system of independent monitoring of the observance of the rights of the military. Such a system would allow not only to monitor the enforcement of court decisions, but also to verify compliance with human rights standards in administrative proceedings, especially in the context of disciplinary procedures and social security for military personnel. This may include the establishment of specialized bodies or commissions that would regularly assess the state of the rights of the military, audit the relevant procedures and facilitate the prompt remedy of identified violations. Overall, the implementation of these principles will contribute to a significant improvement of administrative justice in Ukraine, ensuring more effective and fair protection of the rights of servicemen and women, as well as facilitating the integration of the Ukrainian legal system into the international legal space.

Further research should focus on the impact of European standards on the legal provision of military personnel, as well as on the development of more detailed mechanisms for appealing disciplinary decisions. In addition, the effectiveness of legal aid mechanisms in the context of should be considered. Limitations include the limited access to information on the military, both in Ukraine and in other countries, and the fact that due to the ongoing conflict, statistics are constantly changing, as well as new cases and appeals from servicemen related to violations of their rights.

Acknowledgements

None.

Conflict of interest

None.

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Концептуальні засади забезпечення прав військовослужбовців в адміністративному судочинстві

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Анотація. Актуальність цієї теми зумовлена потребою вдосконалення судових механізмів захисту прав військовослужбовців з урахуванням змін у законодавстві, пов'язаних із воєнним станом, необхідністю гармонізації національного законодавства з міжнародними стандартами, зростанням суспільного запиту на прозорий захист прав військовослужбовців. Метою цього дослідження було всебічне вивчення підходів до забезпечення прав військовослужбовців у процесі адміністративного судочинства. У межах дослідження застосовано порівняльний метод аналізу законодавчих норм та судової практики, що регулюють адміністративний захист прав військових. Проведено системний аналіз судових рішень у справах за участі військовослужбовців. Виявлено основні перешкоди для ефективного захисту прав цієї категорії осіб, серед яких виділяється нестача спеціальних процесуальних гарантій. Розроблено рекомендації щодо вдосконалення нормативно-правової бази для посилення рівня судового захисту військових. Також було здійснено аналіз міжнародного досвіду таких країн, як США, Велика Британія, Канада, Туреччина та Ізраїль. Дослідження показало, що у США захист прав військових забезпечується через спеціалізовані військові суди, а також шляхом звернення до цивільних судів, де права військовослужбовців захищені на підставі законів про права людини та федерального законодавства. У Великій Британії та Канаді прецедентне право активно сприяє захисту військових у рамках адміністративного судочинства. У Туреччині та Ізраїлі існування військових судів дозволяє оперативно вирішувати питання дисципліни та службових обов'язків. Водночас, захист прав військовослужбовців у цих країнах базується на національному законодавстві про права людини, і лише держави-члени Ради Європи, які ратифікували European Convention on Human Rights, враховують прецеденти Європейського суду з прав людини у своїй судовій практиці. Висновки дослідження підтверджують важливість адаптації кращих міжнародних практик для побудови ефективної системи адміністративного судового захисту прав військовослужбовців в Україні, зокрема через впровадження міжнародних стандартів і створення спеціалізованих правових інститутів для військових

Ключові слова: дисциплінарна відповідальність; соціальний захист; оскарження рішень; територіальний центр комплектування та соціальної підтримки; захист від дискримінації; воєнний стан

UDC 349.23
Doi: 10.32518/sals4.2024.272

Соціально-правові студії. 2024. Т. 7, № 4
Social & Legal Studios. 2024. Vol. 7, No. 4

International experience of compensation for moral damage in labour relations

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Abstract. The mechanism of compensation for moral damage to employees has existed in most developed states for many decades, which determines the relevance of its research in view of the insufficient regulation of this institution in Ukraine. Therefore, the purpose of the study was to analyse the features of compensation for moral damage in labour disputes in some countries of the world (France, Spain, Canada, Australia) with the aim of borrowing positive experience with the possibility of its further implementation into Ukrainian legislation. It has been established that there are no restrictions on the grounds for compensation for non-pecuniary damage in France – any material and moral damage is compensable if it is a direct and immediate consequence of the tortious act. French labour law strictly prohibits psychological pressure within the company; employers are obliged to take all necessary measures to prevent such situations. In addition, employers in this country also have a general duty to ensure the health and safety of their workers. It has been determined that compensation for moral damage is also provided for in Spanish labour law, but not for all offences in this area. To determine the amount of moral damage that is subject to compensation, the Law on Labour Infringements and Penalties (LISOS) is applied, which sets its minimum and maximum amount. Workers in Canada can claim compensation for moral damage if it has been caused as a result of wrongful dismissal, harassment, and discrimination. Simultaneously, the court

Suggested Citation

Article's History: Received: 27.08.2024 Revised: 25.11.2024 Accepted: 23.12.2024

Panchenko, O., Yermakov, Yu., Sevruk, V., Pavlenko, S., & Oksin, V. (2024). International experience of compensation for moral damage in labour relations. *Social & Legal Studios*, 7(4), 272-280. doi: 10.32518/sals4.2024.272.

