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

Соціально-правові студії

Науково-аналітичний журнал

Том 8, № 2

Львів
2025

Засновник:
Львівський державний університет внутрішніх справ

Рекомендовано до друку та розміщення
в електронних сервісах ЛьвДУВС Вченою радою
Львівського державного університету внутрішніх справ
(протокол № 17 від 25 червня 2025 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, ERIHPLUS, EBSCO, CLOCKSS, Worldcat, UCSB Library, Dimensions, SOLO, CORE,
Litmaps, University of Oslo Library, University of Hull Library, European University Institute,
Leipzig University Library, Cambridge University Library, Polska Bibliografia Naukowa,
OUCI (Open Ukrainian Citation Index), Національна бібліотека України ім. Вернадського,
Інституційний репозитарій Львівського державного університету внутрішніх справ

Соціально-правові студії: науково-аналітичний журнал / гол. ред. О. Балинська. Львів: Львівський державний університет внутрішніх справ, 2025. Т. 8, № 2. 340 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 8, No. 2

Lviv
2025

Founder:
Lviv State University of Internal Affairs

Recommended for printing and posted in the electronic services of LvSUIA by the Academic Council of Lviv State University of Internal Affairs
(Minutes No. 17 of June 25, 2025)

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, ERIHPLUS, EBSCO, CLOCKSS, Worldcat, UCSB Library, Dimensions, SOLO, CORE, Litmaps, University of Oslo Library, University of Hull Library, European University Institute, Leipzig University Library, Cambridge University Library, Polska Bibliografia Naukowa, OUCI (Open Ukrainian Citation Index), Vernadsky National Library of Ukraine, Institutional repository of Lviv State University of Internal Affairs

Social & Legal Studios: The scientific and analytical journal / O. Balynska (EIC). Lviv: Lviv State University of Internal Affairs, 2025. Vol. 8, No. 2. 340 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 8, № 2
2025

Науково-аналітичний журнал

Засновано у 2018 р.

Періодичність випуску: чотири рази на рік

Редакційна колегія

Головний редактор

Ольга Балинська — Доктор юридичних наук, професор, академік Національної академії наук вищої освіти України, дійсний член Міжнародної академії інформатики, Львівський державний університет внутрішніх справ, Україна

Заступник головного редактора

Ігор Галян — Доктор психологічних наук, професор, Національний університет «Львівська політехніка» Львів, Україна

Відповідальний секретар

Ольга Огірко — Кандидат технічних наук, доцент, Львівський державний університет внутрішніх справ, Україна

Національні члени редколегії

Ольга Барабаш — Доктор юридичних наук, професор, Львівський державний університет внутрішніх справ, Україна

В'ячеслав Бліхар — Доктор філософських наук, професор, Львівський державний університет внутрішніх справ, Україна

Зоряна Ковальчук — Доктор психологічних наук, професор, Львівський державний університет внутрішніх справ, Україна

Марта Копитко — Доктор економічних наук, професор, Львівський державний університет внутрішніх справ, Україна

Ярослав Пушак — Доктор економічних наук, професор, Львівський державний університет внутрішніх справ, Україна

Ірина Шопіна — Доктор юридичних наук, професор, Львівський державний університет внутрішніх справ, Україна

Ірина Ревак — Доктор економічних наук, професор, Львівський державний університет внутрішніх справ, Україна

Степан Мельник — Доктор економічних наук, професор, Львівський державний університет внутрішніх справ, Україна

Олег Семененко — Доктор військових наук, Центральний науково-дослідний інститут Збройних Сил України, Україна

Марія Вінічук — Кандидат економічних наук, доцент, Львівський державний університет внутрішніх справ, Україна

Міжнародні члени редколегії

Ян Енґберґ — Доктор філософії з комунікації знань, професор, Орхуський університет, Данія

Танель Керікмяе — Доктор філософії з права Європейського Союзу, професор, завідувач кафедри права Талліннського технологічного університету, Естонія

Гейккі Піглаямакі — Доктор права, професор, Гельсінський університет, Фінляндія

Біруте Праневічене — Доктор права, професор, директор Інституту права та правоохоронної діяльності Академії громадської безпеки, Університет Миколаса Ромеріса, Литва

Марша Ґаррісон — Доктор права, професор, заслужений професор права 1901, Бруклінська юридична школа, США

Сауле Мільчювене — Доктор філософії з права, доцент, Університет Вітовта Великого, Литва

Social & Legal Studios

Volume 8, No. 2
2025

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

Editorial Board

Editor-in-Chief

Olha Balynska	Doctor of Law, Professor, Academician of the National Academy of Sciences of Higher Education of Ukraine, Full Member of the International Academy of Informatics, Lviv State University of Internal Affairs, Ukraine

Deputy Editor-in-Chief

Ihor Halian	Doctor of Psychology, Professor, National University “Lviv Polytechnic”, Ukraine

Executive Secretary

Olha Ohirko	PhD in Engineering, Associate Professor, Lviv State University of Internal Affairs, Ukraine

National Members of the Editorial Board

Olha Barabash	Doctor of Law, Professor, Lviv State University of Internal Affairs, Ukraine
Viacheslav Blikhar	Doctor of Philosophical Sciences, Professor, Lviv State University of Internal Affairs, Ukraine
Zoriana Kovalchuk	Doctor of Psychological Sciences, Professor, Lviv State University of Internal Affairs, Ukraine
Marta Kopytko	Doctor of Economic Sciences, Professor, Lviv State University of Internal Affairs, Ukraine
Yaroslav Pushak	Doctor of Economic Sciences, Professor, Lviv State University of Internal Affairs, Ukraine
Iryna Shopina	Doctor of Law, Professor, Lviv State University of Internal Affairs, Ukraine
Iryna Revak	Doctor of Economic Sciences, Professor, Lviv State University of Internal Affairs, Ukraine
Stepan Melnyk	Doctor of Economic Sciences, Professor, Lviv State University of Internal Affairs, Ukraine
Oleg Semenenko	Doctor of Military Sciences, Central Research Institute of the Armed Forces of Ukraine, Ukraine
Mariya Vinichuk	PhD in Economic Sciences, Associate Professor, Lviv State University of Internal Affairs, Ukraine

International Members of the Editorial Board

Jan Engberg	PhD in Knowledge Communication, Full Professor, Aarhus University, Denmark
Tanel Kerikmäe	PhD in European Union Law, Full Professor, Head of the Law Department, Tallinn University of Technology, Estonia
Heikki Pihlajamäki	Doctor of Law, Professor, University of Helsinki, Finland
Birutė Pranevičienė	Doctor of Law, Professor, Director of the Law and Law Enforcement Institute of the Academy of Public Security, Mykolas Romeris University, Lithuania
Marsha Garrison	Doctor of Law, Professor, 1901 Distinguished Research Professor of Law, Brooklyn Law School, USA
Saulė Milčiuvienė	PhD in Law, Associate Professor, Vytautas Magnus University, Lithuania

ЗМІСТ / CONTENTS

M. Abisheva, Zh. Omirali, A. Yensebayeva
Innovative approaches to financial and legal regulation of insurance products in the InsurTech era 11
М. Абішева, Ж. Оміралі, А. Єнсебаєва
Інноваційні підходи до фінансово-правового регулювання страхових продуктів в епоху InsurTech 11
Ye. Buribayev, K. Turlykhankyzy, N. Kalkayeva, Zh. Khamzina
Balancing freedom and control: Contemporary legal regulation of religious activity in Kazakhstan 23
Є. Бурібаєв, К. Турлиханкизи, Н. Калкаєва, Ж. Хамзіна
Баланс свободи та контролю: Сучасне правове регулювання релігійної діяльності в Казахстані 23
H. Leskiv, Andriy Babjak, H. Savchyn, M. Panteleiev
Evaluating the intensity of destabilising factors affecting operational and investigative activities in money laundering and illicit legalisation 39
Г. Леськів, А. Баб'як, Г. Савчин, М. Пантелєєв
Оцінювання інтенсивності впливу дестабілізуючих факторів на оперативно-розшукову діяльність у сфері відмивання й незаконної легалізації коштів 39
A. Kipane, A. Vilks, K. Kuznecova, A. Krivins
Prevention of security threats in public space in the context of urban development 49
А. Кіпане, А. Вілкс, К. Кузнецова, А. Кривіньш
Попередження загроз безпеці в публічному просторі в контексті розвитку міст 49
D. Shvets, Z. Kisil, R.-V. Kisil
Psychological specificity of police officers' professional actions under martial law 62
Д. Швець, З. Кісіль, Р.-В. Кісіль
Психологічна специфіка виконання професійних дій співробітниками поліції за умов воєнного стану 62
D. Osmonova, P. Bochkov, A. Kanaev, U. Sharshenaliev, N. Bekmatov
Comparative analysis of the organisational and legal frameworks governing the economic activities of religious organisations 71
Д. Осмонова, П. Бочков, А. Канаєв, У. Шаршеналієв, Н. Бекматов
Порівняльний аналіз організаційно-правових засад регулювання господарської діяльності релігійних організацій 71
Zh. Sadykanova, I. Smailova, A. Ramazanova, K. Koishybaiuly, N. Apakhayev
Criminal-legal mechanisms for countering offences motivated by religious beliefs: A criminotheological approach 84
Ж. Садиканова, І. Смайлова, А. Рамазанова, К. Койшибайули, Н. Апахаєв
Кримінально-правові механізми протидії злочинам, мотивованим релігійними переконаннями: кримінотеологічний підхід 84
M.-Zh. Su, H.-Y. Wang, Ye. Omirzhanov, H.-W. Wang, I. Saktaganova
Legal basis and prospects of international cooperation between Kazakhstan and China in the field of protection the rights of tourists 95
М.-Ч. Су, Х.-Й. Ванг, Є. Оміржанов, Х.-В. Ванг, І. Сактаганова
Правові основи та перспективи міжнародного співробітництва між Казахстаном і Китаєм у сфері захисту прав туристів 95

ЗМІСТ / CONTENTS

R. Vandzhurak, N. Kushakova-Kostytska, O. Balynska, O. Pankevych, I. Nastasak
Socio-legal phenomenon of judicial reasoning in the context of the implementation of a functional state..... 108
Р. Ванджурак, Н. Кушакова-Костицька, О. Балинська, О. Панкевич, І. Настасяк
Соціально-правовий феномен суддівського розсуду в контексті реалізації функцій держави 108
R. Zhaltyrbayeva, A. Jangabulova, Sh. Saimova, Zh. Tlembayeva
Legal challenges of regulating artificial intelligence in law enforcement,
taking into account the interdisciplinary approach to socio-legal transformations 118
Р. Жалтирбаєва, А. Джангабулова, Ш. Саімова, Ж. Тлембаєва
Правові проблеми регулювання штучного інтелекту у правоохоронній діяльності
з урахуванням міждисциплінарного підходу до соціально-правових трансформацій..... 118
N. Tleshaliyev, A. Tleubayev, G. Duisenbayeva, A. Tsoy, A. Smanova
Problems of the development of post-penitentiary probation..... 131
Н. Тлешалієв, А. Тлеубаєв, Г. Дуйсенбаєва, А. Цой, А. Сманова
Проблеми розвитку постпенітенціарної пробації в Казахстані..... 131
D. Dryzhakova
Legal regulation of the concept of “bot farms”
as a response to manipulation of Internet users 144
Д. Дрижакова
Правове регулювання поняття «бот-ферми»
як відповідь на маніпулювання користувачами Інтернету 144
N. Parasiuk, V. Parasiuk, I. Zdrenyk, R. Boryslavskyi
Protection of property rights in civil and criminal law of Ukraine:
Points of intersection and problems of law enforcement..... 155
Н. Парасюк, В. Парасюк, І. Здреник, Р. Бориславський
Захист прав власності в цивільному та кримінальному праві України:
точки перетину та проблеми правозастосування..... 155
J. Koçi
Role of the European Union in addressing climate change migration
and protecting immigrants’ rights 165
Йо. Кочі
Роль Європейського Союзу у вирішенні проблеми міграції,
спричиненої зміною клімату, та захисті прав іммігрантів..... 165
O. Dashkovska, O. Yavor, T. Kyrychenko, O. Liubchenko, M. Naumenko
The effectiveness of international human rights protection mechanisms 177
О. Дашковська, О. Явор, Т. Кириченко, О. Любченко, М. Науменко
Ефективність міжнародних правозахисних механізмівзахисту прав людини 177
A. Satayeva
Comparative analysis of disclosure of documents in the AIFC court and English courts:
Impact on legal certainty in commercial disputes 189
А. Сатаєва
Порівняльний аналіз розкриття документів у суді МФЦА та англійських судах:
вплив на правову визначеність у комерційних спорах..... 189

ЗМІСТ / CONTENTS

Z. Toporetska, M. Pohoretskyi, V. Vazhynskyi, G. Denysenko, M. Pohoretskyi
Institutional risks of organised crime in the gambling business: Structure, mechanisms of influence, and threats to the national security of Ukraine in wartime context based on the analysis of case studies..... 200
З. Топорецька, М. Погорецький, В. Важинський, Г. Денисенко, М. Погорецький
Інституційні ризики організованої злочинності в гральному бізнесі: структура, механізми впливу та загрози національній безпеці України в умовах війни на основі аналізу матеріалів практики 200
A. Ozenbayeva, Zh. Akshatayeva, L. Yerkinbayeva, G. Zharylkapova, M. Algaziyev
Issues of personal subsidiary farm legal status in Kazakhstan in the context of entrepreneurship development..... 214
А. Озенбаєва, Ж. Акшатаєва, Л. Єркінбаєва, Г. Жарилкапова, М. Алгазієв
Питання правового статусу особистого підсобного господарства в Казахстані в контексті розвитку підприємництва..... 214
G.M. Guma, E. Isak
The compatibility of the law “On Social Security in the Republic of Albania” with the European Convention on Human Rights 226
Г.М. Гума, Етьєн Ісак
Сумісність закону «Про соціальне забезпечення в Республіці Албанія» з Європейською конвенцією прав людини..... 226
N. Ilchyshyn
Impact of digitalisation on the justice system: Challenges of administrative justice 238
Н. Ільчишин
Вплив цифровізації на систему правосуддя: виклики адміністративного судочинства..... 238
M. Pleskach
Theoretical grounds for defining the criteria to distinguish between digital and traditional human rights: An international legal analysis..... 248
М. Плескач
Теоретичні засади визначення критеріїв розмежування цифрових і традиційних прав людини: міжнародно-правовий аналіз..... 248
I. Basysta, O. Drozdova, V. Kovtun, S. Shulhin
Social and legal consequences of Ukraine’s ratification of the Rome Statute of the International Criminal Court..... 262
І. Басиста, О. Дроздов, О. Дроздова, В. Ковтун, С. Шульгін
Соціально-правові наслідки ратифікації Україною Римського Статуту Міжнародного кримінального суду..... 262
L. Chystokletov, Yu. Nazar, O. Khytra, D. Zabzaliuk, Yu. Komissarchuk
Information law in the context of information aggression 276
Л. Чистоклетов, Ю. Назар, О. Хитра, Д. Забзалюк, Ю. Коміссарчук
Інформаційне право в умовах інформаційної агресії..... 276
S. Salishev, B. Kanybekova, A. Kokoeva, Ch. Botoeva, B. Kakeshov
Criminal law support for information security: Issues of theory and practice..... 285
С. Салишев, Б. Канибекова, А. Кокоєва, Ч. Ботоєва, Б. Какешов
Кримінально-правове забезпечення інформаційної безпеки: питання теорії та практики 285

ЗМІСТ / CONTENTS

L. Mikhnevych, N. Borsuk, Yu. Udovenko, E. Kulaha
Combining social and environmental law in the context of sustainable development:
Problems of legal balance 297
Л. Міхневич, Н. Борсук, Ю. Удовенко, О. Альонкін, Е. Кулага
Поєднання соціального та екологічного права в умовах сталого розвитку:
проблеми правового балансу 297
B. Kamilova
The impact of freedom of movement in the European Union on the spread of human trafficking:
Legal challenges and opportunities for improving countermeasures 309
Б. Камілова
Вплив свободи пересування в Європейському Союзі на поширення торгівлі людьми:
правові виклики та можливості для вдосконалення контрзаходів 309
A. Kuchuk, Ye. Kobko, A. Radchuk, V. Knyshov, T. Voloshanivska
Ensuring human rights in Ukraine based on the case law of the European Court of Human Rights 324
А. Кучук, Є. Кобко, А. Радчук, В. Книшов, Т. Волошанівська
Забезпечення прав людини в Україні на основі практики Європейського суду з прав людини 324

UDC 368:347.7:004
DOI: 10.32518/sals2.2025.11

Соціально-правові студії. 2025. Т. 8, № 2
Social & Legal Studios. 2025. Vol. 8, No. 2

Innovative approaches to financial and legal regulation of insurance products in the InsurTech era

Meruert Abisheva
Doctoral Student
Al-Farabi Kazakh National University
050040, 71 Al-Farabi Ave., Almaty, Republic of Kazakhstan
https://orcid.org/0000-0002-9558-3987
Zhazira Omirali*
Doctor of Law
Kunayev University
050022, 107 Kurmangazy Str., Almaty, Republic of Kazakhstan
https://orcid.org/0000-0002-5510-2966
Anel Yensebayeva
PhD in Law
Republican Research Institute for Occupational Safety and Health of the Ministry of Labour and Social Protection of the Population of the Republic of Kazakhstan (RRIOSH)
010000, 18 Kravtsova Str., Astana, Republic of Kazakhstan
https://orcid.org/0000-0001-6970-8945

Abstract. The article was aimed at studying legal peculiarities and identifying topical problems of regulation of innovative insurance products operating with the use of InsurTech technologies. The study applied the comparative legal method to compare the norms of Kazakh and international legislation in the field of insurance. Formal-legal and systemic approaches were used to analyse the structure and content of legal acts regulating InsurTech products. The legal modelling method made it possible to substantiate the prospects for the development of financial and legal regulation taking into account the digital transformation of the insurance market. The study analysed in detail the essence of InsurTech as the integration of digital technologies into the insurance industry, which identified key areas of industry transformation, including smart contracts, automated risk assessment and personalised digital products. A study of the current state of legal regulation of insurance activities in the Republic of Kazakhstan revealed a number of gaps, in particular, the lack of normative consolidation of concepts related to digital insurance services, as well as insufficient flexibility of legal mechanisms to respond to technological changes. As a result of the analysis of international experience, it was found that the EU and the US have introduced specialised regulatory regimes, such as "regulatory sandboxes", which allow testing digital insurance products under controlled conditions with minimal regulatory burden. Mechanisms such as the FinTech Regulatory Sandbox and InsurTech Innovation Hub have been considered to provide regulatory flexibility while maintaining an appropriate level of consumer protection. The analysis showed that such initiatives facilitate the accelerated integration of innovations into the insurance sector and can be adapted to the Kazakh context, taking into account local legal and institutional peculiarities. Based on the comparative analysis, recommendations for Kazakhstan were proposed, including the development of legal definitions, expanding the functionality of the financial supervisory agency in terms of InsurTech, as well as the introduction of a legal mechanism of "regulatory sandbox" in order to stimulate innovation while respecting the requirements of legal certainty and consumer protection

Keywords: insurance law; digital technologies; artificial intelligence; blockchain technologies; automated risk assessment systems; digital identification

Introduction

The digitalisation of the financial sector is becoming systemic, affecting not only banking services but also insurance. The development of InsurTech, an innovative segment based on the application of digital technologies in the insurance industry, is transforming both the product line and the mechanisms of interaction between insurers, consumers and the

Suggested Citation

Article's History:Received: 01.03.2025 Revised: 02.05.2025 Accepted: 25.06.2025

Abisheva, M., Omirali, Zh., & Yensebayeva, A. (2025). Innovative approaches to financial and legal regulation of insurance products in the InsurTech era. *Social & Legal Studios*, 8(2), 11-22. doi: 10.32518/sals2.2025.11.

*Corresponding author

Copyright © The Author(s). This is an open access Article distributed under the terms of the Creative Commons Attribution License 4.0 (https://creativecommons.org/licenses/by/4.0/)

state. With the active introduction of artificial intelligence (AI), blockchain technologies, automated risk assessment and digital identification systems, there is a qualitative shift in the structure of the insurance market. The traditional insurance model is being changed by moving to more technological, flexible and customer-oriented forms of providing insurance services (Kuzmak & Svereda, 2023). These changes create both new opportunities for increasing accessibility and personalisation of insurance services and legal challenges related to the protection of personal data, ensuring transparency of algorithmic decision-making, regulation of digital intermediaries and preserving the legal balance between innovation and stability of the financial system. For the Republic of Kazakhstan, which is at the stage of forming an adaptive model of financial regulation, it is particularly important to rethink the existing legal mechanisms in order to adequately respond to the dynamics of the InsurTech market and to comply with international trends in the regulation of digital insurance.

In the context of the rapid development of InsurTech and the digital transformation of financial services, research interest in the legal regulation of insurance products has increased significantly. However, the analysis of scientific sources demonstrates that despite the existence of some fundamental and applied developments, there are a number of unrevealed or insufficiently covered aspects. Thus, E.K. Akhmetov and M.Zh. Kulikpaeva (2022), studying the mechanisms of state regulation of the financial market in Kazakhstan, emphasised the imperfection of the existing supervisory practices and fragmentation of the legislative framework. Their work emphasises that the insurance sector, especially in terms of digital products, requires more flexible and adaptive forms of regulation that can respond quickly to technological change.

The United Kingdom experience analysed in the study by L. Fahy (2021), which focuses on the regulatory sandbox mechanism. The author demonstrates that the involvement of stakeholders in the process of regulatory experimentation increases trust in institutions, but the question of transferring these practices to jurisdictions with different institutional conditions remains open. K. Heinonen and T. Strandvik (2021) interpret the COVID-19 pandemic as a trigger for forced innovation in services, including insurance. The authors stressed the need to reconsider the traditional approach to innovation: in a crisis, the market requires not only technical, but also organisational and legal transformations that can support the adaptation of insurance services. M.Z. Kenzhaliev (2023) carried out a comparative analysis of the regulatory framework for Islamic finance in Kazakhstan, the United Kingdom and the International Financial Centre "Astana". His results demonstrate that flexible multi-level regulatory models based on international practice promote the development of niche insurance products, including takaful, thereby highlighting the need for legal unification in the digital environment.

In their turn, R. Nagayev and N. Stambakiyev (2022), examining the current state of the Islamic finance industry in Kazakhstan, concluded that the lack of comprehensive legal mechanisms hinders the introduction of innovations, despite the high potential of the market. This highlights the need to develop flexible regulatory designs for InsurTech products that are religiously and culturally appropriate. L. Lin and C. Chen (2020) examined InsurTech as a twofold phenomenon – on the one hand a source of progress and on the other a challenge to legal stability. Their critical analysis shows that technological innovations often outpace the regulatory framework, creating legal lacunas and increasing risks for consumers, requiring prior legal adaptation and coordination between regulators. Digital transformation of insurance has also been raised in the study by Z. Poorhadi Poshtiri *et al.* (2024), which proposes an insurance coverage model specifically designed for fintech start-ups. The authors emphasise the need for legal support for the digital footprint of start-ups, as traditional regulatory schemes prove inapplicable in flexible and unstable ecosystems.

The practical aspect of analysing the financial risks of insurance companies is disclosed in the work by B. Saparova *et al.* (2021). The authors, using an empirical approach, demonstrate the high exposure of the insurance sector to instability under conditions of insufficient regulatory support, especially in the process of digitalisation, which underlines the need for more dynamic legal support. A. Urbinati *et al.* (2020) examined the role of digital technologies in the process of open innovation. Using multiple case studies, they showed that digitalisation stimulates inter-organisational collaboration and accelerates innovation processes, but the effectiveness of these transformations depends on a regulatory environment that ensures legal security and predictability. Finally, A. Zhusupov *et al.* (2025) analysed theoretical aspects of the legal regulation of the state's financial activity, focusing on the need to rethink public-law functions in the digital economy. Their argumentation confirms that the transformation of insurance regulation should be based on a systemic rather than fragmentary approach.

Thus, the conducted literature review demonstrates the presence of significant scientific interest in certain aspects of financial and legal regulation of insurance in the digital era. However, the lack of integrated approaches to analysing the interaction of InsurTech, legal risks and adaptation mechanisms indicates a scientific gap, the elimination of which requires a comprehensive theoretical and applied analysis. The aim of the article was to identify the legal features and problematic aspects of regulating innovative insurance products based on InsurTech technologies. To achieve this goal the following tasks were set: to analyse the essence and features of InsurTech as a phenomenon in the context of insurance and digital technologies; to consider the current state of legal regulation of insurance activities in the Republic of Kazakhstan in the context of InsurTech; to study the international experience of regulation of digital insurance services and determine the possibilities of its adaptation to the Kazakh legal system.

Materials and methods

In the course of the work, a combination of general scientific and special legal methods was used, which provided a comprehensive approach to the assessment of the regulatory and legal framework for the functioning of digital insurance products and tools for their legal adaptation. The method of legal hermeneutics was used to analyse the terminological apparatus of the research. It made it possible to perform a lexical and semantic analysis of the concept of InsurTech in the legal context, trace its etymological origin as a combination of the terms insurance and technology, as well as identify the substantive characteristics formed in doctrinal sources and international practice.

The key research method was comparative legal analysis, which was used to compare the peculiarities of InsurTech and digital insurance regulation in the Republic of Kazakhstan with international experience of legal impact on digital insurance services. Within the framework of this approach, the norms of Kazakh legislation and international documents regulating the digital transformation of insurance services were considered. The following regulatory acts formed the basis of the Kazakh legal block of the study: Civil Code of the Republic of Kazakhstan (1999), Law of the Republic of Kazakhstan No. 126-II "On Insurance Activity" (2000), Law of the Republic of Kazakhstan No. 474-II "On State Regulation, Control and Supervision of the Financial Market and Financial Organizations" (2003), Law of the Republic of Kazakhstan No. 94-V "On Personal Data and Their Protection" (2013), Law of the Republic of Kazakhstan No. 2155 "On the National Bank of the Republic of Kazakhstan" (1995). A statistical method was used to study the quantitative characteristics of digital insurance development. The analysis covered the dynamics of conclusion of electronic insurance contracts in 2023, as well as the share of InsurTech products in the insurance portfolios of companies. Empirical data were obtained from the report of the Agency of the Republic of Kazakhstan on Regulation and Development of Financial Market (2024), data of the European Insurance and Occupational Pensions Authority (2024).

The formal-legal method was used to analyse the structure and content of existing regulations governing the specifics of the legal status of digital insurance products, the procedure for their remote registration, the protection of personal data, and the legal registration of electronic document flow between participants in the insurance process. To study the international experience of InsurTech regulation, official sources and analytical materials reflecting current initiatives in countries with developed digital financial infrastructure were used. Such resources as the Digital Regulation Cooperation Forum, InsurTech Innovation Hub, as well as regulatory and policy documents, including the Digital Finance Package (European Commission, 2020), Digital Operational Resilience Act (2025), and Fintech Laws and Regulations Hong Kong 2024-2025 (2024), were analysed as a basis for the study. These sources provided an overview of current trends and approaches to digital regulation in the EU, United Kingdom, US, Singapore and Hong Kong jurisdictions.

Results

Theoretical and legal foundations of InsurTech and insurance regulation. InsurTech is a synthesis of the words "insurance" and "technology" and refers to the use of digital technologies and innovative solutions in the insurance sector. From a theoretical and legal perspective, InsurTech is considered as a set of digital platforms, algorithms and technological solutions aimed at optimising insurance operations, personalising insurance products, automating risk assessment and loss adjustment (Anagnostopoulos, 2018). The functioning of InsurTech is based on technologies such as AI, Big Data, blockchain, Internet of Things (IoT), smart contracts and cloud computing, which allow transforming traditional insurance models and rethinking them from a legal regulatory perspective.

From a legal perspective, the introduction of InsurTech entails the need to adapt existing insurance and financial regulations to the new digital realities. Thus, traditional legal categories such as insurance contract, insured event, and subject of insurance acquire new interpretations in the digital context (Permatasari *et al.*, 2025). For example, insurance contracts can be concluded remotely through digital platforms such as Lemonade, ZhongAn, which use automated AI-based risk assessment algorithms. Insurance claims are also settled using smart systems, such as the Tractable platform, which analyses photos of vehicle damage and automatically generates payment offers. These technologies minimise human involvement in insurance operations, but at the same time, they raise the need for regulatory liability for the actions of algorithms, as well as legal recognition of the digital form of contracting and information storage. This necessitates normative fixation of responsibility for the actions of algorithms, as well as legal recognition of the digital form of contracting and information storage.

Given the variety of digital solutions used in the insurance industry, it is necessary to identify the key technologies that form the basis of InsurTech and analyse their functional features from the point of view of legal regulation. This approach will help systematise the legal challenges arising from their introduction and outline areas for improving the regulatory framework. To this end, it seems appropriate to summarise the relevant aspects in the form of Table 1.

Table 1. Analysing key InsurTech technologies, their functions and legal challenges

Technology	Functional purpose in insurance	Legal challenges	Areas of legal regulation
AI	Automation of risk assessment, pricing, fraud detection	Non-transparency of algorithms, possibility of discrimination, issue of legal liability	Establishing transparency standards, defining the boundaries of automation, legal status of AI solutions
Big Data	Customer behaviour analysis, policy personalisation, insurance event forecasting	Breach of confidentiality, data collection without consent, risks of discrimination	Tightening regulation of data processing, informed consent requirements, access controls
Blockchain	Secure data storage, transaction verification, fraud control	Difficulties in error correction, cross-border data transfer, lack of legal certainty	Recognising the legal validity of records, ensuring compatibility with national data laws
IoT	Real-time monitoring of insurance objects condition, dynamic insurance	Threat of data leakage, liability for device failures, cybersecurity issues	Liability regulation, security standards, device certification
Smart contracts	Automatic fulfilment of insurance contract terms and conditions	Lack of flexibility, difficulty in interpretation, inability to make changes	Recognition of legal status, development of termination and dispute resolution procedures

Table 1, Continued

Technology	Functional purpose in insurance	Legal challenges	Areas of legal regulation
Cloud computing	Processing and storage of insurance data, providing remote access	Risks of data loss, leaks, dependence on IT service providers	Provider licensing, storage audits, resilience and security requirements

Source: compiled by the authors based on V. Chatzara (2020), D. Lanfranchi and L. Grassi (2021a), M. Han and D. Xu (2022)

Additionally, the development of InsurTech is accompanied by a number of ethical challenges that go beyond purely technical or legal regulation. One key challenge is algorithmic bias, which manifests itself when AI and Big Data analytics systems used to assess insurance risks can unknowingly reproduce historical social or gender biases. For example, if training samples contain data in which certain groups (women, the elderly, ethnic minorities) had lower insurance pay-outs or were more likely to be recognised as "high risk", the algorithm may systematically underbid or raise rates for these categories. Such a case has been reported, for example, in the US in the use of algorithms in auto insurance, where men received more favourable offers than women under similar conditions (Owens *et al.*, 2022). This raises questions about the need for transparency of algorithms, ethical scrutiny, and legal defence mechanisms against discrimination in the digital environment.

One of the significant challenges of insurance digitalisation is the risk of over-detailing personalised insurance products through the collection and processing of personal data, including biometric, behavioural and health information (Yevseiev *et al.*, 2021; Yu & Xiao, 2023). While such data can improve the accuracy of actuarial calculations and tailor tariffs to individual risks, its use may violate the insured's right to privacy and the protection of personal information. For example, the use of wearable devices that record physical activity, sleep or heart rate gives insurers access to medical data, enabling them to form more accurate but potentially discriminatory insurance offers (Charpentier & Vamparys, 2025). In addition, the automation of decision-making using algorithms may result in the denial of insurance benefits without human intervention, thus depriving the client of an effective appeal and violating the principles of fairness and procedural transparency. These aspects call for the development of not only legal but also ethical-legal standards, including ensuring transparency of algorithms, creating appeal procedures, and embedding fairness and non-discrimination in digital insurance practice.

Thus, InsurTech is not just a set of technological innovations, but a complex phenomenon that requires the creation of a new legal field capable of ensuring both the innovative development of the insurance sector and preserving the stability and predictability of legal relations in the digital environment. This field should be based on a combination of technological neutrality of law with simultaneous clarity of norms regulating the use of algorithms, data protection, digital identification and liability of participants in new insurance models.

Analysis of the state of financial and legal regulation of the insurance market of Kazakhstan. Financial and legal regulation of the insurance market of the Republic of Kazakhstan is a complex and multi-component system based on a number of legal acts of different legal force, including constitutional provisions, codified acts, laws, by-laws and industry standards regulating relations in the insurance sector. The main aim of this regulatory system is to ensure stability, transparency, protection of the rights of insurance market participants, as well as harmonisation with international standards in the context of globalisation and digitalisation of the financial sector.

The foundation of legal regulation of insurance activities in Kazakhstan is laid in the Civil Code of the Republic of Kazakhstan (1999). It defines the legal nature of an insurance contract, the terms of its conclusion, performance, termination, as well as general requirements for insurance organisations. In particular, Article 817 of the Code sets out the two main types of insurance – compulsory and voluntary, while Articles 818-846 disclose the key provisions of an insurance contract, including insurable interest, insurance indemnity and grounds for refusal of payment.

The specialised legislation regulating the insurance sector of the Republic of Kazakhstan is Law of the Republic of Kazakhstan No. 126-II (2000). The law covers key aspects of insurance activity, including licensing, classification of insurance types, requirements for financial stability of insurance and reinsurance organisations, regulation of insurance brokers, actuaries and underwriters, as well as rules relating to reinsurance. In the course of 2020-2022, provisions were introduced into the Law aimed at adapting legal regulation to the conditions of digitalisation. In particular, the notions of "insurance platform", "electronic insurance contract" and "insurance ombudsman" were enshrined, which indicates an attempt to form a legal basis for the functioning of InsurTech tools within the current legislation.

Regulatory mechanisms are also based on the provisions of Law of the Republic of Kazakhstan No. 474-II (2003), which defines the powers and functions of the Agency for Regulation and Development of the Financial Market of the Republic of Kazakhstan as the central authorised body in the field of insurance supervision. This law grants the Agency exclusive authority to issue, suspend and revoke licences, control compliance by insurance companies with solvency, capital, reserve and reinsurance requirements. The Agency also develops and approves normative legal acts regulating certain aspects of insurance activities.

Along with the above-mentioned acts, of significant importance are the regulatory resolutions of the Board of the National Bank of the Republic of Kazakhstan and later - the Agency for Regulation and Development of the Financial Market of the Republic of Kazakhstan, adopted to develop and detail the provisions of the codes and laws. In particular, these are the Resolution of the Board of the National Bank of the Republic of Kazakhstan No. 13 (2019), Resolution of the Board of the National Bank of the Republic of Kazakhstan No. 170 (2017), Resolution of the Board of the Agency of the Republic of Kazakhstan on Regulation and Development of the Financial Market No. 50 (2020), and also Resolution of the Board of the National Bank of the Republic of Kazakhstan No. 140 (2018). These documents are subordinate but legally binding and are aimed at adapting the sector to modern challenges, including digitalisation.

Since 2019, the Republic of Kazakhstan has seen the progressive introduction of electronic insurance policies, accompanied by the legal and regulatory enshrinement of

their legal status. In accordance with the provisions in the Civil Code of the Republic of Kazakhstan (1999) and acts of the Agency for Regulation and Development of the Financial Market of the Republic of Kazakhstan, electronic insurance contracts are recognised as equivalent to paper insurance contracts provided that they are issued through accredited digital platforms that meet information security requirements and ensure proper identification of the client. This practice is particularly intensified in the period 2020-2024 against the backdrop of the digitalisation of the financial sector. Additionally, the use of electronic policies is regulated by the Law of the Republic of Kazakhstan No. 370 (2003), which establishes the legal validity of electronic documents and the mechanism of their confirmation. Thus, the legal basis for remote conclusion of insurance contracts and their legitimate use in the digital economy is being formed.

In addition, the Law of the Republic of Kazakhstan No. 94-V "On Personal Data and Their Protection" (2013), which establishes the basis for the legal collection, storage and use of personal data of insurance clients, is applicable in the field of data processing. It imposes obligations on insurance organisations to maintain confidentiality and data protection, which is especially important in the context of InsurTech implementation, when data analysis becomes a key element of insurance companies' business models. The implementation of these requirements is the responsibility of authorised state bodies, the powers of which are presented in Table 2.

Table 2. Powers of the main state bodies in the sphere of regulation of the insurance market of the Republic of Kazakhstan

Legal basis	Main powers	Features in the context of digitalisation
Agency for Regulation and Development of the Financial Market of the Republic of Kazakhstan		
Law of the Republic of Kazakhstan No. 474-II (2003)	Licensing of insurance organisations and brokers. Establishment of capital, reserves and reinsurance ratios. Methodological and regulatory regulation. Supervision and application of sanctions. Development of insurance market strategy for insurance organisations and brokers	Implementation of digital insurance standards. Monitoring compliance with digital consumer rights. Adaptation of regulations to InsurTech, AI and Big Data
Ministry of Finance of the Republic of Kazakhstan		
Specific laws and by-laws	Formation of fiscal policy. Participation in the development of legislation. Issues of compulsory insurance. Interaction with IFIs	Participate in the digital transformation of budget and insurance mechanisms. Coordination of mandatory digital insurance programmes
National Bank of the Republic of Kazakhstan		
Law of the Republic of Kazakhstan No. 2155 (1995)	Macroeconomic analysis. Financial stability. Supporting the risk management system. Coordination with Agency for Regulation and Development of the Financial Market of the Republic of Kazakhstan	Promoting the sustainability of the insurance sector. Participating in the development of digital risk standards

Source: compiled by the authors

Despite the existence of a basic regulatory framework for personal data processing, law enforcement practice and existing legislation are not yet fully adapted to the challenges posed by the digitalisation of the insurance industry. This is particularly evident at the intersection of insurance and digital legal regimes, where clearer regulation of the rights and obligations of the parties, big data processing technologies and automated decision-making is required.

One of the key challenges is the lack of specific regulatory consolidation of categories and legal regimes related to the use of new digital technologies in insurance. Thus, in the current legislation – including the Law of the Republic of Kazakhstan No. 126-II (2000), Law of the Republic of Kazakhstan No. 474-II (2003) – there is no clear legal definition of such concepts as AI, smart contract, digital customer identification, blockchain platform etc. This leads to legal uncertainty in their use in insurance products and services.

The regulatory framework also lacks comprehensive provisions on legal liability for the actions of automated systems, especially in cases of damage caused by errors in risk assessment algorithms or failures of intelligent claims settlement systems. Given the increasing autonomy of digital solutions, there's a need to develop regulations governing the degree of permissible automation, principles of algorithmic transparency, and rules for auditing decision-making algorithms.