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considers the deceitful conduct of the previous employer following termination when assessing the level of compensation. It has been substantiated that the Workers Rehabilitation and Compensation Act is the main legal instrument regulating the procedure for compensation for moral damage to an employee in Australia. According to this Law, psychological injury is subject to compensation only if it occurred as a result of work or during work; the latter must be a significant, essential, or main factor that caused the injury. The results presented in the paper can be used by researchers and legal practitioners in conducting further research on this topic, and by the legislator in the process of improving the mechanism of compensation for moral damage to employees in Ukraine

Keywords: employer; harm; labour dispute; moral suffering; positive experience; reimbursement

Introduction

Reparation for moral harm is among the entitlements assured by Ukraine's Fundamental Law. In this regard, Article 56 of the document stipulates that every individual is entitled to compensation for both material and moral damages resulted from illegal acts, omission, or decisions by state authorities, local self-government or their representatives while performing their duties (Constitution of Ukraine, 1996). Reparation for this category of harm is also a method of safeguarding labour rights. Article 237-1 of the Labour Code of Ukraine (1971) stipulates that the employer's compensation for moral damage inflicted on the employee is provided in instances where the infringement of their legal rights, including those resulting from discrimination, mobbing (harassment), as established by a legally binding court ruling, caused emotional distress, disrupted usual life connections, and necessitated extra efforts to reorganise their life. Simultaneously, the issue of compensation for moral harm remains highly pressing due to its insufficient regulation within labour laws. Given the large number of lawsuits connected to this matter in labour relations and the sharp rise in such cases, spurred initially by the mass layoffs during the COVID-19 pandemic and subsequently by the all-out war on the territory of Ukraine, this subject continues to grow in importance.

Conversely, the framework for compensating moral damages in labour conflicts has existed in several countries for decades, which renders its examination highly significant, particularly during the phase of reforming labour laws. This is especially pertinent given Ukraine's aspirations for European integration, particularly following the acquisition of candidate status for EU membership.

The analysis of the academic publications highlights various aspects of moral damage compensation in labour relations. O. Panchenko (2022a) explored the methodology for determining the amount of moral damage compensation in European countries, emphasising the need to adapt these practices in Ukraine. She came to the conclusion that the judges of the considered countries use the framework established by the courts in similar cases in determining the amount of compensation for moral damage, in particular in labour relations. These decisions are based on relevant tables or other acts that help judges or representatives of other bodies in considering similar applications. A. Tabunshikov *et al.* (2020) conducted a comparative study of the current legislation governing compensation for moral damage in some foreign countries. They defined the basic terms used in foreign law that are analogous to the institution of "compensation for moral damage" existing in Ukrainian legal system. R. Basenko *et al.* (2022) revealed and examined the conceptual review of the provisions of international legal experience in dealing with compensation for moral (non-property) damage in the context of priorities for the protection of democratic rights and freedoms of citizens. M. Hryhorchuk *et al.* (2023) analysed the protection of property rights during the Russian-Ukrainian war, focusing on international and Ukrainian mechanisms for holding war criminals accountable. M. Cuadros Garrido (2022) analysed the deterrent effect of moral damage compensation during the pandemic, suggesting that the pandemic accelerated the development of legal mechanisms and raised the question of punitive damages. F. Gonzalez Cazorla (2022) investigated moral damage in Spanish consumer law, focusing on its concept and limitations, identifying weaknesses in current legislation, and offering improvements. Having conducted her own research, Y.M. Porytska (2023) stated that Canadian labour legislation allows workers to sue for wrongful termination, but only for economic damages. That is, the legislation and judicial practice of Canada refer cases of illegal dismissal to the category of cases related to the violation of the terms of the contract. The compensation for moral damage in this case is not provided, but it is reimbursed in the event of discrimination at the workplace, as well as illegal dismissal.

Consequently, as a component of the study, the specific features of compensating moral damages to employees in various countries worldwide will be examined to adopt beneficial practices with the potential for further incorporation into Ukrainian legislation.

Literature review

Scientific sources considered in the study primarily focus on the legal aspects of moral damage and compensation across various contexts. N.J. Mullany and P.R. Handford (1993) dedicated their work to tort liability for psychiatric damage. The researchers presented the detailed discussion of the symptoms of the psychiatric disorders which most often form the subject of litigation, the ways to establish a causal link between mental injury and external event and the instruments for assessment of damages, based on Australian and UK court practice. J.L. Navarro-Espigares and J. Segura (2011) addressed the issues relating to workers' compensation to cover damages derived from work accidents and occupational diseases. The researchers presented their own method for assessing moral damage and to illustrate the differences between the proposed method and the method has been used regularly in Spain, they investigated three real cases, in which the differences exceed EUR 200,000. B. Tapia Cornejo (2022) examined procedural doctrine approaches to moral damage, emphasising the importance of integrating private law and procedural norms to enhance evidence handling. The researcher stressed the relevance of Peruvian jurisprudence in addressing moral damage. B. Verdera Izquierdo (2024) explored family law, particularly the responsibility for concealing true paternity, and discussed whether tort law should be applied to family

matters. S. Morillo Carrillo (2022) investigated state liability in terms of subjective rights, proposing a reinterpretation of damage and unlawful damage in light of modern legal theory. O. Hnativ *et al.* (2024) explored compensation for damages caused by Russia's armed aggression, highlighting the complexity of documenting damages and the need for improved legal frameworks. V. Ivanova (2024) addressed Ukraine's strategy for compensating property damage via digital services, emphasising the development of national court practices and the potential for international cooperation in securing reparations.

As for the authors, who examined the institution of moral damage within labour relations, the following should be mentioned. V. Chernadchuk (2001) dealt with the problem of moral damages caused by violation of labour rights and developed his own methodology of determining the amount of compensation for moral damage caused to the employee by the owner of the enterprise, institution or organisation, or the authorised body. T. Kirichenko (2020) examined the essence and features of moral damage, its role in the legal regulation of labour law relations, paying considerable attention to the ECHR decisions on this issue. The researcher concluded that there is no uniform practice of the Court on the compensation for moral damage, which is explained by the fact that it is grounded on the European Convention rules, which may change or appear during the case. Ya. Protopopova (2011) established the role and significance of the institution of compensation for moral damages in the labour law of Ukraine, summarised foreign experience of legal regulation of compensation for moral damage caused to the employee by the employer, and outlined the development trends of the institution of moral damage compensation in the labour law of Ukraine. O. Soroka (2020) highlighted certain legal problems of compensation for spiritual injury caused by work accidents and occupational diseases, resulting in author's method of calculation of the monetary equivalent of non-pecuniary damage caused to an employee, and detailed analysis of the order for compensation for moral injury caused by these negative factors.

Despite considerable number of studies dedicated to the issue under consideration, there is any comprehensive research on the institution of compensation for moral damage to the employees of other states, which may be considered exemplary in this matter. This is a considerable drawback under current conditions, when Ukraine committed to bring its legislation in line with the European one.

Materials and methods

Common and special methods of scientific inquiry were employed in the preparation of this paper. Specifically, the systematic approach was utilised to examine the components of the issue of moral damage reimbursement in their interconnectedness and unity. Through the application of the monographic approach, the studies by scholars who investigated the topic of compensation for non-pecuniary harm in other countries within the framework of labour relations was analysed. The system and structural approach was used to systematise the features of moral damage compensation in each of the states under consideration. The logical method helped in formulating the concepts of "moral damage" and "psychological trauma". The normative and dogmatic method made it possible to analyse national legislature of some countries of the world, which regulates the subject matter of this research. The choice of the presented states was conditioned by the high level of development of the studied institution in the selected countries, and the detailed regulation of the mechanism of its implementation at the legislative level. The contrastive method helped in the comparison of the approaches, conditions, and procedures of compensation for moral damage caused to an employee under the laws of the countries surveyed. The method of legal modelling was used to formulate relevant conclusions and proposals.

In the course of preparing the paper, the following legal instruments of the indicated states were analysed: Labour Code of France (1973); Law of Spain No. 36/2011 "Regulating social jurisdiction" (2011); Royal Legislative Decree of Spain No. 2/2015 "Approving the revised text of the Workers' Statute Law" (2015); Royal Legislative Decree of Spain No. 5/2000 "Approving the revised text of the Law on Infringements and Sanctions in the Social Order" (2000); Tasmania Workers Rehabilitation and Compensation Act (1988); Labour Code of Ukraine (1971). Concerning court practice, the following decisions were investigated: Decision of the Constitutional Court of Spain No. 61/2021 (2021); "Honda Canada Inc. v. Keays" (2008); "Wallace v. United Grain Growers Ltd." (1997); Decision of Social Chamber of the French Court of Cassation No. 13-17.729 (2014). These legal acts and court decisions were investigated in detail, which contributed to understanding the concept of moral damage; the cases where compensation was granted; the conditions, under which the identified actors were entitled to reimbursement; the mechanism of moral sufferings compensations; the procedure of determining the amount of indemnity subject to reimbursement.

Results and discussion

For example, in France there are no restrictions on the grounds for compensation for moral damage – any material and non-pecuniary harm is compensable if it is a direct and immediate consequence of the tortious act. Courts usually award a total amount of moral damages, but divide it into separate categories. Thus, as stated by O. Panchenko (2022a), when determining the amount of compensation, such factors are considered: the degree of physical suffering; inability to lead a normal lifestyle; permanent or temporary loss of working capacity; aesthetic damage; sexual dysfunction; loss of suitable work and the ability to manage a household; reduction of the average life expectancy; compensation for a spoiled vacation; coma, "vegetative state", and brain damage.