In addition, with the mass use of Big Data and IoT technologies in insurance activities, the problem of insufficient regulatory elaboration of mechanisms for the protection of personal and sensitive data is becoming more pressing. Despite the existence of the basic regulatory act – Law of the Republic of Kazakhstan No. 94-V "On Personal Data and Their Protection" (2013), its provisions are of a general nature and do not take into account the specifics of data processing in the insurance sector. Thus, Article 7 of this Law provides for the obligation of the operator to obtain the consent of the subject of personal data for their collection and processing, but does not disclose the specifics of obtaining informed consent in automated digital insurance systems, where interaction with the user is minimised. In addition, Article 22 of the same Law indicates the need to ensure confidentiality, integrity and availability of personal data during their storage and transmission. However, in the conditions of cross-border data transfer via InsurTech platforms, specific technical and organisational protection measures, such as encryption standards, access logging, as well as mechanisms for limiting algorithmic profiling of clients, especially in terms of non-human decision-making, are not regulated.

Insufficient regulatory clarity of procedures for recognising the legal validity of electronic documents and smart contracts in the insurance sector also remains a problem. In accordance with Article 4 of the Law of the Republic of Kazakhstan No. 370 (2003), an electronic document signed with an electronic digital signature is equal to a paper document if it is created and certified in accordance with the requirements of the law. However, this provision is of a general nature and does not take into account the peculiarities of the

conclusion, execution and cancellation of insurance contracts in the digital environment, especially with the use of automated platforms and smart contracts. This hinders the development of innovative microinsurance models, peer-to-peer insurance and flexible products based on dynamic pricing.

Separately, there is a lack of coordination between regulators (Agency for Regulation and Development of the Financial Market of the Republic of Kazakhstan, the National Bank, the Ministry of Finance) in the regulation of digital insurance products, which leads to legal duplication, gaps or conflicts of norms. In particular, issues related to certification of digital platforms, standardisation of API interfaces for data exchange, or cybersecurity procedures for insurance companies remain at the intersection of jurisdictions of different agencies without a single regulatory centre. Thus, the digitalisation of Kazakhstan's insurance sector is outpacing the pace of regulatory adaptation. To overcome these gaps, it is necessary not only to update the existing legislation, but also to develop a fundamentally new regulatory framework based on a balance of technological neutrality and functional specificity.

International experience of legal regulation of InsurTech. The development of InsurTech globally is accompanied by the active formation of new legal approaches reflecting the rapid introduction of digital technologies in the insurance sector. The international experience of InsurTech legal regulation demonstrates the diversity of strategies and models determined both by technological development and the specifics of national legal systems and the level of maturity of financial markets. The world's leading countries have already integrated InsurTech into the context of the digital transformation of financial regulation by developing appropriate framework approaches to supervision, licensing and consumer protection. One of the most advanced jurisdictions in InsurTech is the United Kingdom, where the regulator, the Financial Conduct Authority, has initiated a regulatory "sandbox" (Cornelli *et al.*, 2024). This mechanism provides insurance start-ups with the opportunity to test innovative products and services in a limited legal environment in co-operation with the regulator. This model has enabled a balance between innovation and consumer protection, and minimised legal risks during the implementation phase of new solutions. In addition, the United Kingdom implemented the Digital Regulation Cooperation Forum strategy, which coordinates the actions of different regulators in the context of digitalisation, including the InsurTech segment.

In the EU, the InsurTech regulatory architecture is based on a number of supranational legal acts aimed at harmonising digital standards in the financial sector, including insurance (Kamyshanskyi, 2025). One of the key documents is Regulation of the European Parliament and of the Council No. 910/2014 (2014) on electronic identification and trust services for electronic transactions in the internal market. According to Article 25 of this Regulation, an electronic signature recognised in one EU Member State must also be legally valid in other Member States, thus providing a legal basis for the cross-border conclusion of insurance contracts in digital form.

In addition, Directive of the European Parliament and of the Council No. 2016/97 (2016) in Article 3 provides for the possibility of cross-border provision of insurance services subject to general consumer protection and disclosure requirements, including in electronic format. An important step was the Digital Finance Package initiative (European Commission, 2020), which includes a digital finance strategy and the Digital Operational Resilience Act (2025). The latter sets out requirements for cyber resilience, risk management, and the performance of IT service providers, which InsurTech companies are increasingly relying on.

The US, despite the absence of a single centralised regulation of the insurance industry, demonstrates flexible and innovative practices at the level of individual states. For example, New York State has a special division within the Department of Financial Services dealing with digital financial products, including insurance. The National Association of Insurance Commissioners has developed the InsurTech Innovation Hub, which coordinates the activities of market players and facilitates legal support for technological innovations. The key focus of US regulation remains ensuring transparency of algorithms, non-discriminatory access to insurance services and increasing the sustainability of digital infrastructure (Kolodiziev *et al.*, 2021).

In the Asia-Pacific region, Singapore and Hong Kong are taking active steps to create a legal environment for InsurTech. In Singapore, insurance fintech companies are regulated by the Management of monetary circulation, which has implemented an "open API" model and supports digital insurance platforms through the government's FinTech Regulatory Sandbox programme. In Hong Kong, the Insurance Authority is implementing an InsurTech Facilitation Team strategy to advise market participants and support digital insurance projects Fintech Laws and Regulations Hong Kong 2024-2025 (2024). Both jurisdictions demonstrate an integrated approach covering both the technological and legal aspects of InsurTech integration.

In order to visualise the key differences in InsurTech legal regulation between the Republic of Kazakhstan and the world's leading jurisdictions, it is useful to supplement the above analysis with Table 3. The EU is chosen as a reference model for comparison, as it is in this association that one of the most systematic and thoughtful approaches to digital regulation of the financial sector is observed. The EU legal architecture is characterised by a high level of harmonisation of rules covering such critical areas for InsurTech as digital identity, electronic contracting, personal data protection, cyber resilience and the promotion of technological innovation.

Table 3. Comparative characterisation of InsurTech legal regulation in the Republic of Kazakhstan and the EU

Criterion	Republic of Kazakhstan	EU
Electronic insurance contracts	Recognised at the legislative level, but there is no detailed regulation of conclusion/execution procedures via InsurTech platforms	Recognised as part of the Digital Finance Package strategy (European Commission, 2020), a legal framework for the use of smart contracts and remote contracting has been established
Digital identification of customers	Regulated by general legislation, but not adapted to the specifics of insurance activities	Regulated in accordance with Regulation of the European Parliament and of the Council No. 910/2014 (2014) – single electronic identification system for all financial services

Table 3, Continued

Criterion	Republic of Kazakhstan	EU
Personal data protection	Law of the Republic of Kazakhstan No. 94-V (2013) contains general norms without sectoral detailing in insurance.	Directive of the European Parliament and of the Council No. 2016/97 (2016) – sets high mandatory standards, including for insurance companies
Cybersecurity	There is no separate normative act; there are only general provisions in the sphere of information technologies	The Digital Operational Resilience Act (2025) contains clear requirements for insurance companies' IT infrastructures and technology service providers
Innovation support	There is no specialised regulatory sandbox focused on insurance technologies	Creates conditions for testing innovations through a pan-European Sandbox Framework within the framework of digital financial regulation

Source: compiled by the authors

Thus, international practice shows that successful regulation of InsurTech requires flexible legal mechanisms focused on preventing the risks of digitalisation, protecting consumer rights, and ensuring transparency and ethics of algorithmic solutions. Regardless of the regulatory model – centralised (EU), decentralised (US) or hybrid (Singapore) - legal certainty, innovation neutrality and ensuring trust in digital insurance products remain key priorities. In this context, the situation in the Republic of Kazakhstan is also illustrative, where industry experts estimate that the share of electronic insurance contracts will exceed 15% in 2023, which indicates a positive trend in the digitalisation of the insurance sector (Agency of the Republic of Kazakhstan on Regulation and Development of Financial Market, 2024). However, this indicator is significantly behind similar values in the EU countries, where the share of online contracts in some jurisdictions (e.g., the Netherlands, Estonia) reaches 35-40% (European Insurance and Occupational Pensions Authority, 2024). In the UK and Singapore, InsurTech solutions cover up to 20-30% of the insurance market, especially in the areas of motor and health insurance. In Kazakhstan, however, the share of InsurTech products in insurance companies' portfolios remains fragmented and concentrated mainly in motor insurance, while state support for innovation is still limited mainly to the fintech sector, with no clear coverage of insurance technologies.

Prospects for improvement of regulatory policy in Kazakhstan. The conducted comparative analysis with the EU legal system allowed to identify priority areas of reforms that require both legislative and institutional improvements. In this regard, it seems reasonable to put forward a number of recommendations that have the potential to ensure a balanced development of innovative insurance technologies while maintaining consumer protection and financial stability. The need to update the Law of the Republic of Kazakhstan No. 126-II (2000) is actualised. In particular, Article 1 of this law requires the addition of legal definitions of such concepts as "electronic insurance contract", "smart contract", "digital insurance platform". The lack of legal consolidation of these concepts creates uncertainty when concluding insurance contracts using automated digital means. It also seems advisable to supplement Article 6 regulating the rights and obligations of insurance market participants with a provision on the possibility of using digital platforms accredited by a regulatory body. This approach is in line with the provisions of the EU Digital Finance Strategy, which provides a regulatory framework for the operation of smart contracts and remote contracting.

The second area of modernisation is the adaptation of the norms of the Law of the Republic of Kazakhstan No. 370 (2003) to the peculiarities of the insurance sector. Article 3 of this law should be supplemented with a provision explicitly providing for the possibility of using electronic identification when providing insurance services. Such a measure is in line with the European Regulation of the European Parliament and of the Council No. 910/2014 (2014), which establishes mutual recognition of electronic identifiers in financial services, including insurance, and ensures a high level of cybersecurity and authentication.

Equally important is the harmonisation of approaches in the field of personal data protection. Law of the Republic of Kazakhstan No. 94-V (2013) is of a general nature and does not contain the industry specifics required for InsurTech. Given that digital insurance platforms process a significant amount of sensitive information, including medical information, it seems necessary to develop bylaws regulating the collection, storage, processing and destruction of personal data in digital insurance products. The provisions of Article 9 of the Directive of the European Parliament and of the Council No. 2016/97 (2016), which contains special rules on the processing of sensitive information. Empirical studies confirm that the implementation of these standards contributes to the increase in consumer confidence and the growth of capitalisation of InsurTech companies (Fras *et al.*, 2024).

A separate attention should be paid to the problem of the absence in Kazakhstan of a special regulatory document regulating the issues of cyber resilience of insurance companies. The introduction of a separate bylaw would allow structuring the requirements to the IT infrastructure of insurance organisations. Such a document should include provisions on mandatory testing of the resilience of technological systems, independent audits of digital vendors, and incident response protocols. Similar approaches have been implemented in the EU under the Financial Sector Digital Operational Resilience Act (2025), which sets minimum cybersecurity requirements. According to a report by Allianz (2024), cyber incidents were the second most common cause of insurance losses, which emphasises the importance of this issue.

In addition, the possibility of extending the regulatory sandbox mechanism to the insurance sector should be considered. The current Law of the Republic of Kazakhstan No. 193-VII ZRK "On Digital Assets in the Republic of Kazakhstan" (2023) does not contain provisions explicitly authorising the testing of innovative insurance products. In this regard, it is recommended to expand its scope taking into account the introduction of specialised regulatory sandboxes for insurance companies. International experience, in particular the example of Singapore, demonstrates the high efficiency of such a mechanism. Thus, the improvement of regulatory policy in the Republic of Kazakhstan should be based on the gradual updating of the current legislation

taking into account the digital specifics of insurance, adoption of bylaws and implementation of the EU best practices. Such an approach will not only ensure harmonisation of Kazakh legislation with international standards, but will also contribute to the formation of a competitive InsurTech environment adapted to the challenges of the digital economy.

Discussion

As a result of analysing the theoretical and legal foundations of InsurTech and insurance regulation, it was found that the existing legal structures in most cases do not reflect the specifics of the digital transformation of the insurance industry. The provisions of traditional insurance law were predominantly developed with analogue business models in mind and proved to be poorly applicable to hybrid and automated digital platforms. The findings demonstrated a lag in the doctrinal understanding of the legal status of InsurTech and the legal risks associated with it.

A similar position was presented in the study by D. Lanfranchi and L. Grassi (2021b), which emphasised that the transition of insurance companies to innovative digital models was accompanied by a fragmented regulatory support. The authors concluded that legal uncertainty regarding new digital products and distributed technologies is a key obstacle to the sustainable integration of innovation in the insurance sector. These observations supported the conclusion that the basic concepts of insurance law need to be revised to take into account the technological context.

The study by I. Sosa and O. Montes (2022) also revealed that the successful development of InsurTech requires not only technological investments, but also a comprehensive transformation of the institutional and regulatory landscape. According to their findings, InsurTech is changing the very nature of the insurance service, making it more interactive, algorithmic and personalised, which is not always reflected in the current legal regulation. The results obtained in the course of the analysis of the theoretical and legal foundations of InsurTech confirmed this assertion: the absence of unified approaches to the legal recognition of algorithmic solutions, virtual agents and smart contracts in insurance was recorded.

In the work of X. Xu and P. Zweifel (2020) proposed a conceptual framework for InsurTech assessment, in which the key element is the degree of legal compatibility of innovative business models with existing regulations. It was emphasised that the effectiveness of InsurTech is inextricably linked to the legal validation of technological solutions. This conclusion correlated with the results of the present analysis, which emphasised the lack of regulatory clarity in relation to digital insurance channels, cross-border service delivery and the regulation of decision-making algorithms.

The focus of this study was on the institutional and regulatory aspects of InsurTech adoption, identifying key gaps and challenges in financial and legal regulation. The analysis of the financial and legal regulation of the insurance market in Kazakhstan revealed that, despite the existence of a basic regulatory infrastructure, the existing regulation was not sufficiently adapted to the rapidly developing digital innovations in the insurance sector. This conclusion was also reflected in international studies, which emphasised the need to transform regulatory approaches in the context of InsurTech implementation.

Thus, in the study by Zh. Hristozov and R. Vazov (2025) found that European regulators faced similar challenges already in the early 2020s and responded to them by adopting specialised insurance digitalisation strategies, adapting data protection regulations and updating oversight mechanisms for algorithmic platforms. In contrast to European practice, Kazakhstan has lagged behind in the regulatory interpretation of key concepts such as digital insurance product, algorithmic underwriting and automated claims processing. This lag reduces the potential for investment attraction and technology transfer in the national insurance market.

A study by J. Liu *et al.* (2023) demonstrated that the level of technological innovation in insurance companies directly depends on the presence of an incentivising regulatory environment. In the case of Kazakhstan, it was recorded that with the formally declared digital transformation of the sector there are no clear regulations on the introduction of innovative solutions, which restrains technological development and reduces the competitiveness of national insurance. This also creates risks of market fragmentation and increases the gap between large and small participants, who are unevenly prepared for digital transformation.

According to the findings of M. Eling *et al.* (2022), AI has the potential to radically change the insurance value chain, but only if there is appropriate legal certainty regarding the transparency of algorithms and the allocation of liability. In the Kazakh context, there has been regulatory uncertainty regarding liability for AI-based decisions, as well as a lack of institutional regulation of algorithmic risks. Such a regulatory vacuum could be a source of legal conflict and undermine consumer confidence in digital insurance services.

In addition, the results of the study by V. Murinde *et al.* (2022) confirmed that successful integration of FinTech solutions in insurance requires flexible coordination between central banks, financial agencies and industry participants. An analysis of Kazakh practice has shown institutional fragmentation, which is reflected in the disparate functions of the Agency for Regulation and Development of the Financial Market of the Republic of Kazakhstan, the Ministry of Finance and the National Bank, especially with regard to digital innovation and systemic risks. Without effective interagency coordination and consolidation of competences, the digital transformation of the insurance sector remains limited and fragmented.

Based on the analysis of the international experience of InsurTech legal regulation, it was revealed that the most successful models of legal support for digital transformation in the insurance industry have been formed in jurisdictions with flexible regulatory policies aimed at stimulating innovation while preserving the basic principles of consumer protection. The approaches established in the course of the study in the United Kingdom, the EU, the United States and Asia-Pacific countries confirmed the importance of regulatory sandboxes, multi-level supervision and coordination between sectoral regulators.

The results are consistent with the findings of J.J. Goo and J.-Y. Heo (2020), who emphasised that the implementation of regulatory sandboxes has a positive impact on the development of fintech ecosystems, including InsurTech, by reducing regulatory uncertainty and creating an experimental environment for testing innovative solutions. Similarly, the countries analysed - primarily the United Kingdom and Singapore - employ a sandbox regulatory strategy, which is consistent with their observations of the need for a combination of flexibility and institutional oversight.

As part of the comparison with the study by P. Marano and M. Siri (2021), it was confirmed that in the EU, the InsurTech regulatory landscape is evolving in an environment of digital harmonisation within financial legislation, with a focus on cross-border service provision and electronic identification. The analysis of European practice (e.g., in the context of the Digital Operational Resilience Act and the General Data Protection Regulation) has shown consistency with the authors' assertion that InsurTech regulation in the EU is based on the principle of "innovation neutrality", providing the same conditions for both traditional insurers and digital platforms.

Thus, the gaps and inconsistencies in the legal regulation of Kazakhstan's insurance market identified in the course of the analysis have found correlation with international studies, which indicates the universality of the challenges, but emphasises the need for nationally oriented and proactive regulatory solutions. Strengthening institutional interaction, adapting legislation to digital realities and introducing a risk-based approach to regulation may become key steps towards improving the sustainability and efficiency of the insurance sector.

Conclusions

The legal-theoretical analysis of InsurTech has revealed that the digitalisation of the insurance sector has already led to the transformation of key concepts and institutions of insurance law. Innovative technologies, such as AI, big data, blockchain, IoT, smart contracts and cloud computing, contribute to changing traditional approaches to the conclusion, execution and settlement of insurance contracts. Such changes were found to require the adaptation of existing insurance and financial regulations to the new digital environment, including the legal recognition of automated solutions, the digital form of contracts and the allocation of liability between actors in the digital ecosystem. These findings laid the foundation for further research into the specifics of InsurTech legal regulation in the Republic of Kazakhstan and identifying areas for its improvement.

An analysis of the current financial and legal regulation of the insurance market of the Republic of Kazakhstan shows that there is a comprehensive, but in some aspects fragmentary, legal framework. The basis of regulation is Law of the Republic of Kazakhstan No. 126-II "On Insurance Activity", supplemented by specialised by-laws. The central regulator is the Agency for Regulation and Development of the Financial Market of the Republic of Kazakhstan, which has broad powers in licensing, supervision, standards development and strategic planning. The Ministry of Finance plays an important coordinating and fiscal-policy role, while the National Bank retains macroeconomic stability and systemic risk functions.

However, the accelerated digitalisation of the sector (InsurTech, Big Data, AI) reveals legal gaps and regulatory inertia in regulating new forms of insurance relations. The current regulations do not cover the specifics of online insurance, the protection of consumers' digital rights, the use of algorithmic risk assessment models and digital platforms. In addition, there is insufficient integration of the norms on personal data and digital security into the sphere of insurance regulation.

InsurTech's analysis of international regulatory experience found that key trends have been the introduction of flexible regulatory regimes, the development of regulatory sandboxes, the legal recognition of digital insurance platforms and the adaptation of legislation to the use of AI, big data and blockchain technologies in insurance activities. Jurisdictions such as the United Kingdom, Singapore and EU states show the greatest regulatory receptivity to innovation, while maintaining a balance between technological development and consumer protection.

It was found that the success of InsurTech regulation depends to a large extent on a systematic approach to the digitalisation of financial markets, as well as the existence of specialised regulatory mechanisms that allow new insurance technologies to be tested in a controlled environment. In addition, the trend towards internationalisation of digital standards and harmonisation of legal frameworks has been confirmed, which has led to the formation of uniform principles of InsurTech regulation at supranational level, in particular within the EU.

International experience has shown that effective regulation of InsurTech requires not only the adaptation of existing legal structures, but also the development of new regulatory categories that take into account the specifics of digital technologies and the changing nature of insurance relations in the context of digital transformation. Consequently, further development of financial and legal regulation of the insurance market of Kazakhstan should be focused on the formation of an integral digital legal architecture that ensures adaptability, sustainability and protection of market participants' interests in the conditions of transformation of insurance business models.