French labour law strictly prohibits psychological pressure within the company; owners are obliged to take all possible steps to prevent such situations. Art. L 1152-1 of the Labour Code of France (1973) defines moral oppression as "repeated actions that are intended or result from the deterioration of the worker's working conditions, which may violate his/her rights or dignity; affect his/her physical or mental health, or endanger his/her future career". The measures applied in case of the failure to comply with this prohibition are quite severe: fines may be imposed on the employer, and any action taken in violation of this Article may be declared invalid. The victim of such actions may also demand the employer to be brought to civil liability and receive reimbursement for harm caused as a result of moral pressure. Besides, employers in France also have a general duty to ensure the health and safety of their employees (duty of care). Thus, the employer must take actions to protect physical and mental

health of his/her subordinates – Article L. 4121-1 of the Labour Code of France (1973). Violation of this obligation entails the responsibility of the employer, even if there is no fault on his/her part. In this case, the employer may be jointly liable for both the breach of the duty of care and the consequences of moral duress.

Court practice indicates that this is also the case. This can be supported by the Decision of the Social Chamber of the Court of Cassation of France No. 13-17.729 (2014). According to the case file, the employee was on sick leave for two months due to a conflict with the manager, who behaved aggressively towards his subordinate: shouted at him, insulted him in the presence of his colleagues, etc. In this regard, the employer noted that he took appropriate measures immediately after the incident, which consisted of organising a meeting to resolve the conflict, during which the manager apologised to his subordinate. In addition, a special department was created to deal with psychosocial risks in the company, and the employee who was the victim of harassment was transferred to avoid any contact with his former manager. However, despite the best efforts of the employer, the employee resigned from the company, and then filed a lawsuit in the labour dispute court with a demand to compensate for damage caused by moral harassment. The Court of Appeal ruled in favour of the affected and awarded him EUR 8,000 in compensation for the employer's breach of legal obligation to avoid causing harm and EUR 12,000 in compensation for moral harm resulted from psychological damage. Despite the employer's arguments that the same injury cannot be recovered twice, the Court of Cassation upheld the Court of Appeal's decision and noted that an employer is in fact violating his legal obligation to avoid causing harm when one employee is harassed by another in the workplace, regardless of what actions have been taken to stop such a violation.

This Decision of the Social Chamber of the Court of Cassation of France No. 13-17.729 (2014) is in line with case law, which allows an employee to receive 2 compensations for the psychological pressure he/she experienced on the job. It should serve as a reminder to employers that moral harassment of their employees in the workplace can be grounds for prosecution; at the same time, it is emphasised that the damage to the victim should be compensated even if the employer immediately took measures to resolve the conflict. However, the court will take into account their adequacy, timeliness, and efficiency when calculating the amount of reimbursement for the moral sufferings (as it was done when making a decision in the case under consideration).

It is worth noting that the burden of proving the fault of the owner is borne by the employee; this means that the latter must provide facts confirming cases of moral harassment against him/her. In turn, the accused must prove that the contested violations have nothing to deal with this negative phenomenon. The court listens to both sides and may decide on additional evidence to be provided for the investigation of the situation to make the most objective decision. It should be emphasised that employees cannot be punished, fired or subjected to discriminatory measures because they have experienced moral harassment, witnessed it, or reported such actions.

Spanish labour law is comprehensive and provides through protection for workers. It regulates individual and collective legal relations between employees and employers, the scope of which extends to other related areas, such as social security, labour protection, special labour relations and procedural law. Thus, the Statute of Workers (Royal Legislative Decree of Spain No. 2/2015, 2015) regulates a number of aspects of personal and collective labour relations and is an important component of Spanish labour law. In addition, it is responsible for the conclusion of collective agreements, which establish the minimum wage for employees of certain professions, the specific features of the trade unions' functioning, the provision of incentives, etc.

Spain places great emphasis on protection against discrimination in the workplace. Thus, all companies with more than 50 employees were obliged to elaborate and incorporate an equality plan by the end of 2021. They had to include a pay audit and provide public access as well. This was necessary to demonstrate that a difference in pay between workers of different sexes is not the consequence of discrimination. In addition, discrimination based on sex, marital status, ethnicity, colour, nationality, ethnic origin, disability, religion or religious belief, and age is prohibited. Direct and indirect discrimination, harassment and victimisation are illegal. Those Spanish workers who believe they have been discriminated against by management can file a claim to the Labour Court.

Reimbursement for moral harm is also provided for by Royal Legislative Decree of Spain No. 2/2015 (2015); however, not for all offences in this area. For example, such compensation is not defined for illegal dismissal. In case of proving the fault of the employer, the employee has the right to: 1) return to work with compensation for lost remuneration or 2) payment of 33 days' salary during the year of service, provided that the salary does not exceed 24 months' salary.

However, if the dismissal involved discrimination or other violation of human rights, the court will declare it invalid and reinstate the employee with payment of financial compensation for lost wages. In this case, the employee is entitled for the moral harm indemnity as well. According to the Decision of the Constitutional Court of Spain No. 61/2021 (2021), the employee was fired from the company due to the fact that she spent about 70% of her working time on personal issues and only the remaining 30% – on professional ones (according to the results of checking her computer data). It should be noted that the employees of this company perform most part of their activity through corporate PCs, mobile phones, etc., which leaves relevant traces or is directly visible, as all gadgets are usually connected to the public network. This enables monitoring of the work and identifying possible inconsistencies.

The claimant filed a lawsuit against her termination, essentially contesting the owner's access to her PC. At each of the stages of the proceedings, the judges agreed that it was illegal. The company's internal rules allow only least necessary intervention, but in this case, there was invasive digital surveillance, capturing everything on the PC's screen (and private content as well). When considering these facts, the judges gave them different legal assessments. Madrid Labour Court No. 19 assumed that the unlawfulness (and therefore impermissibility) of such proof (received as a result of a violation of the fundamental right) entailed its complete inadmissibility. Therefore, since this was the only basis for dismissal, the dismissal itself should also be invalidated. Besides, since the dismissal violated the claimant's basic rights, the company was forced to redeem EUR 6,251

as compensation for moral damage (the applicant claimed EUR 51,439.40) (Decision of the Constitutional Court of Spain No. 61/2021, 2021). The High Court of Madrid, however, went the other way. In its opinion, the illegal surveillance performed by the company just required the court to ignore this proof for the dismissal qualification, but had any effect of its invalidity. For this, the layoff should have directly breached the claimant's fundamental rights, but it was not the case. Considering that the rest of the proof did not confirm the assertable violations, the Court qualified the layoff as unjust. And since (as it was already stated), the dismissal did not violate any fundamental rights, the employee is not entitled to compensation for moral damage (Decision of the Constitutional Court of Spain No. 61/2021, 2021).

Having exhausted these remedies, the employee applied to the Constitutional Court (CC) for constitutional protection grounded on an indirect allegation that her fundamental right to effective judicial protection had been violated: (I) in respect of the right to privacy and secrecy of communication; (II) in respect to the right to a reasoned decision, which was breached by the High Court of Madrid. The Constitutional Court came to the conclusion that the position of the latter regarding the fact that the proof obtained unlawfully does not reflexively entail the invalidness of the layoff and does not breach the right to effective judicial protection. Nevertheless, the CC does not decide whether this understanding is proper; it is an issue of common legitimacy, and it is for the High Court to lay down the appropriate standards. The Constitutional Court recognises the existing division between the courts and indicates that the position of the High Court of Madrid is "positively rooted in our legal system and cannot be characterised as arbitrary or manifestly unfounded" (Decision of the Constitutional Court of Spain No. 61/2021, 2021).

The judge María Luisa Balaguer Callejón dissented, stating that "in the absence of grounds justifying the dismissal, violation of fundamental rights to collect evidence of a single alleged violation should also result in the reversal of the dismissal decision". Conversely, the CC recognised that the right to effective judicial protection had been breached in relation to the moral harm reimbursement claimed by the employee by way of annulment; it is on this point of the High Court of Madrid decision that the case was sent back for redetermination. The Constitutional Court expressly found that evidence obtained during computer monitoring breached the claimant's fundamental rights to privacy and secrecy of communication, and therefore, the High Court of Madrid had to award refund for moral damage (Decision of the Constitutional Court of Spain No. 61/2021, 2021).

The legal basis for assigning indemnity for moral harm for breaching worker's labour rights in Spain is Art. 183 of the Law of Spain No. 36/2011 (2011), which specifies that, if the case concludes that any fundamental right has been violated, the judge will issue a decision to award an amount of compensation to the claimant who suffered a violation of the fundamental right, depending on the extent of moral injury caused by such violation, as well as other, as well as on others additional losses. In other words, in any case, when such violation is proven, the victim has the right to demand compensation.

The most important factor in classifying an offence as violating an employee's fundamental rights is the character of the owner's conduct. The latter is legally responsible "whether the behaviour is described as psychological claim in a literal sense or not, there is a duty to make good the damage caused". Any long-term labour conflict that can cause psychosocial harm, in the absence of preventive intervention on the part of the employer, is violation not only under common law – the duty to effectively protect the right to health, but also under constitutional law – the duty to protect personal immunity. This position is equivalent to the French doctrine of labour law.

In addition, there is a need to distinguish between psychological pressure from a broad spectrum of normal and abnormal conflicts that can be resolved according to the rules of common law:

- disputes connected to working conditions (time, place, service conditions, etc.) that are "ordinary violations of labour relations". Conflict can be an indicator of pressure, but it will never be the determining factor;
- long-term professional pressure that causes stress;
- forms of exercising the employer's powers that are illegal or random. This includes any improper, inappropriate, or abnormal exercise of the company's authority aimed at promoting the company's economic interests, which, however, does not involve any intention or desire to harm the emotional stability of the employee or create a humiliating environment;
- oppressing and degrading forms of implementation of the owner's management responsibilities, which cause mental harm to employees personally, although directed at all employees who are subordinate to the employer.