Acknowledgements

None.

Funding

The study was not funded.

Conflict of interest

None.

References

[1] Agency of the Republic of Kazakhstan on Regulation and Development of Financial Market. (2024). *Report of the Agency of the Republic of Kazakhstan on Regulation and Development of Financial Market for the year 2023*. Retrieved from https://www.gov.kz/uploads/2024/6/13/11b3f08101e5cc568a117fc014eef6ee_original.1251402.pdf.

[2] Akhmetov, E.K., & Kulikpaeva, M.Zh. (2022). Some issues of state regulation, control and supervision of the financial market and financial organizations. *Bulletin of the Institute of Legislation and Legal Information of the Republic of Kazakhstan*, 71(4), 212-223. doi: 10.52026/2788-5291_2022_71_4_212.

[3] Allianz. (2024). *Allianz Risk Barometer. Identifying the major business risks for 2024*. Retrieved from https://surl.li/cheonb.

[4] Anagnostopoulos, I. (2018). Fintech and regtech: Impact on regulators and banks. *Journal of Economics and Business*, 100, 7-25. doi: 10.1016/j.jeconbus.2018.07.003.

[5] Charpentier, A., & Vamparys, X. (2025). Artificial intelligence and personalization of insurance: Failure or delayed ignition? *Big Data & Society*, 12(1). doi: 10.1177/20539517241291817.

[6] Chatzara, V. (2020). FinTech, InsurTech, and the regulators. In P. Marano & K. Noussia (Eds.), *InsurTech: A legal and regulatory view* (pp. 3-25). Cham: Springer. doi: 10.1007/978-3-030-27386-6_1.

[7] Civil Code of the Republic of Kazakhstan. (1999, July). Retrieved from https://online.zakon.kz/Document/?doc_id=1013880&pos=5;-107#pos=5;-107.

[8] Cornelli, G., Doerr, S., Gambacorta, L., & Merrouche, O. (2024). Regulatory sandboxes and fintech funding: Evidence from the UK. *Review of Finance*, 28(1), 203-233. doi: 10.1093/rof/rfad017.

[9] Digital Operational Resilience Act. (2025). Retrieved from https://www.eiopa.europa.eu/digital-operational-resilience-act-dora_en.

[10] Directive of the European Parliament and of the Council No. 2016/97 "On Insurance Distribution (Recast)". (2016, January). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L0097.

[11] Eling, M., Nuessle, D., & Staubli, J. (2022). The impact of artificial intelligence along the insurance value chain and on the insurability of risks. *The Geneva Papers on Risk and Insurance – Issues and Practice*, 47(2), 205-241. doi: 10.1057/s41288-020-00201-7.

[12] European Commission. (2020). *Digital finance package*. Retrieved from https://finance.ec.europa.eu/publications/digital-finance-package_en.

[13] European Insurance and Occupational Pensions Authority. (2024). *Annual report 2023*. Retrieved from https://www.eiopa.europa.eu/publications/annual-report-2023_en.

[14] Fahy, L. (2021). Regulator reputation and stakeholder participation: A case study of the UK's regulatory sandbox for fintech. *European Journal of Risk Regulation*, 13(1), 138-157. doi: 10.1017/err.2021.44.

[15] Fintech Laws and Regulations Hong Kong 2024-2025. (2024). Retrieved from https://iclg.com/practice-areas/fintech-laws-and-regulations/hong-kong.

[16] Fras, M., Pauch, D., Walczak, D., & Bera, A. (2024). Determinants of the behaviour of entities on the insurance market in the light of changes introduced by the IDD directive. *Journal of Consum Policy*, 47, 533-566. doi: 10.1007/s10603-024-09572-z.

[17] Goo, J.J., & Heo, J.-Y. (2020). The impact of the regulatory sandbox on the fintech industry, with a discussion on the relation between regulatory sandboxes and open innovation. *Journal of Open Innovation: Technology, Market, and Complexity*, 6(2), article number 43. doi: 10.3390/joitmc6020043.

[18] Han, M., & Xu, D. (2022). The sandbox approach to FinTech regulation: A case study of China. *Revista Chilena de Derecho*, 49(2), 193-232. doi: 10.7764/R.492.8.

[19] Heinonen, K., & Strandvik, T. (2021). Reframing service innovation: COVID-19 as a catalyst for imposed service innovation. *Journal of Service Management*, 32(1), 101-112. doi: 10.1108/JOSM-05-2020-0161.

[20] Hristozov, Zh., & Vazov, R. (2025). Redefining insurance through innovation: Trends, benefits, and regulatory challenges: An European perspective. *Strategies for Policy in Science and Education*, 33(1), 160-178. doi: 10.53656/str2025-1s-8-red.

[21] Kamyshanskyi, V. (2025). Interoperability of CBDCs: Optimising Cross-Border Settlements through the lens of national and international regulation. *Scientific Journal of the National Academy of Internal Affairs*, 30(1), 34-44. doi: 10.63341/naia-herald/1.2025.34.

[22] Kenzhaliev, M.Z. (2023). Legal regulation of the Islamic finances: Comparative analysis of the legal framework of the Republic of Kazakhstan, "Astana" International Financial Center and United Kingdom. *Bulletin of the Institute of Legislation and Legal Information of the Republic of Kazakhstan*, 4(75), 241-249. doi: 10.52026/2788-5291_2023_75_4_241.

[23] Kolodiziev, O., Krupka, M., Shulga, N., Kulchytskyy, M., & Lozynska, O. (2021). The level of digital transformation affecting the competitiveness of banks. *Banks and Bank Systems*, 16(1), 81-91. doi: 10.21511/bbs.16(1).2021.08.

[24] Kuzmak, O., & Svereda, Yu. (2023). Organizational and law aspects of the development of the insurance market in Ukraine. *Economic Forum*, 13(1), 146-150. doi: 10.36910/6775-2308-8559-2023-1-18.

[25] Lanfranchi, D., & Grassi, L. (2021a). Examining insurance companies' use of technology for innovation. *The Geneva Papers on Risk and Insurance – Issues and Practice*, 47(3), 520-537. doi: 10.1057/s41288-021-00258-y.

[26] Lanfranchi, D., & Grassi, L. (2021b). Translating technological innovation into efficiency: The case of US public P&C insurance companies. *Eurasian Business Review*, 11(4), 565-585. doi: 10.1007/s40821-021-00189-7.

[27] Law of the Republic of Kazakhstan No. 126-II "On Insurance Activity". (2000, December). Retrieved from https://online.zakon.kz/Document/?doc_id=1021136&pos=149;-82#pos=149;-82.

[28] Law of the Republic of Kazakhstan No. 193-VII ZRK "On Digital Assets in the Republic of Kazakhstan". (2023, February). Retrieved from https://adilet.zan.kz/rus/docs/Z2300000193.

[29] Law of the Republic of Kazakhstan No. 2155 "On the National Bank of the Republic of Kazakhstan". (1995, March). Retrieved from https://online.zakon.kz/Document/?doc_id=1003548.

[30] Law of the Republic of Kazakhstan No. 370 "On Electronic Document and Electronic Digital Signature". (2003, January). Retrieved from https://adilet.zan.kz/eng/docs/Z030000370_.

[31] Law of the Republic of Kazakhstan No. 474-II "On State Regulation, Control and Supervision of the Financial Market and Financial Organizations". (2003, July). Retrieved from https://online.zakon.kz/Document/?doc_id=1041467&pos=4;-107#pos=4;-107.

[32] Law of the Republic of Kazakhstan No. 94-V "On Personal Data and Their Protection". (2013, May). Retrieved from https://adilet.zan.kz/rus/docs/Z1300000094/z13094.htm.

[33] Lin, L., & Chen, C. (2020). The promise and perils of InsurTech. *Singapore Journal of Legal Studies*, 2020, 115-142.

[34] Liu, J., Ye, S., Zhang, Y., & Zhang, L. (2023). Research on InsurTech and the technology innovation level of insurance enterprises. *Sustainability*, 15(11), article number 8617. doi: 10.3390/su15118617.

[35] Marano, P., & Siri, M. (2021). Regulating insurtech in the European Union. *Journal of Financial Transformation*, 54, 166-177.
[36] Murinde, V., Rizopoulos, E., & Zachariadis, M. (2022). The impact of the FinTech revolution on the future of banking: Opportunities and risks. *International Review of Financial Analysis*, 81, article number 102103. doi: 10.1016/j.irfa.2022.102103.
[37] Nagayev, R., & Stambakiyev, N. (2022). Islamic finance industry in Kazakhstan: Then and now. *Eurasian Journal of Religious Studies*, 29(1), 61-71. doi: 10.26577//EJRS.2022.v29.i1.r8.
[38] Owens, E., Sheehan, B., Mullins, M., Cunneen, M., Ressel, J., & Castignani, G. (2022). Explainable artificial intelligence (XAI) in insurance. *Risks*, 10(12), article number 230. doi: 10.3390/risks10120230.
[39] Permatasari, B.K., Widhiyanti, H.N., & Widyanti, Y.E. (2025). Validity of digital agreements and the legal relations of the parties in affiliate marketing. *Law Journal of the National Academy of Internal Affairs*, 15(1), 59-71. doi: 10.63341/naia-chasopis/1.2025.59.
[40] Poorhadi Poshtiri, Z., Gholipour Soleimani, A., Delafrooz, N., & Shahroudi, K. (2024). Designing the insurance coverage model for FinTech startups: A novel approach to the necessity of digital transformation track of in insurance. *Interdisciplinary Journal of Management Studies*, 17(1), 71-94. doi: 10.22059/ijms.2023.345002.675187.
[41] Regulation of the European Parliament and of the Council No. 910/2014 "On Electronic Identification and Trust Services for Electronic Transactions in the Internal Market and Repealing Directive 1999/93/EC". (2014, July). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0910.
[42] Resolution of the Board of the Agency of the Republic of Kazakhstan on Regulation and Development of the Financial Market No. 50 "On Approval of the Rules of Exchange of Electronic Information Resources Between the Organisation on Formation and Maintenance of the Database and the Insurer, the Insurer and the Insured (Insured, Beneficiary), the Rules of Sending by the Organisation on Formation and Maintenance of the Database of the Notification of the Conclusion of the Insurance Contract and Settlement of Insurance Events, Requirements for Software and Hardware Tools and Internet-Resources". (2020, April). Retrieved from https://adilet.zan.kz/rus/docs/V2000020514.
[43] Resolution of the Board of the National Bank of the Republic of Kazakhstan No. 13 "On Approval of the Requirements for Formation, Methodology of Calculation of Insurance Reserves and Their Structure". (2019, January). Retrieved from https://adilet.zan.kz/rus/docs/V1900018290#z7.
[44] Resolution of the Board of the National Bank of the Republic of Kazakhstan No. 170 "On Establishment of Normative Values and Methods of Calculation of Prudential Norms and Other Compulsory Norms and Limits, the Bank's Capital Amount and the Rules of Calculation and Limits of Open Currency Position". (2017, September). Retrieved from https://adilet.zan.kz/rus/docs/V1700015886#9.
[45] Resolution of the Board of the National Bank of the Republic of Kazakhstan No. 140 "On Approval of the Requirements for Due Diligence of Customers in Case of Remote Establishment of Business Relationships by Financial Monitoring Entities". (2018, June). Retrieved from https://adilet.zan.kz/rus/docs/V1800017250.
[46] Saparova, B., Yessenova, G., Alina, G., Nurumov, A., & Sabyrzhan, Zh. (2021). Assessment and analysis financial risks in insurance companies of the Kazakhstan. *Proceedings of the 6th International Conference on Education Reform and Modern Management*, 551, 336-339. doi: 10.2991/assehr.k.210513.077.
[47] Sosa, I., & Montes, O. (2022). Understanding the InsurTech dynamics in the transformation of the insurance sector. *Risk Management and Insurance Review*, 25(1), 35-68. doi: 10.1111/rmir.12203.
[48] Urbinati, A., Chiaroni, D., Chiesa, V., & Frattini, F. (2020). The role of digital technologies in open innovation processes: An exploratory multiple case study analysis. *R&D Management*, 50(1), 136-160. doi: 10.1111/radm.12313.
[49] Xu, X., & Zweifel, P. (2020). A framework for the evaluation of InsurTech. *Risk Management and Insurance Review*, 23(4), 305-329. doi: 10.1111/rmir.12161.
[50] Yevseiev, S., Laptiev, O., Lazarenko, S., Korchenko, A., & Manzhul, I. (2021). Modeling the protection of personal data from trust and the amount of information on social networks. *EUREKA, Physics and Engineering*, 2021(1), 24-31. doi: 10.21303/2461-4262.2021.001615.
[51] Yu, X., & Xiao, K. (2023). COVID-19 Government restriction policy, COVID-19 vaccination and stock markets: Evidence from a global perspective. *Finance Research Letters*, 53, article number 103669. doi: 10.1016/j.frl.2023.103669.
[52] Zhusupov, A., Kaliev, A., Karibay, S., & Kulibek, A. (2025). Theoretical aspects of legal regulation of financial activities of the state. *SHS Web of Conferences*, 212, article number 01014. doi: 10.1051/shsconf/202521201014.

Інноваційні підходи до фінансово-правового регулювання страхових продуктів в епоху InsurTech

Меруерт Абішева
Докторант
Казахський національний університет імені аль-Фарабі
050040, просп. аль-Фарабі, 71, м. Алмати, Республіка Казахстан
https://orcid.org/0000-0002-9558-3987
Жазіра Оміралі
Доктор юридичних наук
Університет Кунаєва
050022, вул. Курмангази, 107, м. Алмати, Республіка Казахстан
https://orcid.org/0000-0002-5510-2966
Анель Єнсебаєва
Кандидат юридичних наук
Республіканський науково-дослідний інститут охорони праці та здоров'я
Міністерства праці та соціального захисту населення Республіки Казахстан (РНДІООЗ)
010000, вул. Кравцова, 18, м. Астана, Республіка Казахстан
https://orcid.org/0000-0001-6970-8945

Анотація. Стаття була спрямована на вивчення правових особливостей і виявлення актуальних проблем регулювання інноваційних страхових продуктів, що функціонують з використанням технологій InsurTech. У дослідженні застосовано порівняльно-правовий метод для зіставлення норм казахстанського та міжнародного законодавства у сфері страхування. Формально-юридичний і системний підходи використовувалися для аналізу структури і змісту нормативно-правових актів, що регулюють InsurTech-продукти. Метод правового моделювання дозволив обґрунтувати перспективи розвитку фінансово-правового регулювання з урахуванням цифрової трансформації страхового ринку. Під час дослідження детально проаналізовано сутність InsurTech як інтеграції цифрових технологій у страхову сферу, що дало змогу виокремити ключові напрями трансформації галузі, включно зі смарт-контрактами, автоматизованою оцінкою ризиків і персоналізованими цифровими продуктами. Дослідження поточного стану правового регулювання страхової діяльності в Республіці Казахстан виявило низку прогалин, зокрема відсутність нормативного закріплення понять, пов'язаних із цифровими страховими сервісами, а також недостатню гнучкість правових механізмів для реагування на технологічні зміни. У результаті аналізу міжнародного досвіду було встановлено, що в ЄС та США впроваджено спеціалізовані регуляторні режими, як-от «регуляторні пісочниці», що дають змогу тестувати цифрові страхові продукти в контрольованих умовах із мінімальним регуляторним навантаженням. Розглядалися такі механізми, як FinTech Regulatory Sandbox і InsurTech Innovation Hub, що забезпечують гнучкість регулювання при збереженні належного рівня захисту споживачів. Аналіз показав, що подібні ініціативи сприяють прискореній інтеграції інновацій у страховий сектор і можуть бути адаптовані до казахстанських умов з урахуванням місцевих правових та інституційних особливостей. На основі порівняльного аналізу було запропоновано рекомендації для Казахстану, включно з розробленням правових дефініцій, розширенням функціоналу агентства фінансового нагляду в частині InsurTech, а також упровадженням правового механізму «регуляторної пісочниці» з метою стимулювання інновацій за умови дотримання вимог правової визначеності та захисту споживачів

Ключові слова: страхове право; цифрові технології; штучний інтелект; блокчейн-технології; автоматизовані системи оцінки ризиків; цифрова ідентифікація

UDC 342.7
DOI: 10.32518/sals2.2025.23

Соціально-правові студії. 2025. Т. 8, № 2
Social & Legal Studios. 2025. Vol. 8, No. 2

Balancing freedom and control: Contemporary legal regulation of religious activity in Kazakhstan

Yermek Buribayev*
Doctor of Law, Professor
Zhetysu University named after I. Zhansugurov
040009, 187A Zhansugurov Str., Taldykorgan, Republic of Kazakhstan
https://orcid.org/0000-0003-0433-596X

Kuralay Turlykhankyzy
PhD in Law, Professor
Abai Kazakh National Pedagogical University
050010, 13 Dostyk Ave., Almaty, Republic of Kazakhstan
https://orcid.org/0000-0003-1075-6891

Nessibeli Kalkayeva
PhD in Law, Associate Professor
Abai Kazakh National Pedagogical University
050010, 13 Dostyk Ave., Almaty, Republic of Kazakhstan
https://orcid.org/0000-0001-8109-2004

Zhanna Khamzina
Doctor of Law, Professor
Abai Kazakh National Pedagogical University
050010, 13 Dostyk Ave., Almaty, Republic of Kazakhstan
https://orcid.org/0000-0003-0913-2002

Abstract. The regulation of religious activity in contemporary Kazakhstan is a critical issue shaped by the interplay between ensuring freedom of religion and maintaining state control. This study aimed to analyse the legal frameworks governing religious activity in Kazakhstan, with a particular focus on their alignment with international human rights standards and domestic socio-political dynamics. Employing legal analysis, comparative methods, and case studies, the research examined the country's legislation and its practical implications for religious communities. The study revealed that Kazakhstan's legal framework imposes significant restrictions on religious freedoms, including mandatory registration of religious associations, limitations on public worship, and broad state oversight. These measures often disproportionately affect minority religious groups, raising concerns about discrimination and barriers to religious pluralism. Despite Kazakhstan's constitutional guarantees of religious freedom, the implementation of laws frequently conflicts with the country's international obligations under treaties such as the International Covenant on Civil and Political Rights and the Organisation for Security and Co-operation in Europe commitments. Case studies of religious communities, including Jehovah's Witnesses, the Ahmadiyya Muslim community, and the Baptist Church, further illustrated the practical challenges posed by existing regulations. These cases highlighted issues such as administrative overreach, discriminatory registration processes, and the marginalisation of non-traditional religious groups. The findings emphasised the need for legislative reforms to address ambiguities, harmonise national laws with international standards, and foster a more inclusive environment for religious communities. This research contributes to the broader discourse on religious regulation, offering practical insights for policymakers, legal practitioners, and human rights advocates. By addressing the tension between governance and religious freedom, the study provides a foundation for future reforms aimed at balancing societal stability and the protection of fundamental rights

Keywords: religious policy; legal regulation; freedom of religion; law enforcement practices; religious associations; legislative reforms

Suggested Citation

Article's History: Received: 11.03.2025 Revised: 01.06.2025 Accepted: 25.06.2025

Buribayev, Ye., Turlykhankyzy, K., Kalkayeva, N., & Khamzina, Zh. (2025). Balancing freedom and control: Contemporary legal regulation of religious activity in Kazakhstan. *Social & Legal Studios*, 8(2), 23-38. doi: 10.32518/sals2.2025.23.

*Corresponding author

Copyright © The Author(s). This is an open access Article distributed under the terms of the Creative Co mmons Attribution License 4.0 (https://creativecommons.org/licenses/by/4.0/)

Introduction

The regulation of religious activity in Kazakhstan presents a pressing issue at the intersection of governance, human rights, and social stability. As a secular state with a diverse religious composition, Kazakhstan navigates the challenge of safeguarding freedom of conscience and religion while addressing concerns of security, extremism, and public order. This issue is particularly significant in the contemporary context, as Kazakhstan continues its post-Soviet transformation and aligns its policies with international human rights standards. The study of religious regulation in Kazakhstan is vital for several reasons. First, it reflects broader global trends in managing religious diversity and balancing state interests with individual freedoms. Second, it addresses a critical aspect of Kazakhstan's socio-political development, offering insights into the interplay between governance, cultural heritage, and modernity. Lastly, it provides an opportunity to evaluate the effectiveness of legal and institutional mechanisms in promoting societal cohesion while respecting religious freedoms.

Constitution of the Republic of Kazakhstan (1995) guarantees freedom of religion under Article 22, emphasising the importance of this right for societal cohesion. The Law of the Republic of Kazakhstan No. 483-IV "On Religious Activities and Religious Associations" (2011) serves as a key regulatory instrument but has drawn scrutiny for its restrictive provisions, including burdensome registration requirements for religious organisations and mandatory theological examinations. Such measures, while aimed at promoting transparency and addressing potential security risks, have raised concerns about their impact on the free exercise of religious rights.

Existing scholarship provides a foundation for understanding the complexities of religious regulation in Kazakhstan. Several studies, such as those by N. Baitenova *et al.* (2021), examined the transformation of Kazakhstan's religious landscape after independence, highlighting the impact of historical and political changes on religious governance. Around the same period, D. Allès (2021) contributed to the discussion from a global perspective, analysing the securitisation of religion in international security frameworks, which provides valuable insights into how religious governance policies are influenced by broader geopolitical concerns. Additionally, I. Jugl *et al.* (2021) explored the risks and protective factors associated with extremism, indirectly contributing to the discourse on religious regulation by assessing the conditions under which religious movements may become radicalised. J. Temperman (2010) advanced the discussion by critically evaluating the relationship between the secular state and religion in Kazakhstan, identifying legislative gaps that undermine constitutional protections of religious freedoms, while A.M. Almasovich and A. Zhalgas (2022) examined the risks and challenges emerging in Kazakhstan's religious sector, advocating for legislative reforms to address them.

At the same time, D. Gamza and P. Jones (2021) provided a comparative regional analysis of religious regulation across Central Asia, positioning Kazakhstan's approach within a broader governance framework. Meanwhile, studies from other contexts, such as those by P. Suyaman and T.F. Alfiany (2022) and M.A. Nasir (2022), analysed interfaith marriage laws in Indonesia, offering a comparative perspective on the interaction between religious and secular governance. More recent studies have focused on practical policy recommendations and strategic governance improvements. R. Shaykhutdinov (2024) examined the accommodation of minority religious practices in post-communist Muslim republics, emphasising the challenges of balancing religious pluralism with public policy. Y. Buribayev *et al.* (2024) proposed strategic guidelines for state policy in the religious sphere, addressing key issues such as extremism and secular governance. Similarly, D. Achilov (2012) analysed the role of Islam in Kazakhstan's education system, linking religious discourse with broader societal development. R. Finke (2024) contributed a cross-national research agenda for studying religious freedom, emphasising the importance of contextual analyses when evaluating governance frameworks. Finally, M. Abdikakimov and M. Karibaev (2024) explored the correlation between religious and secular values in Kazakhstan, shedding light on evolving societal attitudes toward religious regulation. This body of literature illustrates the progression of scholarly discourse, from foundational studies on historical transformations to recent policy-oriented research that seeks to align Kazakhstan's religious governance with international human rights standards.

The purpose of this study was to analyse the contemporary legal regulation of religious activity in Kazakhstan, focusing on its alignment with international human rights standards and its effectiveness in addressing societal needs. This research aimed to identify gaps in existing legislation, evaluate its impact on religious freedoms, and propose actionable recommendations for enhancing governance in this area. The objectives of the study were:

- to examine the legislative framework governing religious activity in Kazakhstan and its alignment with constitutional and international norms;
- to evaluate the societal and political implications of current regulatory practices;
- to propose evidence-based recommendations for improving legal and institutional mechanisms for managing religious activity.

Materials and methods

This research was conducted within the conceptual framework of legal pluralism and state-confessional theory, which focus on the coexistence and interaction of secular and religious norms within a unified legal framework. Each method was selected based on its ability to address specific research objectives effectively. The historical method was employed to trace the evolution of state-confessional relations in Kazakhstan from independence in 1991 to the present. This approach enabled the reconstruction of key stages in the development of religious policies and legal norms. One of the critical legislative milestones was the adoption of the Law of the Republic of Kazakhstan No. 1128-XII "On Freedom of Religion and Religious Associations" (1992). Despite its initial liberal provisions, the law allowed for legal restrictions on religious activities to protect public order, security, and morality, as well as the rights of other citizens. Over time, these regulatory gaps necessitated amendments, leading to significant changes in 2004 and 2005, which refined key legal definitions and expanded state oversight of religious organisations. A major shift occurred with the adoption of the Law of the Republic of Kazakhstan No. 483-IV (2011), which replaced the 1992 legislation. This marked a transition from relatively liberal policies to stricter state control over

religious activities. Subsequent amendments further tightened regulatory frameworks, reflecting Kazakhstan's broader shift toward a securitised approach to religious governance.

The formal-legal method provided the foundation for an in-depth analysis of legal texts governing the religious sphere, including the Constitution of the Republic of Kazakhstan (1995), the Law of the Republic of Kazakhstan No. 483-IV (2011) and international agreements ratified by Kazakhstan. This method was instrumental in evaluating the compliance of national legislation with constitutional principles and international human rights standards, such as those outlined in the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (ICCPR) (1966). The formal-legal analysis exposed gaps and inconsistencies in existing laws and excessive administrative barriers, which hinder the practical realisation of religious freedoms. Legal modeling was employed to propose hypothetical improvements to the legislative framework governing religious activities. Based on identified shortcomings, this method facilitated the development of legislative scenarios aimed at optimising the legal environment.

A systemic approach was utilised to construct a holistic analysis of state-confessional relations within Kazakhstan's legal framework. By examining interrelations between legal norms, governmental policies, and religious practices, this method allowed for the identification of institutional and functional dynamics within the system. The systemic method facilitated the assessment of how legislative changes impacted the interaction between religious associations and state authorities, contributing to a nuanced understanding of policy effectiveness. This approach also revealed the role of external factors, such as international obligations and socio-cultural changes, in shaping Kazakhstan's legal regulation of the religious sphere.

The study drew on a diverse array of primary and secondary sources. Key materials included Constitution of the Republic of Kazakhstan (1995), the Law of the Republic of Kazakhstan No. 483-IV (2011), and associated regulations. Additionally, international treaties such as the International Covenant on Civil and Political Rights (1966) provided a benchmark for assessing legislative compliance. The research also relied on analytical reports, court decisions, and resolutions from national and international bodies, which offered insights into the practical application of religious policies (Resolution of the Government of the Republic of Kazakhstan No. 953, 2020; Resolution of the Government of the Republic of Kazakhstan No. 236, 2023). The Resolution of the Government of the Republic of Kazakhstan No. 953 (2020) and later amended by Resolution of the Government of the Republic of Kazakhstan No. 236 "On Amendments and Supplements to Certain Decisions of the Government of the Republic of Kazakhstan and Orders of the Prime Minister of the Republic of Kazakhstan" (2023), provided a strategic framework for regulating religious affairs, ensuring interfaith harmony, and maintaining national security in religious matters. Statistical data from government reports and OpenData platforms enriched the analysis by providing an empirical context for assessing the impact of legislative changes on real-world outcomes. Official reports, including the Comprehensive Plan for the Implementation of State Policy in the Religious Sphere of the Republic of Kazakhstan for 2021-2023, along with analytical reviews on state OpenData platforms, highlighted trends in religious policy, the demographics of religious groups, and the level of public support for government initiatives (2023 Report on…, 2024).

The selection of countries for comparative analysis was based on their relevance to Kazakhstan's legal and political context, as well as their alignment with different models of religious regulation. The comparison with Uzbekistan and Turkmenistan was chosen due to their shared post-Soviet legal heritage and similar approaches to state control over religious activities, allowing for an assessment of how Kazakhstan's framework compares within the Central Asian region.

Uzbekistan, in particular, has undergone significant religious policy shifts in recent years, reflecting broader political reforms within the country. While historically known for its strict control over religious organisations, recent national strategies, including those implemented under the "New Uzbekistan" reforms, indicate efforts to modernize governance and improve religious freedom (Sobirovich, 2025). However, despite some progress, Uzbekistan continues to prohibit unregistered religious activities, maintaining a regulatory environment that prioritises state oversight over religious pluralism. This approach aligns with earlier efforts at religious regulation in independent Uzbekistan, which were aimed at balancing security concerns with controlled religious liberalisation (Umarov, 2021). Furthermore, while Uzbekistan has eased some restrictions, particularly regarding interfaith dialogue and religious education, the government still tightly monitors religious practices, fearing the spread of extremism. This reflects a broader regional strategy where religious governance is viewed through the lens of national security rather than human rights.

Turkmenistan's highly restrictive policies provide a further benchmark for understanding Kazakhstan's relative positioning, as it remains one of the most state-controlled religious environments in the region. The Turkmen government imposes severe restrictions on religious organisations, requiring all religious groups to register with the state, while non-compliance can lead to severe administrative and even criminal penalties (Horák & Polese, 2016).

Additionally, the government continues to enforce policies that limit religious expression in public spaces and place strict controls on religious literature and places of worship. The cult of personality surrounding the Turkmen leadership further reinforces this control, with state ideology often overshadowing religious discourse. In contrast, religious extremism and terrorism concerns have played a significant role in shaping Turkmenistan's restrictive policies, as the government actively suppresses religious groups it deems as a potential threat to national security (Akhantayeva & Mussabekova, 2024). This approach, while officially justified as a counterterrorism measure, has resulted in widespread human rights violations, including the imprisonment of religious activists and restrictions on independent religious organisations. Compared to Uzbekistan and Kazakhstan, Turkmenistan's religious policies are the most authoritarian, reflecting broader patterns of state repression across all aspects of civil society (Horák & Polese, 2016).

Meanwhile, Germany and the United Kingdom were selected as representatives of more liberal, democratic models that prioritise religious freedom, ensuring a contrast with Kazakhstan's state-centred regulatory framework. Germany's constitutional protections for religious rights and its cooperative approach between the state and religious organisations illustrate an alternative legal model that balances religious

freedoms with state oversight. Similarly, the United Kingdom's minimal regulatory approach, where religious organisations are not subject to mandatory registration unless they seek charitable status, contrasts with Kazakhstan's extensive administrative controls. By juxtaposing Kazakhstan's legal framework with both regional counterparts and established democratic systems, this comparative analysis provides insights into the effectiveness and limitations of its regulatory approach, highlighting potential areas for legal reform.

The case of Uzbekistan, in particular, demonstrates the challenges of transitioning from a highly restrictive religious policy toward a more open and internationally aligned framework. While legislative and institutional changes have been introduced, the continued prohibition of independent religious activity and strict government oversight suggest that Uzbekistan still struggles to fully realize religious freedom reforms (Umarov, 2021; Sobirovich, 2025). Similarly, Turkmenistan remains an extreme example of religious state control, where the government's authoritarian grip limits even the most fundamental expressions of religious identity (Horák & Polese, 2016; Akhantayeva & Mussabekova, 2024). Kazakhstan, while less restrictive than Turkmenistan, still enforces mandatory religious registration and places limitations on public religious gatherings, aligning more closely with Uzbekistan's controlled approach rather than with Western models of religious pluralism. This underscores the broader regional trend where legal adjustments do not always translate into substantive policy shifts, making comparative analysis crucial for evaluating Kazakhstan's own approach to religious governance.

The research followed a structured sequence. Initially, the historical context of state-confessional relations was reconstructed using legislative analysis and archival data. Next, systemic and formal-legal methods were applied to examine the interrelations within the regulatory framework and evaluate compliance with international standards. Finally, the legal modeling method was used to propose actionable legislative improvements. This step-by-step approach ensured that the study addressed both theoretical and practical dimensions of the research problem.

Results

A retrospective of Kazakhstan's religious policy. One of the critical legislative milestones was the adoption of the Law of the Republic of Kazakhstan No. 1128-XII (1992). This law positioned Kazakhstan as a secular and democratic state, guaranteeing citizens' equality regardless of their religious beliefs. However, despite its initial liberal provisions, the law allowed for legal restrictions on religious activities to protect public order, security, and morality, as well as the rights of other citizens. While these restrictions were initially justified as measures to maintain stability, they conflicted with international human rights principles, particularly Article 18 of the Universal Declaration of Human Rights (1948), which guarantees the right to freedom of thought, conscience, and religion, including the freedom to manifest one's beliefs individually or in community with others, publicly or privately. A major shift occurred with the adoption of the Law of the Republic of Kazakhstan No. 483-IV (2011), which marked a transition from relatively liberal policies to stricter state control over religious activities. The 2011 law introduced rigorous registration requirements for religious organisations, imposed restrictions on missionary activity, and prohibited unregistered religious groups from operating. The shift from the 1992 to the 2011 legislation illustrates the increasing securitisation of Kazakhstan's religious policy.

Kazakhstan's legal framework is primarily governed by the Constitution of the Republic of Kazakhstan (1995) and the Law of the Republic of Kazakhstan No. 483-IV (2011), which regulate the establishment and operation of religious groups. Supplementary regulations include decrees and administrative acts that guide the implementation of these laws. However, inconsistencies in defining key legal concepts, such as "religious association" and "religious activity", contribute to legal uncertainty. One of the central mechanisms of control is the mandatory registration of religious associations. While this provision aims to regulate religious activities, it has been criticised for creating administrative barriers, particularly for minority groups, and potentially infringing upon the constitutional right to freedom of religion. Additionally, the restriction on public religious gatherings without prior approval raises concerns about proportionality and compatibility with international standards, particularly Article 18 of the International Covenant on Civil and Political Rights (1966), which permits limitations on religious freedom only when necessary to protect public safety, order, health, or morals.

The regulation of the religious sphere in Kazakhstan is primarily governed by Article 22 of the Constitution of the Republic of Kazakhstan (1995) and Articles 3, 4, 7 of the Law of the Republic of Kazakhstan No. 483-IV (2011). These foundational documents establish the legal framework for state-religious relations, define the rights and obligations of religious associations, and set limitations on religious practices. To operationalise these laws, the Resolution of the Government of the Republic of Kazakhstan No. 953 (2020), and later amended by Resolution of the Government of the Republic of Kazakhstan No. 236 (2023), provided a strategic framework for regulating religious affairs, ensuring interfaith harmony, and maintaining national security in religious matters. While this plan outlines measures to manage religious activities and promote stability, its implementation has raised concerns about excessive state control and the marginalisation of minority religious groups. A closer analysis of these regulatory mechanisms reveals inconsistencies, gaps, and areas for improvement within the current system, particularly regarding the balance between religious freedom and national security considerations.

One of the central mechanisms of control is the registration of religious associations, mandated by Article 3 of the Law of the Republic of Kazakhstan No. 483-IV (2011). This provision requires all religious organisations to register with the state to gain legal recognition. The registration process includes submitting charters, conducting a religious studies examination of the association's documents, and meeting membership thresholds, as detailed in Articles 9 and 11 of the same Law of the Republic of Kazakhstan No. 483-IV. While these requirements aim to regulate religious activities, they have been criticised for creating administrative barriers, particularly for minority groups, and potentially infringing upon the constitutional right to freedom of religion, as stated in Article 22 of the Constitution of the Republic of Kazakhstan (1995).

Critics argue that the stringent registration requirements make it difficult for smaller religious communities to operate legally. For example, the U.S. Commission on International

Religious Freedom (2022) highlights that these regulations disproportionately impact minority religious groups, as they often lack the necessary membership numbers or financial resources to comply with state requirements. Additionally, the 2023 Report on International Religious Freedom: Kazakhstan (2024) notes that religious groups failing to obtain registration face fines, restrictions on public worship, and, in some cases, legal dissolution. Furthermore, the I.N. Brady (2015) has pointed out that the religious studies examination process lacks transparency, allowing authorities to arbitrarily reject applications from non-traditional religious groups. The report also emphasises that state-controlled religious regulation contradicts Kazakhstan's commitments under international human rights treaties, such as the International Covenant on Civil and Political Rights (1966) under Article 18, which guarantees the right to freedom of thought, conscience, and religion with minimal state interference.

According to Article 22 of the Constitution of the Republic of Kazakhstan (1995), every citizen is guaranteed freedom of conscience and religion, including the right to freely practice any religion or none at all. However, Article 7 of the Law of the Republic of Kazakhstan No. 483-IV (2011) stipulates those religious rites may only be conducted in designated places of worship or with prior approval from local authorities. This territorial restriction on religious worship contradicts the principle of proportionality, as it imposes broad prohibitions without demonstrating the necessity of such measures in each specific case. According to Article 18(3) of the International Covenant on Civil and Political Rights (1966), to which Kazakhstan is a signatory, restrictions on religious freedom may only be applied when necessary to protect public safety, order, health, morals, or the fundamental rights of others. However, as noted by the 2023 Report on International Religious Freedom: Kazakhstan (2024) Kazakhstan's restrictions on places of worship are not always justified by public safety concerns but rather serve as a mechanism for state control over religious groups. This has led to discriminatory application of restrictions against religious minorities, who often lack access to officially registered places of worship.

According to paragraph 9.4 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (1990), participating states are obligated not to impose unjustified obstacles on religious groups in exercising their freedom of worship. However, as noted by U.S. Commission on International Religious Freedom (2022), Kazakhstan limits opportunities for public religious gatherings, disproportionately violating principles of religious freedom and equality of religious organisations. Thus, the legislative restrictions on religious gatherings in Kazakhstan do not always comply with the principle of proportionality as established in Article 18(3) of the International Covenant on Civil and Political Rights (1966) and the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE. These limitations may also contradict Article 22 of the Constitution of the Republic of Kazakhstan (1995), which guarantees freedom of conscience but is subject to administrative barriers in practice. This indicates a need for a revision of the regulatory framework governing the religious sphere to align Kazakhstan's domestic laws with international human rights standards.

The provision in Article 490 of the Code of the Republic of Kazakhstan "On Administrative Infractions" (2014) penalising religious associations for engaging in activities not specified in their charter's conflicts with the constitutional principle of freedom of association as outlined in Article 5 of the Constitution of the Republic of Kazakhstan (1995). This article guarantees the right of citizens to form associations, including religious organisations, and does not explicitly restrict their activities to those predefined in a charter. Furthermore, Article 22 of the Constitution of the Republic of Kazakhstan ensures freedom of conscience, which encompasses the right to practice religion freely. Restricting religious organisations' activities solely to those listed in their charters creates unjustified administrative barriers that are not necessarily linked to protecting public safety, order, health, or morals – the only permissible grounds for restricting religious freedom under Article 18(3) of the International Covenant on Civil and Political Rights (1966).

A more nuanced legal analysis, however, acknowledges that Article 32 of the Constitution of the Republic of Kazakhstan (1995) allows for certain restrictions on freedom of assembly in the interests of state security, public order, and the protection of the rights and freedoms of others. While this provision may justify some regulatory oversight of religious activities, the broad and vague nature of Article 490 of the Code of the Republic of Kazakhstan "On Administrative Infractions" (2014) permits discretionary enforcement, which may lead to arbitrary restrictions on religious organisations. For example, religious groups may evolve over time, incorporating new forms of worship, educational activities, or community outreach, which may not have been explicitly outlined in their original charter. Penalising such developments contradicts the constitutional commitment to freedom of association and religion and fails to meet the international legal standard of proportionality under Article 18 of the International Covenant on Civil and Political Rights (1966). Thus, the legal framework should be revised to ensure that restrictions on religious associations are necessary and proportionate, rather than imposed through rigid administrative requirements that may not align with constitutional and international human rights principles.