The compensation provided for in Art. 183 of the Law of Spain No. 36/2011 (2011) includes not only moral damage, but also any other harm caused by the breach of the fundamental right, although the existence of the latter must be proven. Sufficient supporting or objective evidence must be provided for its assessment. As regards the determination of the amount of moral injury, the criteria for its quantification, according to the High Court, should be "made more flexible", since the violation of the fundamental right necessarily leads to the assignment of moral damage, and it is difficult to establish its exact amount. Determining the amount of moral harm is a hard and costly process; therefore, the High Court uses the Law on Labour Irregularities and Penalties (LISOS) (Royal Legislative Decree of Spain No. 5/2000, 2000) as a guide to determine the amount of the foreseeable compensation.

In Royal Legislative Decree No. 5/2000 (2000), labour offences, which are the acts or omission of employers that contradict the legal and regulatory provisions of collective and individual labour agreements on employment, professional training, temporary work, social and labour integration and other types of labour relations, classified and sanctioned in accordance with this Law, are united into groups depending on the rules that are violated. They include: breaches of conditions in personal and group labour agreements; infringements in the area of occupational hazard prevention; breaches in employment regulations; failure to comply with temporary employment rules; violations in the area of social protection; breaches of the right to entitlements; infractions related to workplace accident and occupational illness insurance; violations concerning labour migration, among others.

Each of these groups is divided, in turn, into subgroups with further classification of offences into light, medium, serious, and especially serious. For each of them, the Law

provides a sanction in the form of a fine with a minimum, average, and maximum value, considering the criteria established in it. They are: negligence and intentionality on the part of the perpetrator, fraud or conspiracy; ignoring previous remarks and demands of inspectors; the company's revenue; the number of employees affected; the damage caused; the extent of the fraud, etc. In case of violation of the rules of professional risks prevention, such criteria as the level of hazard, severity of harm or damage that may have been caused by the absence or lack of necessary measures, the number of injured persons, etc. are applied.

According to Royal Legislative Decree No. 5/2000 (2000), a report on violations issued by the Employment and Social Security Inspectorate must not only describe the facts that led to the breach, but also state its classification (as minor, serious, or very serious), its severity and the penalty provided. The assessment of fines is within the competence of the inspection bodies, which must perform it in accordance with the criteria established by law. After qualifying each offence and carrying out its assessment, the inspection bodies propose the amount of the fine to be collected, considering the criteria laid down in this act. The amount of compensation must be substantiated by the judge of the first instance, and such an assessment can only be changed by appeal or review by the court of cassation when it is excessive, unjust, inappropriate, or unreasonable.

In 2008, the decision known as "Honda Canada Inc. v. Keays" (2008), provided for a definition of moral damage, which is used by all courts in Canada when dealing with such cases. According to it, moral damage is harm caused by dismissal; if the employer's behaviour is found to be unfair or unconscionable resulting in the employee's mental disorder, the latter may be awarded appropriate compensation. Non-pecuniary damages are the exception, not the rule: ordinary suffering and injury resulting from dismissal are usually not compensable. Damages for moral damage are compensated in the form of a one-time monetary payment, not related to loss of income.

This decision provided a basis for employees to sue for wrongful dismissal, but only for economic losses. That is, Canadian legislation and case law refer cases of wrongful dismissal to the category of ones related to the breach of contract terms. In this case, moral damage is usually not compensated. The award that the employee may expect will be limited to the damage caused by the late notice of the future dismissal. If the circumstances of the case were unacceptable, compensation may be awarded depending on the manner and conditions of such dismissal. As a rule, this concerns awards for aggravating circumstances (discrimination). The purpose of such reimbursement is not to compensate for damages, but to punish the employer. According to Y.M. Porytska (2023), when deciding on such compensation, the courts are guided by the following: whether the dismissal procedure was clearly and grossly violated; were there serious grounds for dismissal (an investigation was conducted, etc.); whether all necessary salary payments have been made; whether the employer took such actions that could further prevent the employee from finding a new job, etc.

Compensation is awarded in cases where the employee is able to demonstrate the presence of moral harm done by the employer. This means that if the owner behaved unjustly or unconscionable during the dismissal process, for example, has cheated, lied, or demonstrated clear disrespect and indifference, and the former employee provides evidence that this behaviour caused him/her moral distress, he/she may be entitled to compensation for this suffering.