This inconsistency underscores the need for a systematic review to harmonise legal norms and eliminate contradictions. Although Article 1 of the Law of the Republic of Kazakhstan No. 483-IV (2011) provides definitions for "religious activity" and "religious association", legal ambiguity persists in practice, leading to inconsistent enforcement and restrictions on religious freedom. The lack of a clear distinction between individual religious practices and organised religious activities has resulted in penalties for informal religious gatherings, even when they do not constitute a formal association (Kazakhstan. Events..., 2022). Additionally, compulsory registration requirements have led to misinterpretations, penalising unregistered groups even when engaging in personal religious expression rather than missionary activities (OSCE Office for Democratic Institutions and Human Rights, 2019). Furthermore, unclear regulations on religious literature and places of worship have allowed authorities to arbitrarily restrict religious materials and outlaw private prayer meetings (Amnesty International, 2019). Data from United States Department of State further highlight the inconsistencies in enforcement, revealing disparities in the number of registered religious organisations across regions, as well as a pattern of heightened scrutiny toward minority religious groups (2023 Report on…, 2024).

These legal uncertainties and inconsistent applications of the law reinforce the need for clearer definitions and reforms to align Kazakhstan's religious policies with international human rights standards (2019 Report on…, 2020).

Kazakhstan's legal framework demonstrates partial alignment with international human rights norms, but specific inconsistencies exist between national legislation and international standards. Article 18 of the International Covenant on Civil and Political Rights (1966) guarantees freedom of religion and states that restrictions on religious expression are permissible only if necessary and proportionate to protect public safety, order, health, or morals. However, Article 3 of the Law of the Republic of Kazakhstan No. 483-IV (2011) imposes a mandatory registration requirement for all religious groups, including small and informal ones. This contradicts the interpretation of Article 18(3) of the ICCPR by the United Nations (UN) Human Rights Committee, which has criticised Kazakhstan's approach for making legal recognition a precondition for exercising religious freedom, potentially violating the principle that unregistered groups must also enjoy basic religious freedoms (Kaye *et al.,* 2016).

Additionally, Article 7 of the Law of the Republic of Kazakhstan No. 483-IV (2011) confines public worship to registered places of worship and requires additional permissions for religious activities outside these premises, including private homes and public spaces. This requirement is stricter than the proportionality standard outlined in Article 9 of the European Convention on Human Rights (ECHR) (1950), which allows freedom of religious assembly unless it directly threatens public order. The Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (1990) also states that states should facilitate, not hinder, religious practices, yet Kazakhstan's broad discretionary powers in enforcing these restrictions have led to administrative penalties and criminal liability for unregistered religious gatherings (OSCE Office for Democratic Institutions and Human Rights, 2019).

Furthermore, Article 490 of the Code of the Republic of Kazakhstan "On Administrative Infractions" (2014) penalizes religious associations for engaging in activities not explicitly listed in their charters, effectively restricting their ability to evolve or respond to new social needs. This contradicts Article 22 of the Constitution of Kazakhstan (1995), which guarantees freedom of conscience and does not explicitly link religious rights to state approval. The OSCE Office for Democratic Institutions and Human Rights (2019) has criticised Kazakhstan's legal framework for granting excessive control to state authorities over religious associations, particularly in the registration and approval of religious literature. Thus, while Kazakhstan's constitutional provisions formally uphold religious freedom, its implementing legislation – particularly the Law of the Republic of Kazakhstan No. 483-IV (2011) and Code of the Republic of Kazakhstan "On Administrative Infractions" – contains restrictive elements that deviate from international human rights obligations under the ICCPR, ECHR, and Organisation for Security and Co-operation in Europe (OSCE) principles. These contradictions necessitate legislative reforms to bring domestic laws into full compliance with international commitments on religious freedom.

The implementation of religious legislation in Kazakhstan reveals further challenges. Administrative practices often emphasise control over facilitation, resulting in a lack of trust between the state and religious communities. For instance, the process of conducting religious studies examinations, as required for registration, has been criticised for its opacity and potential bias. These issues highlight the need for more transparent and consistent enforcement mechanisms. Judicial interpretations of religious laws in Kazakhstan have exhibited significant variation, reflecting a lack of standardised guidelines for courts and leading to inconsistent enforcement of religious legislation. This inconsistency undermines the predictability of legal outcomes and creates uncertainty for religious associations seeking to navigate the regulatory framework.

For instance, different courts have issued divergent rulings regarding the legal status of unregistered religious groups, with some judges recognising their right to practice freely, while others impose administrative penalties based on the strict interpretation of the Law of the Republic of Kazakhstan No. 483-IV (2011). The absence of uniform judicial practice exacerbates the risk of arbitrary decision-making, particularly in cases involving religious literature, missionary activities, and public worship. Furthermore, courts frequently rely on broad discretionary powers granted to administrative bodies, leading to a lack of independent judicial oversight in religious freedom cases. The United States Department of State has raised concerns over the absence of clear procedural safeguards for religious associations, noting that judicial appeals against registration denials and administrative penalties rarely result in favourable outcomes due to the deference courts afford to executive authorities (2019 Report on…, 2020). Consequently, the lack of clear judicial standards not only limits religious associations' ability to challenge state-imposed restrictions effectively but also reinforces a legal environment where compliance with international human rights norms remains uncertain.

Kazakhstan's policy on religious activity in comparative perspective. Kazakhstan's model more restrictive than Western legal frameworks, yet slightly more flexible than Uzbekistan's or Turkmenistan's prohibitive policies. Turkmenistan, governed by Article 11 of the Law of Turkmenistan No. 199-II "On Freedom of Religion and Religious Organisations" (2003), represents a highly restrictive model, where local executive authorities regulate and approve most aspects of religious activity. This decentralised control allows regional authorities to exercise broad discretionary power over religious organisations, which can lead to inconsistent enforcement and arbitrary decision-making. In contrast, Kazakhstan enforces religious regulations primarily at the national level through Articles 3, 7 of the Law of the Republic of Kazakhstan No. 483-IV (2011), which mandates a centralised registration system and imposes restrictions on public religious practices. This distinction highlights a fundamental difference: while Turkmenistan's model relies on localised oversight, Kazakhstan's approach ensures uniformity in regulation but maintains tight state control over religious communities at the national level.

A key distinction between the two legal frameworks lies in the scope of permitted religious activities. Article 11 of the Law of Turkmenistan No. 199-II "On Freedom of Religion and Religious Organisations" (2003) requires religious organisations to obtain direct approval from local executive bodies before conducting any activities, effectively limiting religious expression to government-sanctioned groups.

In contrast, Kazakhstan does not impose such a direct local approval process but enforces a mandatory state registration system, making legal recognition a prerequisite for any religious activity (Law of the Republic of Kazakhstan No. 483-IV, 2011). While both systems impose significant administrative barriers, Turkmenistan's model grants broader discretionary power to local officials, whereas Kazakhstan implements a nationwide regulatory framework that centralizes religious oversight.

Another important distinction concerns public religious practices. According to Article 7 of the Law of the Republic of Kazakhstan No. 483-IV (2011), religious gatherings outside officially registered places of worship require prior authorisation, and failure to comply can result in administrative penalties (OSCE Office for Democratic Institutions and Human Rights, 2019). This contrasts with Turkmenistan's more restrictive approach, where religious meetings in private homes are generally prohibited unless explicitly permitted by local authorities (Law of Turkmenistan No. 199-II, 2003). This demonstrates a notable difference in enforcement: while both states impose limitations on religious gatherings, Kazakhstan's framework provides a legal mechanism for authorisation, whereas Turkmenistan's policies create a default prohibition, effectively eliminating most opportunities for informal religious practice.

Consequently, while both Kazakhstan and Turkmenistan enforce state-centred religious regulation, the degree of control and the level at which it is implemented vary significantly. Turkmenistan's highly localised model leads to inconsistent enforcement and widespread suppression of religious activity, whereas Kazakhstan's centralised registration system creates uniform, yet still restrictive, barriers. Neither system aligns with European Union (EU) legal standards, which emphasise freedom of religion without excessive state intervention.

In Germany, religious communities enjoy a voluntary and decentralised recognition system that provides them with legal and financial benefits without imposing mandatory registration. According to Article 4 of the Basic Law for the Federal Republic of Germany (1949), freedom of religion is inviolable, and religious organisations can operate without registration, unlike in Kazakhstan, where Article 3 of the Law of the Republic of Kazakhstan No. 483-IV (2011) requires mandatory state registration for all religious groups. In Germany, religious organisations can exist as private associations (Vereine), registered non-profit organisations (e.V.), or public law corporations (Körperschaften des öffentlichen Rechts), with each level offering different legal rights and benefits (Basic Law for the Federal Republic of Germany, 1949). The highest level of recognition, public law corporation status, is granted based on objective criteria, such as long-term existence and societal contributions, allowing religious communities to receive state funding, manage religious schools, and provide social. In contrast, Kazakhstan's system mandates registration for all religious activities, and authorities retain broad discretionary power to approve or deny applications, creating administrative barriers for minority groups (OSCE Office for Democratic Institutions and Human Rights, 2019). Furthermore, unregistered religious activity in Kazakhstan is penalised, whereas in Germany, religious communities can freely operate without formal state recognition. This distinction highlights Germany's more liberal and inclusive approach to religious freedom, in which the state fosters cooperation with religious groups without imposing bureaucratic constraints, compared to Kazakhstan's restrictive and control-oriented system (International Center for Not-for-Profit Law, 2025).

Similarly, the United Kingdom follows a model of minimal regulation, where religious associations are not required to register unless they seek charitable status for tax benefits. The Equality Act (2010) in the United Kingdom explicitly prohibits discrimination based on religion or belief, ensuring equal treatment in employment, education, and public services. According to Section 10 of the Equality Act, religion includes any religious or philosophical belief, as well as the lack of belief. The law applies to both direct and indirect discrimination, meaning that policies or practices that disadvantage individuals due to their religious beliefs are unlawful unless they can be objectively justified (Equality Act, 2010). The Public Sector Equality Duty (Section 149) further obliges public authorities to consider the impact of their policies on religious groups and actively promote equality. This framework ensures a more inclusive environment for all religious communities in the UK, contrasting with Kazakhstan's restrictive policies on religious registration and public worship (OSCE Office for Democratic Institutions and Human Rights, 2019). These frameworks contrast sharply with Kazakhstan's mandatory registration requirements and the limitations on public religious practices, highlighting the restrictive nature of Kazakhstan's approach.

The mandatory registration requirement for religious associations in Kazakhstan has been widely criticised for imposing significant administrative barriers, particularly for smaller or non-traditional religious groups. According to the United States Commission on International Religious Freedom (2022), the registration process requires religious groups to submit a minimum number of members, undergo state-conducted religious expertise assessments, and obtain approval from the government. This bureaucratic process disproportionately affects minority religious communities that may not have the required number of adherents or face ideological scrutiny during registration. United States Commission on International Religious Freedom further notes that unregistered religious activity is prohibited under Law of the Republic of Kazakhstan No. 483-IV (2011), meaning that groups unable to register face legal consequences, including administrative fines and potential dissolution.

The 2022 Report on International Religious Freedom: Kazakhstan (2023) highlights that these registration requirements have led to the harassment of minority religious communities, particularly Protestant Christian groups, Jehovah's Witnesses, and Ahmadi Muslims, who have faced legal actions for holding religious meetings without official recognition. The report cites cases where authorities have raided unregistered religious gatherings, fined participants, and confiscated religious literature. Such actions violate international norms outlined in Article 18 of the International Covenant on Civil and Political Rights (1966), which guarantees the right to freely practice religion without undue government interference.

Human rights organisations have also expressed concerns over Kazakhstan's approach to religious regulation (Sopelnyk, 2025). The Office of the United Nations High Commissioner for Human Rights has urged Kazakhstan to abolish mandatory registration, stating that "registration should not be a precondition for individuals and groups

to exercise their religious freedoms" (Kazakhstan's human rights…, 2025). This aligns with OSCE Office for Democratic Institutions and Human Rights principles, which emphasise that while registration can provide legal benefits, it should not be a requirement for religious practice. Kazakhstan's legal framework, however, restricts public worship to registered religious organisations, a policy that has been criticised for contradicting Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (1990) commitments to ensuring religious pluralism (OSCE/ODIHR guidelines…, 2016).

The United Nations Human Rights Council criticised these restrictions as disproportionate, yet fines under Article 490 of the Code of the Republic of Kazakhstan "On Administrative Infractions" (2014) persist (Kaye *et al.*, 2016; OSCE/ODIHR guidelines…, 2016). In contrast, Article 4 of the Basic Law for the Federal Republic of Germany (1949) allows unrestricted public worship without mandatory registration, and the United Kingdom's Equality Act (2010) ensures non-discriminatory access to religious spaces. Unlike Kazakhstan, these countries uphold religious pluralism without excessive administrative control. Thus, Kazakhstan's frequent enforcement of Article 7, as reported by U.S. Department of State, Forum 18 News Service, and OSCE Office for Democratic Institutions and Human Rights, limits religious expression (OSCE/ODIHR guide- lines…, 2016; Corley & Kinahan, 2022; 2022 Report on…, 2023). Aligning its policies with international human rights norms would enhance religious freedom and pluralism.

Similarly, Forum 18 News Service reported that Baptist churches in Kazakhstan have frequently been denied registration despite meeting all formal requirements (Corley & Kinahan, 2022). Authorities have used administrative discretion to refuse registration on the grounds that "insufficient demand exists for this religious denomination in the country". This reasoning contradicts the OSCE Office for Democratic Institutions and Human Rights, which state that registration should not be dependent on the number of adherents but rather should be a neutral administrative process (OSCE/ODIHR guidelines…, 2016). The UN Human Rights Committee also criticised Kazakhstan for arbitrary application of registration requirements, citing cases where Protestant groups and Jehovah's Witnesses faced unwarranted rejections (Kaye *et al.,* 2016). The committee noted that "excessive governmental discretion in granting registration should not be allowed, as it may lead to discrimination against minority religious groups". Despite these concerns, Kazakh authorities continue to apply inconsistent standards to different religious groups.

In summary, while Kazakhstan has made strides in legislating religious freedom, aligning its legal framework with international norms and reducing administrative and practical barriers are essential for fostering a more inclusive environment.

Religious policy of Kazakhstan from the perspective of religious communities of the country. The religious policy of Kazakhstan has elicited mixed reactions from various stakeholders, including religious associations, civil society organisations, and international institutions. While the government asserts that its regulatory framework promotes stability and national security, many religious communities argue that it imposes undue restrictions on their activities, particularly minority groups. For instance, mandatory registration requirements and restrictions on public worship have been criticised for disproportionately affecting smaller and non-traditional religious associations, often limiting their ability to operate freely.

State control over religious activity has had a significant impact on public attitudes toward religious freedom. Many citizens view the restrictive measures as necessary for maintaining social harmony and preventing extremism (Otynshiyeva *et al.*, 2019). This perspective is supported by research indicating that Kazakhstan's religious policies aim to balance state security concerns with social stability. Y. Buribayev *et al.* (2024) highlight that government-imposed restrictions on religious activities are often justified as measures to prevent radicalisation and maintain interfaith harmony, despite concerns about their impact on religious freedoms. Similarly, A.M. Almasovich and A. Zhalgas (2022) emphasise that public support for restrictive religious policies stems from fears of extremism and instability, leading to general acceptance of state control over religious organisations. These findings illustrate how religious governance in Kazakhstan is shaped by both security considerations and prevailing societal attitudes toward state intervention in religious affairs. However, these measures have also stifled religious pluralism by creating a system where majority religious groups, such as Sunni Islam and Russian Orthodoxy, are favoured, while minority groups face administrative hurdles. This has led to a perception of unequal treatment among religious communities and raised concerns about potential social tensions.

The challenges faced by religious communities in Kazakhstan are well illustrated by specific cases, which highlight the tension between national legislation and international commitments to religious freedom. Kazakhstan's mandatory registration requirements for religious organisations have led to significant legal challenges for groups such as Jehovah's Witnesses, the Ahmadiyya Muslim Community, and Baptist churches. These cases highlight the tension between national administrative regulations and international human rights standards. Jehovah's Witnesses have faced numerous legal obstacles due to their failure to register with state authorities. Over the years, more than 60 Jehovah's Witnesses have been fined for engaging in missionary activities without registration. In one notable instance, a court in Almaty suspended all activities of the Christian Center of Jehovah's Witnesses in Kazakhstan for three months, citing minor administrative violations as the basis for the suspension (Hurd, 2017; Kazakhstan suspends activity…, 2017). The Ahmadiyya Muslim Community has also encountered significant challenges. Operating in Almaty, the community failed to pass the mandatory re-registration process, leading to a court decision to close it. The head of the community, Nyrim Taibek, argued that the authorities discriminated against them due to theological differences with the Spiritual Governance of Muslims in Kazakhstan (Court refuses to…, 2013). Baptist churches have similarly faced penalties for conducting religious meetings without prior authorisation. Authorities have prosecuted individuals for "violating the procedure for conducting religious meetings", even in private settings. For example, two Protestants from Atyrau were prosecuted for drinking tea with other church members, an act deemed a violation of the law (2022 Report on…, 2023).

These cases underscore the broader issue of whether Kazakhstan's laws align with its obligations under the ICCPR and other international treaties. The restrictive regulatory

framework has hindered religious pluralism and marginalised smaller groups. International institutions, such as the UN Human Rights Committee and the OSCE, have called for reforms to align national laws with international commitments, emphasising the importance of non-discrimination and the facilitation of religious pluralism (Levchenko, 2023).

To foster a more inclusive and harmonious society, reforms are needed to align Kazakhstan's domestic laws with international standards and address the grievances of religious communities. A balanced approach that respects religious diversity while safeguarding public order is essential for building a cohesive and tolerant society.

The legal modeling method was applied to develop actionable legislative improvements aimed at enhancing Kazakhstan's legal framework for religious freedom. The analysis focused on refining the structure of the Law of the Republic of Kazakhstan No. 483-IV (2011) to ensure consistency with constitutional principles and international human rights obligations. Given that freedom of religion and belief is a fundamental right protected under Article 22 of the Constitution of the Republic of Kazakhstan (1995) and Article 3 of the Law of the Republic of Kazakhstan No. 483-IV, the proposed legislative amendments emphasise balancing state regulation with the protection of religious freedoms. The updated law should establish a clear legal framework by consolidating two main sections: human rights in the religious sphere and the legal regulation of religious associations. It should provide precise definitions for key legal terms, including "religious association", and incorporate standardised legal norms governing registration procedures, legal status, operational rules, financial accountability, religious education, and religious representation. By eliminating legal ambiguities and ensuring proportionality in restrictions on religious activities, these legislative improvements will strengthen legal certainty and promote the fair and transparent application of regulatory measures. This legal modeling approach ensures that the proposed amendments address both theoretical concerns related to legal coherence and practical challenges faced by religious associations in Kazakhstan.

Discussion

A key issue identified in the study is the inconsistency between Kazakhstan's domestic legal framework and its international obligations. While national laws emphasise state control and security considerations, they frequently diverge from principles of religious pluralism and non-discrimination. The comparative analysis demonstrated that Kazakhstan's approach is significantly more restrictive than European models, such as those in Germany and the United Kingdom, where religious associations enjoy more autonomy, and public worship is generally not subject to extensive governmental oversight. At the same time, Kazakhstan's policies, though strict, are relatively more flexible than those of neighbouring Central Asian states, such as Uzbekistan and Turkmenistan, where unregistered religious activity is completely prohibited.

The analysis of religious regulation in Kazakhstan demonstrates a complex interplay between state policies, international commitments, and societal attitudes toward religious freedom. The findings indicate that while Kazakhstan formally upholds freedom of religion, its legal framework imposes significant restrictions on religious practices through mandatory registration, limitations on public worship, and discretionary enforcement mechanisms. These aspects align with broader regional trends in Central Asia, where state control over religious institutions has historically been a key governance strategy (Gamza & Jones, 2021). However, comparative insights highlight that Kazakhstan's model, while restrictive, does not fully align with either the more rigid policies of Turkmenistan and Uzbekistan or the more inclusive frameworks of European states such as Germany and the United Kingdom.

A key theme emerging from the study concerns the challenges associated with the registration of religious organisations. The mandatory registration requirement, stipulated in Article 3 of the Law of the Republic of Kazakhstan No. 483-IV (2011), has been widely criticised for creating administrative barriers, particularly for minority religious groups. J. Fox and R. Finke (2021) emphasise the role of institutional freedoms in ensuring religious rights, arguing that excessive bureaucratic oversight can undermine fundamental liberties. In Kazakhstan, registration procedures involve extensive governmental scrutiny, including doctrinal examinations, which have led to the exclusion of non-traditional religious groups, such as Jehovah's Witnesses and the Ahmadiyya Muslim Community (United States Commission on International Religious Freedom, 2022). This practice contradicts the OSCE Office for Democratic Institutions and Human Rights guidelines, which stress that registration should not be a prerequisite for exercising religious freedom (OSCE/ODIHR guidelines…, 2016).

The legal and administrative inconsistencies within Kazakhstan's regulatory framework further complicate the religious landscape. J. Temperman (2010) highlight that while Article 22 of the Constitution of the Republic of Kazakhstan guarantees freedom of conscience, the enforcement of legal provisions often contradicts this principle. In particular, Article 490 of the Code of the Republic of Kazakhstan "On Administrative Infractions" (2014). penalizes religious associations for engaging in activities not explicitly listed in their charters. This restriction contradicts the principle of flexibility in religious practice, as articulated by R. Finke (2024), who argues that legal frameworks should accommodate the evolving nature of religious expression. The requirement that religious organisations operate strictly within predefined parameters limits their ability to adapt to changing social and theological contexts.

From a historical perspective, N. Baitenova *et al.* (2021) trace the evolution of Kazakhstan's religious policy from its early post-independence liberalism to the more securitised approach introduced with the 2011 law. While their analysis accurately reflects the tightening of religious regulations in response to perceived security threats, the conducted research suggests that this shift may not have been entirely justified by objective risks. Instead, the securitisation of religious governance appears to be part of a broader regional trend among post-Soviet states, where the strengthening of state control over religious organisations is often framed as a necessary response to extremism and national identity concerns (Kopan & Melnyk, 2024). However, this approach raises questions regarding its proportionality and effectiveness, as excessive restrictions on religious activity may contribute to social tensions rather than mitigate security risks.

This interpretation aligns with D. Allès (2021), who examines the intersection between religion and international security, arguing that securitisation often serves as a pretext for consolidating state power rather than addressing

actual extremist threats. While Kazakhstan's policies regulating missionary activities and religious literature can be understood as preventative measures, their practical implementation has faced criticism. D.K. Raibyaev (2015) highlight that these restrictions frequently extend beyond legitimate security concerns and instead limit religious pluralism, disproportionately affecting minority religious groups. The inconsistency between the declared goals of state policy and its real impact suggests that a more nuanced regulatory approach is required – one that ensures national security without infringing upon fundamental religious freedoms.

Moreover, while the securitisation of religious governance in Kazakhstan follows a similar trajectory to other post-Soviet states, the degree of control varies significantly (Turemuratov *et al.*, 2024). Unlike Turkmenistan, where state control over religion is absolute, Kazakhstan's policies, though restrictive, still allow for a certain degree of religious diversity. However, in comparison to Uzbekistan, which has initiated limited religious reforms in recent years, Kazakhstan appears to be lagging in aligning its religious regulations with international human rights standards. This discrepancy underscores the importance of reassessing the effectiveness of Kazakhstan's current approach and considering alternative models that balance security concerns with respect for religious freedoms.

The socio-political implications of these restrictive policies are evident in public attitudes toward religious pluralism, yet their impact remains a subject of debate. While A.M. Almasovich and A. Zhalgas (2022) provide an assessment of risks and challenges in Kazakhstan's religious sphere, noting that state-favoured religious institutions – such as the Spiritual Administration of Muslims of Kazakhstan (SAMK) and the Russian Orthodox Church – receive preferential treatment, the rationale behind this favouritism requires further scrutiny. On one hand, the state justifies such policies as a means of maintaining social cohesion and preventing religious radicalisation. On the other hand, these measures create systemic disadvantages for minority religious groups, limiting their public visibility and institutional development. This raises critical concerns about whether such favouritism genuinely contributes to stability or, conversely, exacerbates religious marginalisation.

Moreover, R. Shaykhutdinov (2024) highlights a similar trend in other post-communist Muslim republics, where state-supported religious institutions are positioned as guardians of national identity while non-traditional groups are often viewed with suspicion. However, this approach is not without consequences – restricting minority religious communities can lead to their alienation from broader societal discourse and discourage open religious dialogue. While Kazakhstan officially promotes an image of religious tolerance, its regulatory framework, in practice, appears to undermine this commitment by disproportionately impacting smaller religious communities (Saparbekova *et al.*, 2024). This contradiction raises important questions: does the state's approach to religious governance genuinely serve the public interest, or does it primarily function as a tool for reinforcing state control over religious life?

Additionally, comparative analysis suggests that Kazakhstan's selective favouritism toward certain religious groups contrasts with more pluralistic approaches found in European legal frameworks, which emphasise equal treatment and non-discrimination. Unlike Directive of the Council of European Union No. 2000/78/EC (2000), which explicitly prohibits religious discrimination in institutional settings, Kazakhstan's policies institutionalise a hierarchy among religious organisations, making it difficult for minority groups to operate on equal footing. This divergence underscores the need for a reassessment of Kazakhstan's regulatory approach to ensure that it aligns not only with national security objectives but also with international commitments to religious freedom and pluralism.

A comparative perspective on Kazakhstan's regulatory framework offers further insights into its restrictive nature, yet it also raises important questions regarding the balance between security concerns and religious freedom. Y. Buribayev *et al.* (2024) propose a strategic development plan for religious governance, emphasising the need for greater transparency and legal predictability. While their recommendations highlight necessary reforms, the extent to which such proposals can be effectively implemented remains uncertain, particularly given the entrenched nature of state oversight in religious affairs. Although transparency is often cited as a means of improving governance, previous legislative amendments in Kazakhstan have demonstrated that increased legal clarity does not necessarily translate into greater religious freedom, as enforcement mechanisms often favour state control rather than equitable regulation.

Furthermore, I. Iskakova *et al.* (2023) stress that inconsistencies in legal definitions contribute to arbitrary enforcement, a problem that is particularly evident in the distinction between religious activity and missionary work. This vague legal framework has resulted in the criminalisation of informal religious gatherings, raising concerns about the disproportionate impact on minority religious groups. However, an alternative viewpoint suggests that such strict definitions may be deliberately maintained to allow the government flexibility in managing religious organisations based on shifting political priorities. If this is the case, then regulatory ambiguity is not merely an oversight but rather a strategic tool for selective enforcement.

This perspective is supported by international reports from OSCE Office for Democratic Institutions and Human Rights (2019) and United States Commission on International Religious Freedom (2022), which repeatedly highlight those legal uncertainties enable state authorities to impose restrictions on religious communities in an inconsistent manner. While these reports criticise Kazakhstan's approach, they do not fully account for the broader regional context, where similar regulatory mechanisms exist in neighbouring Central Asian states. Compared to Turkmenistan and Uzbekistan, where religious organisations face even stricter state control, Kazakhstan's system, though restrictive, still allows for a degree of religious expression. This raises the question: should reforms aim for incremental improvements within the existing framework, or is a more fundamental restructuring of religious governance necessary? The answer depends on whether policymakers prioritise international human rights commitments or maintain the status quo under the justification of national security and social cohesion.

The broader international discourse on religious freedom and governance further contextualises Kazakhstan's regulatory challenges, yet it also reveals significant differences in how states justify and implement religious restrictions. R. Finke (2024) underscores that state interventions in religious affairs must be assessed through a global

comparative lens, considering both security concerns and human rights obligations. While this perspective highlights the need for a balanced approach, Kazakhstan's policies often lean disproportionately toward securitisation rather than the protection of religious freedoms. This raises an important question: are Kazakhstan's restrictive measures genuinely necessary for national stability, or do they reflect a broader pattern of state control over religious life inherited from the Soviet era?

This issue becomes more apparent when comparing Kazakhstan's legal framework to international best practices. Unlike Directive of the Council of European Union No. 2000/78/EC (2000), which explicitly prohibits religious discrimination in institutional settings, Kazakhstan's regulatory framework imposes significant administrative barriers on minority religious groups, effectively institutionalising a hierarchy among religious organisations. Such an approach appears inconsistent with global human rights commitments, yet it remains justified within the state's broader national security framework. However, an overly rigid securitisation strategy risks alienating religious communities and undermining social cohesion, rather than strengthening national stability (Parkhomenko, 2023).

D. Gamza and P. Jones (2021) document similar trends across Central Asia, where legal restrictions on religious activity often stem from historical legacies of Soviet-era control mechanisms rather than purely contemporary security concerns. This observation suggests that Kazakhstan's approach is not an isolated case but part of a regional trend in which governments maintain tight control over religious life to reinforce state authority. However, this argument does not fully account for variations within the region. For instance, Uzbekistan has recently introduced limited religious reforms, signalling a shift away from rigid Soviet-era policies. This divergence raises critical questions: Is Kazakhstan's strict regulatory approach sustainable in the long term, or will it face increasing pressure to align with international human rights standards? If the latter, what would be the implications for its broader governance model? Addressing these questions requires not only legal adjustments but also a fundamental reassessment of the role religion plays in Kazakhstan's national identity and political landscape.

Legal restrictions on religious identity in Kazakhstan raise concerns about the long-term effects of state-backed religious narratives. A. Zakhay *et al.* (2022) highlight how state-supported interpretations of traditional Islam shape public perceptions, reinforcing official legitimacy while excluding non-conforming groups. While the government justifies this as a measure to ensure unity and prevent extremism, such policies risk fostering religious fragmentation rather than cohesion.

This pattern aligns with P. Mazurkiewicz (2021), who argues that governments often use crises to impose additional religious restrictions, strengthening state control rather than addressing social tensions. Kazakhstan's promotion of a state-approved version of Islam serves both as a tool against extremism and a means of regulating religious discourse. However, restricting the natural evolution of religious identity may unintentionally encourage underground religious movements.

Compared to the United Kingdom's Equality Act (2010), which ensures equal protection for all religious groups, Kazakhstan's framework structurally disadvantages non-traditional religious communities. This contrast raises critical questions about the sustainability of Kazakhstan's religious policies and whether future reforms will be necessary to promote a more pluralistic and inclusive approach. Balancing national security with religious freedom remains an ongoing challenge in shaping Kazakhstan's governance of religion.

M.A. Nasir (2022), and P. Suyaman and T.F. Alfiany (2022) explore how legal frameworks accommodate or restrict interfaith marriages and religious conversions in Indonesia, offering insights into the broader debate on legal autonomy for religious communities. While Indonesia's approach reflects tensions between religious doctrine and secular legal principles, Kazakhstan's system presents a different challenge – one where state approval is required for religious institutions to function, restricting their operational flexibility. This raises the question of whether Kazakhstan's model effectively balances religious freedom with governance or if it primarily serves as a tool for state control.

J. Fox and R. Finke (2021) emphasise that institutional autonomy is fundamental to religious freedom, yet Kazakhstan's rigid regulatory structure contradicts this principle by imposing administrative barriers that limit religious self-governance. While some argue that these restrictions are necessary for maintaining social stability and preventing extremism, comparative research suggests that excessive state interference can instead weaken religious institutions, driving some groups toward unofficial or underground practices. Unlike Indonesia, where interfaith marriages and conversions are regulated through religious and civil law interactions, Kazakhstan's restrictions extend beyond personal religious choices to institutional control, limiting religious communities' ability to function independently. While Indonesia's model demonstrates the complexities of balancing secular law with religious identity, Kazakhstan's approach leans more heavily on state-imposed constraints, potentially undermining the principles of religious pluralism and self-determination. This contrast suggests that Kazakhstan may need to reassess its legal framework to align more closely with international norms while maintaining its commitment to stability and social cohesion.

Differences in the socio-political context explain many of these divergences. For example, the comparative study by A. Zhanat *et al.* (2023) on Kazakhstan and Malaysia revealed that the former's historical emphasis on state control contrasts sharply with Malaysia's accommodation of diverse religious practices. This distinction underscores the need for Kazakhstan to consider alternative models that prioritise inclusivity. The findings support the recommendations of N. Seitakhmetova *et al.* (2024), who argued for youth-focused initiatives to counteract religious extremism. Integrating education programs that promote critical thinking and tolerance can mitigate the risks associated with radicalisation. J. Fox and R. Finke (2021) emphasised the role of institutional freedoms in safeguarding individual rights, providing a theoretical framework for evaluating religious regulation. Their research concluded that institutional protections for religious freedom are crucial for maintaining a balance between state authority and individual rights. They found that countries with strong institutional frameworks tend to have lower levels of religious discrimination and greater societal stability. Furthermore, they highlighted those restrictive religious policies often lead to unintended consequences, such as social unrest and increased polarisation.

The importance of institutional safeguards in religious governance becomes evident when analysing the legal inconsistencies and discretionary enforcement practices that hinder religious pluralism in Kazakhstan. Kazakhstan's approach aims to ensure stability, the resulting uncertainty for religious organisations seeking registration suggests that restrictive measures may generate administrative burdens rather than effectively balancing security and religious freedom. A further comparative analysis underscores that countries with stronger institutional protections for religious freedom experience greater societal cohesion and lower levels of religious discrimination (Majeed *et al.,* 2023). However, Kazakhstan's broad discretionary powers in enforcing religious legislation create systemic barriers for minority religious groups, reinforcing their marginalisation. This finding aligns with the critique of international human rights bodies, which argue that mandatory registration requirements, limitations on religious literature, and administrative obstacles contradict Kazakhstan's commitments under international conventions such as the ICCPR and OSCE guidelines. While proponents of Kazakhstan's policies assert that these measures are necessary for national security, international best practices indicate that legal certainty and proportionality are more effective in fostering religious harmony without undermining fundamental rights.

The securitisation of religion remains a core element of Kazakhstan's regulatory policies, reflecting broader regional trends. Research on religious fundamentalism and extremism demonstrates how fears of radicalisation justify strict state-imposed restrictions (Das, 2022; Makhamatjanovich, 2023). However, the effectiveness of such measures is debatable, as excessive control may drive religious activities underground, making them more difficult to monitor. Similarly, the COVID-19 pandemic highlighted the intersection of religion and public health, offering insights into crisis-driven regulatory interventions (Winiger & Peng-Keller, 2021). Kazakhstan's response, which included restrictions on public worship, mirrored global trends but also exposed pre-existing structural constraints on religious freedom.

The dynamics of religious transformation further reveal how state intervention influences the development of non-traditional religious groups (Indelicato & Martín, 2025). While Kazakhstan justifies its strict oversight as a means to regulate religious expansion, comparisons with extremist movements highlight the unintended consequences of overregulation – namely, the radicalisation of religious groups due to perceived state oppression. In contrast, more liberal models, such as those in Western Europe, focus on countering extremism through community engagement rather than restrictive legal measures (Jugl *et al.,* 2021).

Kazakhstan's national strategy emphasises countering youth radicalisation through strict regulation of religious education (Seitakhmetova *et al.,* 2024). While this approach aligns with security priorities, it also raises concerns regarding academic freedom and the right to religious instruction. Additionally, the correlation between religious and secular values in Kazakhstan provides insights into how regulatory frameworks shape public attitudes toward religion (Abdikakimov & Karibaev, 2024). Although the state seeks to promote a unified national identity through religious governance, overregulation risks alienating certain religious groups and undermining public trust in government institutions.

Given these findings, legal reforms in Kazakhstan should focus on reducing discretionary enforcement, clarifying legal definitions, and ensuring that registration processes do not serve as de facto mechanisms of exclusion. Strengthening institutional safeguards through independent judicial oversight and transparent administrative procedures could create a more balanced religious regulatory environment. A shift toward aligning national policies with international human rights norms would not only enhance religious freedoms but also foster trust between religious organisations and the state, ultimately contributing to greater legal consistency and societal cohesion.

The emphasis on preserving religious freedoms during crises, as discussed by P. Mazurkiewicz (2021), is particularly relevant in the context of Kazakhstan. Our research corroborates the view that emergency measures should not disproportionately restrict religious practices, as this can exacerbate societal tensions. Finally, the cultural dimensions of religious regulation explored by E. Leach and J. Gore (2022) highlight the need for Kazakhstan to address cultural biases in policy implementation. Ensuring equitable treatment of all religious communities can foster social cohesion and reduce instances of discrimination.

In summary, the findings of this study contribute to the broader discourse on state-religion relations, offering insights that are both specific to Kazakhstan and relevant to other post-Soviet contexts. By fostering dialogue among policymakers, religious leaders, and civil society, Kazakhstan can continue to refine its approach, ensuring that its policies reflect both its constitutional principles and the diverse needs of its citizens.

Conclusions

This study systematically analysed the legal regulation of religious activities in Kazakhstan, evaluating its alignment with constitutional and international human rights standards, assessing its societal implications, and proposing recommendations for improving governance in this area. Through a detailed examination of national legislation, including the Law of the Republic of Kazakhstan No. 483-IV, and a comparative analysis of regulatory frameworks in Central Asian and European countries, the research successfully identified key inconsistencies and challenges within Kazakhstan's legal framework.

The findings reveal that while Kazakhstan's legal provisions formally recognise religious freedom, their implementation often imposes administrative and procedural barriers that disproportionately affect minority religious communities. The mandatory registration requirement, as well as restrictions on public religious activities, have led to cases where religious organisations, such as Jehovah's Witnesses, the Ahmadiyya Muslim community, and the Baptist Church, faced legal sanctions or operational limitations. These regulatory mechanisms, while officially intended to maintain public order and security, have raised concerns about their proportionality and compliance with international human rights norms, particularly those outlined in the ICCPR and OSCE guidelines.

The research highlights the need for legislative and institutional reforms to address these challenges. A critical recommendation is the revision the Law of the Republic of Kazakhstan No. 483-IV to ensure greater clarity in legal definitions, reduce excessive administrative control, and

provide a more transparent and equitable registration process. The study also emphasises the importance of fostering trust between religious communities and the state, as restrictive policies have been shown to increase social alienation and limit religious pluralism. Aligning domestic legislation with international commitments will not only strengthen religious freedom but also contribute to social stability and governance effectiveness.

Future research should focus on assessing the long-term impact of legislative changes on religious pluralism and social cohesion in Kazakhstan. Further studies should explore the potential of decentralised regulatory approaches, evaluate the role of public perception in shaping religious policy, and analyse the effectiveness of international human rights mechanisms in promoting legal compliance. By addressing these aspects, ongoing research can contribute to the development of a more balanced, rights-respecting approach to religious regulation in Kazakhstan.

Acknowledgements

None.

Funding

This research was funded by the Committee of Science of the Ministry of Science and Higher Education of the Republic of Kazakhstan (Grant No. BR21882428 “The influence and prospects of Islam as a spiritual, cultural, political, and social phenomenon in postnormal times: the experience of the countries of the Middle East and Central Asia”).

Conflict of interest

None.