In the case "Wallace v. United Grain Growers Ltd." (1997), the court cited the following examples of the employer's dishonest behaviour: 1) the employer illegally accused the employee of theft and reported this fact to future potential employers, which significantly complicated the job search process for the dismissed; 2) the employer unjustifiably accused the employee of failing to fulfil his professional duties and refused to provide a letter of recommendation; 3) after the elimination of the employee's position, the employer promised the latter a new one, which was never provided. The former employee waited for an appointment for a long time (more than a month), and during this period he did not look for a job, which negatively affected his financial condition; 4) the employer dismissed the employee immediately after the latter left sick leave; 5) the employer sold his business and fired the employee, promising that he would be hired by new management. After three months, he was indeed offered to return to his duties, but the salary for their performance was already half as much. The given examples, clearly, do not cover the entire list of cases of dishonest behaviour by the employer; however, they help to orientate in which cases the dismissed employee can count on compensation for moral damage. Generally, Canadian courts award for moral damage in the range of $20,000 to $40,000. However, there are isolated cases of awarding larger sums if the judge believes that the employee experienced particularly severe moral suffering due to the employer's unscrupulous behaviour (Panchenko, 2022b).

There are 11 main workers' compensation schemes in Australia. Each of Australia's 8 states and territories has developed its own compensation system, and there are 3 programmes at the Commonwealth level: for Australian Government employees and Australian Armed Forces personnel who served before 01 July 2004; the second – for some categories of sailors; the third one – for Australian Armed Forces personnel serving on or after 01 July 2004 (Carey & Triffitt, 2018). The Workers Rehabilitation and Compensation Act (1988) is the main regulation governing the procedure for compensating moral harm. According to its rules, an employee in Australia has the right to compensation for psychological injuries or disorders received during the performance of his/her work duties. Psychological trauma is a set of cognitive, emotional, and behavioural symptoms interfering with the normal life of an employee and can greatly influence his/her feelings, thoughts and interactions with other people. Psychological trauma can compromise such illnesses as depression, anxiety, or PTSD.

Psychological injury is compensable only if it occurred as a result of work or during work; the latter must be a significant, essential, or main factor that caused the injury. Claims for psychological injury compensation are generally not accepted if they are related to the employer's reasonable dismissal, layoff, transfer, job evaluation, disciplinary action or placement. An employee who has suffered a psychological injury must report it to (optionally): his/her employer(s); immediate supervisor; the person designated by the employer for this purpose; the person authorised to receive such applications. The document must be submitted no later than six months from the day of the injury, or six months from the day of the death of the employee, if it was the cause of his

death. If this period is missed, the employee loses the right to compensation, unless it was missed for valid reasons.

The application should contain the following details: name of the victim; his/her home address and telephone number; the nature of the injury, the date and reason for receiving it. Along with the application, the employee should submit a medical certificate in the prescribed form, signed by a practicing physician or an appropriate accredited institution. Such a certificate may be provided after the application, but the latter will be considered submitted only after a medical report is attached. The employer or other authorised person who received such a statement should notify the employee within 14 days whether or not the latter is entitled to compensation. In case of missing this period, the perpetrator will have to pay a fine.

After receiving the application, the employer or other authorised person should complete a report in the prescribed form and send it along with a copy of the application, within five days to their insurer, who, in turn, within five days should forward them to the WorkCover Tasmania Board – a special body that considers this kind of claims. The employer has to inform the employee about the results of the examination of the application within 28 days from the day of its receipt (in writing). In the case of refusal to pay compensation, the employer should indicate the reasons for it, and the arguments he/she was guided by when accepting it. An employer's decision (both positive and negative) can be appealed to the Tasmanian Civil and Administrative Tribunal. The Law of 1988 regulates in detail the procedure for consideration of each of these issues, which must be conducted within the appropriate time frame and supported by the necessary documents.

Conclusions

As a result of research conducted, the following conclusions were obtained. French labour law strictly prohibits psychological pressure within the company; employers are obliged to take all actions for preventing such situations. In addition, employers have a general duty to ensure health and safety of their employees. For the breach of this obligation, the employer assumes collective responsibility (both for the infringement of the duty of care and for the moral harm inflicted) even in the absence of culpability. Simultaneously, the harm to the victim must be reimbursed even if the employer promptly implemented actions to address the conflict.

Reimbursement for moral damage is also provided for by Spanish labour law; however, not for all offences in this area. Thus, for example, such compensation is not envisaged for illegal dismissal. However, if the dismissal involved discrimination or other violation of human rights provided for by the Constitution or other laws of Spain, the court declares it invalid and reinstates the employee with payment of financial compensation for lost wages. In this case, the employee is entitled to compensation for moral damage.

Employees in Canada can seek reimbursement for non-pecuniary harm if it has been inflicted due to wrongful termination, harassment, or discrimination. Simultaneously, the deceitful actions of the former employer following termination are considered by the court when assessing the award for moral injury, as the conduct of the employer or the entity authorised by them must align with the principles of good faith and fairness both during the employee's dismissal process and afterward. There are 11 main workers' compensation schemes in Australia: each of Australia's 8 states and territories has developed its own compensation system, and there are 3 programmes at the Commonwealth level. The Workers Rehabilitation and Compensation Act (1988) is the main regulation governing the procedure for compensating damage to the employee. According to this Law, psychological injury is subject to compensation only if it occurred as a result of work or during work; the latter must be significant, essential, or main factor that caused the injury. Claims for psychological injury compensation are generally not accepted if they are related to the employer's reasonable dismissal, layoff, transfer, job evaluation, disciplinary action or placement.

Therefore, compensation for moral damage to the employee is provided for in all the countries considered in the case of discrimination and harassment at the workplace, as well as wrongful dismissal. Notably, discrimination in labour relations is considered a serious offence, the responsibility for which sometimes arises even regardless of fault on the part of the employer, who, in turn, must take all necessary measures to prevent this phenomenon. The criteria used in assessing the amount of compensation are established at the legislative level, including certain, legally defined frameworks within which compensation is assigned depending on the severity of the offence in the labour area that caused harm, the fault of the employer and the employee, the company's income, the presence of previous violations on the owner's part, etc. The procedure for an employee's request for compensation is clearly prescribed, specifying all the terms by which it must be considered by each authorised body. Such a detailed regulation helps to ensure the stability of legal practice on this issue and provide adequate amount of compensation to the victims.

Given the fact that there are no uniform mechanisms for compensation for moral damage or methods for calculating its amount in Ukraine, this finding may be useful in the process of improving the procedures of its compensation in general and within labour relations in particular. Prospects for further research lie in the possibility of developing ways to incorporate positive experience into relevant regulations.

Acknowledgements

None.

Conflict of interest

None.

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Міжнародний досвід відшкодування моральної шкоди у трудових правовідносинах

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Анотація. Механізм компенсації моральної шкоди працівникам у більшості розвинутих держав існує вже багато десятиліть, що обумовлює актуальність його дослідження з огляду недостатньої врегульованості цього інституту в Україні. Тож метою статті був аналіз особливостей відшкодування моральної шкоди у трудових спорах деяких країн світу (Франції, Іспанії, Канади, Австралії) із метою запозичення позитивного досвіду та можливості його подальшої імплементації до українського законодавства. З'ясовано, що у Франції відсутні будь-які обмеження стосовно підстав для компенсації моральної шкоди – усі матеріальні та моральні втрати можуть бути компенсовані, якщо вони є безпосереднім і прямим результатом деліктного правопорушення. Французьке трудове законодавство суворо забороняє психологічний тиск всередині компанії; роботодавці зобов'язані вживати всіх необхідних заходів, аби запобігти подібним ситуаціям. Крім того, на роботодавців цієї країни також покладається загальний обов'язок щодо забезпечення охорони здоров'я та безпеки своїх працівників. Визначено, що відшкодування моральної шкоди іспанським трудовим законодавством також передбачено, втім не за всі правопорушення у цій сфері. Для визначення розміру моральної шкоди, яка підлягає компенсації, застосовується Закон про трудові порушення та покарання, де встановлений її мінімальний і максимальний розмір. Працівники в Канаді мають право вимагати компенсацію за моральну шкоду, якщо вона була заподіяна внаслідок неправомірного звільнення, переслідувань або дискримінації. При цьому недобросовісні дії колишнього роботодавця після звільнення враховуються судом при визначенні розміру відшкодування за моральну шкоду. Доведено, що Закон про безпеку, реабілітацію та компенсацію є основним нормативним документом, який визначає процедуру компенсації моральної шкоди працівнику в Австралії. За законодавством країни, психологічна травма підлягає відшкодуванню лише в тому випадку, якщо вона виникла в результаті роботи або під час роботи; остання має бути значним, суттєвим, істотним або основним фактором, що завдав травму. Результати, представлені у статті, можуть бути використані науковцями та юристами-практиками при проведенні подальших досліджень на цю тематику, а також законодавцем у процесі удосконалення механізму відшкодування моральної шкоди працівникам в Україні

Ключові слова: компенсація; моральні страждання; роботодавець; позитивний досвід; трудовий спір; шкода

Науково-аналітичний журнал
«СОЦІАЛЬНО-ПРАВОВІ СТУДІЇ»

Том 7, № 4
2024

Відповідальний редактор:
В. Боровікова

Редагування бібліографічних списків:
В. Боровікова

Комп'ютерна верстка:
О. Глінченко

Підписано до друку з оригінал-макета 23.12.2024
Ум. друк. арк. 32,8
Тираж 100 прим.

Видавництво: Львівський державний університет внутрішніх справ
79007, вул. Городоцька, 26, м. Львів, Україна
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www: https://sls-journal.com.ua/uk

The scientific and analytical journal
“SOCIAL AND LEGAL STUDIOS”

Volume 7, No. 4
2024

Managing Editor:
V. Borovikova

Editing Bibliographic Lists:
V. Borovikova

Desktop Publishing:
O. Glinchenko

Signed to the print with the original layout 23.12.2024
Conventional Printed Sheet 32.8
Circulation 100 copies

Publisher: Lviv State University of Internal Affairs
79007, 26 Horodotska Str., Lviv, Ukraine
tel.: +380 (32) 233-20-80
E-mail: info@sls-journal.com.ua
www: https://sls-journal.com.ua/en