References

[1] 2019 Report on International Religious Freedom. (2020). Retrieved from https://www.state.gov/reports/2019-report-on-international-religious-freedom/.

[2] 2022 Report on International Religious Freedom: Kazakhstan. (2023). Retrieved from https://www.state.gov/reports/2022-report-on-international-religious-freedom/kazakhstan/.

[3] 2023 Report on International Religious Freedom: Kazakhstan. (2024). Retrieved from https://www.state.gov/reports/2023-report-on-international-religious-freedom/kazakhstan/.

[4] Abdikakimov, M., & Karibaev, M. (2024). Correlation of religious and secular values in Kazakhstan society. *Journal of Psychology and Sociology*, 88(1), 110-125. doi: 10.26577/jpss.2024.v88.i1.09.

[5] Achilov, D. (2012). Islamic education in Central Asia: Evidence from Kazakhstan. *Asia Policy,* 1(1), 79-106. doi: 10.1353/asp.2012.0024.

[6] Akhantayeva, S., & Mussabekova, A. (2024). Religious extremism and terrorism in Central Asia: An overview of radical groups. *Journal of Central Asian Studies*, 96(4), 54-68. doi: 10.52536/3006-807x.2024-4.004.

[7] Allès, D. (2021). Religion and international security: From confessionalisation to securitisation. In J. Haynes (Ed.), *Handbook on religion and international relations* (pp. 100-114). Cheltenham: Edward Elgar Publishing. doi: 10.4337/9781839100246.00013.

[8] Almasovich, A.M., & Zhalgas, A. (2022). The current condition of the religious sphere in Kazakhstan. *Islamic Studies*, 61(2), 215-231. doi: 10.52541/isiri.v61i2.2360.

[9] Amnesty International. (2019). *Kazakhstan: Fundamental freedoms under pressure.* Retrieved from https://www.amnesty.org/fr/wp-content/uploads/2021/05/EUR5705022019ENGLISH.pdf.

[10] Baitenova, N., Meirbayev, B., & Baizhuma, S. (2021). Trends in the development of the religious situation in the post-secular society of Kazakhstan over the years of independence. *KazNU Bulletin, Religious Studies Series*, 26(2), 4-9. doi: 10.52541/isiri.v61i2.2360.

[11] Basic Law for the Federal Republic of Germany. (1949, May). Retrieved from https://www.gesetze-im-internet.de/gg/GG.pdf.

[12] Brady, I.N. (2015). Religious freedom in Kazakhstan: Legal framework and challenges. *Regent Journal of Global Justice and Public Policy*, 1, 227-246.

[13] Buribayev, Y., Turlykhankyzy, K., Kalkayeva, N., Shakenov, D., & Khamzina, Z. (2024). Strategic development and comprehensive guidelines for state policy in Kazakhstan’s religious sphere. *International Journal of Religion*, 5(3), 40-51. doi: 10.61707/77nmvb36.

[14] Code of the Republic of Kazakhstan on Administrative Infractions. (2014, July). Retrieved from https://adilet.zan.kz/eng/docs/K1400000235.

[15] Constitution of the Republic of Kazakhstan. (1995, August). Retrieved from https://adilet.zan.kz/eng/docs/K950001000 .

[16] Corley, F., & Kinahan, J. (2022). *Kazakhstan: Religious freedom survey, June 2022*. Retrieved from https://www.forum18.org/archive.php?article_id=2753.

[17] Court refuses to register Ahmadiyya Muslim Community in Kazakhstan. (2013). Retrieved from https://www.rabwah.net/court-refuses-to-register-ahmadiyya-muslim-community-in-kazakhstan/.

[18] Das, S.P. (2022). Religious orthodoxy and terrorism. In *Economics of terrorism and counter-terrorism measures: History, theory, and evidence* (pp. 525-548). Cham: Springer. doi: 10.1007/978-3-030-96577-8_14.

[19] Directive of the Council of European Union No. 2000/78/EC “Establishing a General Framework for Equal Treatment in Employment and Occupation ”. (2000, November). Retrieved from https://eur-lex.europa.eu/eli/dir/2000/78/oj/eng.

[20] Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE. (1990, June). Retrieved from https://www.osce.org/odihr/elections/14304.

[21] Equality Act 2010. (2010, April). Retrieved from https://www.legislation.gov.uk/ukpga/2010/15/contents.

[22] European Convention on Human Rights. (1950, November). Retrieved from https://www.echr.coe.int/european-convention-on-human-rights.

[23] Finke, R. (2024). Cross-national research on religious freedom: Charting a research agenda. In O. Breskaya, R. Finke & G. Giordan (Eds.), *Religion between governance and freedoms* (pp. 15-30). Cham: Springer. doi: 10.1007/978-3-031-69880-4_2.

[24] Fox, J., & Finke, R. (2021). Ensuring individual rights through institutional freedoms: The role of religious institutions in securing religious rights. *Religions*, 12(4), article number 273. doi: 10.3390/rel12040273.
[25] Gamza, D., & Jones, P. (2021). The evolution of religious regulation in Central Asia, 1991-2018. *Central Asian Survey*, 40(2), 197-221. doi: 10.1080/02634937.2020.1836477.
[26] Horák, S., & Polese, A. (2016). Personality cults and nation-building in Turkmenistan 1, 2. In R. Isaacs & A. Polese (Eds.), *Nation-building and identity in the post-soviet space: New tools and approaches* (pp. 159-175). London: Routledge. doi: 10.4324/9781315597386.
[27] Hurd, N. (2017). *Religious freedom in Kazakhstan: The case of Teymur Akhmedov*. Retrieved from https://www.csce.gov/articles/religious-freedom-kazakhstan-case-teymur-akhmedov.
[28] Indelicato, A., & Martín, J.C. (2025). Exploring the interplay between religion, tolerance, fundamentalism, and attitudes towards immigrants: A semi-automatic literature review. *Social Identities*, 31(3), 294-316. doi: 10.1080/13504630.2025.2453158.
[29] International Center for Not-for-Profit Law. (2025). *Kazakhstan.* Retrieved from https://www.icnl.org/our-work/kazakhstan.
[30] International Covenant on Civil and Political Rights. (1966, December). Retrieved from https://www.ohchr.org/sites/default/files/ccpr.pdf.
[31] Iskakova, I., Sopyhanova, A., Rakhimgulova, M., Otarbaeva, A., Saitova, E., & Kussainova, L. (2023). Legal regulation of the activities of religious associations: Issues of theory and practice. *Journal of Law and Sustainable Development,* 11(5), article number e728. doi: 10.55908/sdgs.v11i5.728.
[32] Jugl, I., Bender, D., & Lösel, F. (2021). Left-wing extremist violence: Risk and protective factors in a targeted sample of potential extremists. *Monthly Journal of Criminology and Criminal Law Reform*, 104(3), 243-258. doi: 10.1515/mks-2021-0125.
[33] Kaye, D., UN. Human Rights Council, Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, & UN Human Rights Council Secretariat. (2016). *Report of the Special Rapporteur on the Promotion and Protection of the Right to freedom of opinion and expression: Note/by the Secretariat*. Retrieved from https://digitallibrary.un.org/record/842541.
[34] Kazakhstan suspends activity of Witnesses' national headquarters. (2017). Retrieved from https://www.jw.org/en/news/region/kazakhstan/court-suspends-activity-national-headquarters-jehovahs-witnesses/.
[35] Kazakhstan. Events of 2022. (2022). Retrieved from https://www.hrw.org/world-report/2023/country-chapters/kazakhstan.
[36] Kazakhstan's human rights record to be examined by Universal Periodic Review. (2025, January). Retrieved from https://www.ohchr.org/en/press-releases/2025/01/kazakhstans-human-rights-record-be-examined-universal-periodic-review.
[37] Kopan, O., & Melnyk, V. (2024). International experience in mobilising mechanisms to combat organised crime. *Law Journal of the National Academy of Internal Affairs*, 14(4), 9-22. doi: 10.56215/naia-chasopis/4.2024.09.
[38] Law of the Republic of Kazakhstan No. 1128-XII "On Freedom of Religion and Religious Associations". (1992, January). Retrieved from https://adilet.zan.kz/rus/docs/Z920004000 .
[39] Law of the Republic of Kazakhstan No. 483-IV "On Religious Activities and Religious Associations". (2011, October). Retrieved from https://adilet.zan.kz/eng/docs/Z1100000483.
[40] Law of Turkmenistan No. 199-II "On Freedom of Religion and Religious Organisations". (2003, October). Retrieved from https://continent-online.com/Document/?doc_id=31338966#pos=0;0.
[41] Leach, E., & Gore, J. (2022). Culture, religion, and homonegativity: A multi-level analysis. *Mental Health, Religion & Culture*, 25(1), 85-98. doi: 10.1080/13674676.2022.2027353.
[42] Levchenko, A. (2023). *Does Kazakhstan need to cancel registration of religious associations?* Retrieved from https://cabar.asia/en/does-kazakhstan-need-to-cancel-registration-of-religious-associations.
[43] Majeed, N., Hilal, A., & Khan, A.N. (2023). Doctrinal research in law: Meaning, scope and methodology. *Bulletin of Business and Economics*, 12(4), 559-563. https://doi.org/10.61506/01.00167
[44] Makhamatjanovich, M.D. (2023). Religious extremism as an intensive ideological threat. *European Journal of Business Startups and Open Society*, 3(3), 63-66.
[45] Mazurkiewicz, P. (2021). Religious freedom in the time of the pandemic. *Religions*, 12(2), article number 103. doi: 10.3390/rel12020103.
[46] Nasir, M.A. (2022). Negotiating muslim interfaith marriage in Indonesia: Integration and conflict in Islamic law. *Mazahib Journal of Islamic Legal Thought*, 21(2), 155-186. doi: 10.21093/mj.v21i2.5436.
[47] OSCE Office for Democratic Institutions and Human Rights. (2019). *Freedom of religion or belief and security: Policy guidance*. Retrieved from https://www.osce.org/odihr/429389.
[48] OSCE/ODIHR guidelines on registration and recognition of religious communities. (2016). Retrieved from https://www.scientologyreligion.org/blog/osce-odihr-guidelines-on-registration-and-recognition-of-religious-communities.html.
[49] Otynshiyeva, A.A., Ibrayeva, A.S., Castellino, J., Baimakhanova, D.M., & Baikenzheyev, A.S. (2019). International and legal aspects of citizenship on the basis of analysis of the legislation in Kazakhstan and Great Britain. *International Journal of Public Law and Policy*, 6(2), 138-154. doi: 10.1504/IJPLAP.2019.097539.
[50] Parkhomenko, N. (2023). Instrumentalism of Law-making in the context of the functioning of the modern state. *Scientific Journal of the National Academy of Internal Affairs*, 28(3), 9-16. doi: 10.56215/naia-herald/3.2023.09.
[51] Raibyaev, D.K. (2015). Legal groundwork for preventing religious extremism in the Kazakhstan Republic. *Journal of Advanced Research in Law and Economics*, 6(1), 169-176.
[52] Resolution of the Government of the Republic of Kazakhstan No. 236 "On Amendments and Supplements to Certain Decisions of the Government of the Republic of Kazakhstan and Orders of the Prime Minister of the Republic of Kazakhstan". (2023, March). Retrieved from https://adilet.zan.kz/rus/docs/P2300000236#z272.

[53] Resolution of the Government of the Republic of Kazakhstan No. 953 "On Approval of the Comprehensive Plan for the Implementation of State Policy in the Religious Sphere of the Republic of Kazakhstan for 2021-2023". (2020, December). Retrieved from https://adilet.zan.kz/rus/docs/P2000000953.

[54] Saparbekova, E.K., Smanova, A.B., Makhambetsaliyev, D.B., Nessipbaeva, I.S., & Nussipova, L.B. (2024). Comparative analysis of the concept of constitutional judicial law-making in the United States of America and Kazakhstan. *International Journal for the Semiotics of Law*, 38(2), 603-617. doi: 10.1007/s11196-024-10138-y.

[55] Seitakhmetova, N., Aliyarov, E., Zhandossova, S., Tolen, Z., & Nurov, M. (2024). Counteracting religious extremism in youth environments: World experience and Kazakhstan. *Journal of Social Studies Education Research*, 15(3), 257-288.

[56] Shaykhutdinov, R. (2024). Religion and subnational public policy: accommodation of minority religious practices in the post-communist Muslim republics. In C.N. Avellaneda & R.A. Bello-Gómez (Eds.), *Handbook on subnational governments and governance* (pp. 232-247). Cheltenham: Edward Elgar Publishing. doi: 10.4337/9781803925370.00025.

[57] Sobirovich, T. (2025). New Uzbekistan and political reform: The role of National strategies in strengthening governance. *Indonesian Journal of Public Administration Review*, 2(2), article number 12. doi: 10.47134/par.v2i2.3753.

[58] Sopelnyk, I. (2025). The essence of human rights and the transformation of their protection mechanisms. *Law. Human. Environment*, 16(1), 122-146. doi: 10.31548/law/1.2025.122.

[59] Suyaman, P., & Alfiany, T.F. (2022). Polemics of interfaith marriage reviewed from the perspectives of marriage law and the compilations of Islamic law. *KnE Social Sciences*, 7(15), 537-549. doi: 10.18502/kss.v7i15.12129.

[60] Temperman, J. (2010). Secularism & Separation of State and Religion. In *State-religion relationships and human rights law* (pp. 111-137). Leiden: Brill. doi: 10.1163/ej.9789004181489.i-382.31.

[61] Turemuratov, O., Byulegenova, B., Pogodin, S., Onuchko, M., & Nurtazina, R. (2024). Urbanisation trends in Central Asian countries: Aspects of extensive and intensive agglomeration growth. *Public Organisation Review*, 24(3), 963-986. doi: 10.1007/s11115-024-00766-0.

[62] U.S. Commission on International Religious Freedom. (2022). *2022 Annual Report. United States commission on international religious freedom.* Retrieved from https://www.uscirf.gov/sites/default/files/2022-05/2022%20Kazakhstan.pdf.

[63] Umarov, M. (2021). The beginning of religious reforms in independent Uzbekistan and the changes being implemented. *ACADEMICIA: An International Multidisciplinary Research Journal,* 11(11), 477-481.

[64] United States Commission on International Religious Freedom. (2022). *Issue update: Kazakhstan's religion law amendments*. Retrieved from https://www.uscirf.gov/sites/default/files/2022-12/2022%20Kazakhstan%20Update%20on%20Amendments%20Issue%20Update.pdf.

[65] Universal Declaration of Human Rights. (1948, December). Retrieved from https://www.un.org/en/about-us/universal-declaration-of-human-rights.

[66] Winiger, F., & Peng-Keller, S. (2021). Religion and the World Health Organization: An evolving relationship. *BMJ Global Health*, 6(4), article number e004073. doi: 10.1136/bmjgh-2020-004073.

[67] Zakhay, A., Tyshkhan, K., & Shamakhay, S. (2022). The problem of the traditional view of Islam in Kazakhstan. *Journal of Spirituality in Mental Health*, 26(1), 1-11. doi: 10.1080/19349637.2022.2132896.

[68] Zhanat, A., Tutinova, N., Kairat, Z., Galiya, S., Kudayberdi, B., & Maxat, M. (2023). Peculiarities of Kazakhstan and Malaysia in view of the relationship between state and religion. *Journal of Islamic Thought and Civilisation*, 13(1), 75-88. doi: 10.32350/jitc.131.06.

Баланс свободи та контролю: Сучасне правове регулювання релігійної діяльності в Казахстані

Єрмек Бурібаєв
Доктор юридичних наук, професор
Жетісуський університет імені І. Жансугурова
040009, вул. Жансугурова, 187А, м. Талдикорган, Республіка Казахстан
https://orcid.org/0000-0003-0433-596X

Куралай Турлиханкизи
Доктор юридичних наук, професор
Казахський національний педагогічний університет імені Абая
050010, просп. Достик, 13, м. Алмати, Республіка Казахстан
https://orcid.org/0000-0003-1075-6891

Несібелі Калкаєва
Кандидат юридичних наук, доцент
Казахський національний педагогічний університет імені Абая
050010, просп. Достик, 13, м. Алмати, Республіка Казахстан
https://orcid.org/0000-0001-8109-2004

Жанна Хамзіна
Доктор юридичних наук, професор
Казахський національний педагогічний університет імені Абая
050010, просп. Достик, 13, м. Алмати, Республіка Казахстан
https://orcid.org/0000-0003-0913-2002

Анотація. Регулювання релігійної діяльності в сучасному Казахстані є критично важливим питанням, яке формується під впливом взаємодії між забезпеченням свободи релігії та збереженням державного контролю. Це дослідження мало на меті проаналізувати нормативно-правову базу, що регулює релігійну діяльність у Казахстані, з особливим акцентом на її відповідність міжнародним стандартам у сфері прав людини та внутрішній соціально-політичній динаміці. Використовуючи правовий аналіз, порівняльні методи та аналіз конкретних ситуацій, вивчено законодавство країни та його практичні наслідки для релігійних громад. Дослідження показало, що правова база Казахстану накладає значні обмеження на релігійні свободи, включаючи обов'язкову реєстрацію релігійних об'єднань, обмеження на публічні богослужіння і широкий державний нагляд. Ці заходи часто непропорційно впливають на релігійні меншини, викликаючи занепокоєння щодо дискримінації та перешкод для релігійного плюралізму. Незважаючи на конституційні гарантії релігійної свободи в Казахстані, виконання законів часто суперечить міжнародним зобов'язанням країни за такими договорами, як Міжнародний пакт про громадянські і політичні права та зобов'язання в рамках Організації з безпеки і співробітництва в Європі. Тематичні дослідження релігійних громад, включаючи Свідків Єгови, мусульманську громаду Ахмадія та Баптистську церкву, ще більше проілюстрували практичні проблеми, пов'язані з існуючими нормативно-правовими актами. Ці випадки висвітлили такі проблеми, як адміністративне свавілля, дискримінаційні процеси реєстрації та маргіналізація нетрадиційних релігійних груп. Висновки підкреслили необхідність законодавчих реформ, спрямованих на усунення двозначностей, гармонізацію національного законодавства з міжнародними стандартами та створення більш інклюзивного середовища для релігійних громад. Це дослідження є внеском у ширший дискурс про релігійне регулювання, пропонуючи практичні висновки для політиків, юристів та правозахисників. Розглядаючи напруженість між державним управлінням і релігійною свободою, дослідження закладає основу для майбутніх реформ, спрямованих на досягнення балансу між суспільною стабільністю та захистом фундаментальних прав людини

Ключові слова: релігійна політика; правове регулювання; свобода віросповідання; правозастосовна практика; релігійні об'єднання; законодавчі реформи

UDC 343
DOI: 10.32518/sals2.2025.39

Соціально-правові студії. 2025. Т. 8, № 2
Social & Legal Studios. 2025. Vol. 8, No. 2

Evaluating the intensity of destabilising factors affecting operational and investigative activities in money laundering and illicit legalisation

Halyna Leskiv
PhD in Technical Sciences, Associate Professor
Lviv State University of Internal Affairs
79007, 26 Horodotska Str., Lviv, Ukraine
https://orcid.org/0000-0002-4900-9466

Andriy Babjak*
PhD in Law
Lviv State University of Internal Affairs
79007, 26 Horodotska Str., Lviv, Ukraine
https://orcid.org/0000-0002-2284-3864

Halyna Savchyn
PhD in Law
Lviv State University of Internal Affairs
79007, 26 Horodotska str., Lviv, Ukraine
https://orcid.org/0000-0002-5522-1578

Mykyta Panteleiev
Postgraduate Student
Lviv State University of Internal Affairs
79007, 26 Horodotska Str., Lviv, Ukraine
https://orcid.org/0000-0002-3305-8634

Abstract. The relevance of this study stems from the need to enhance mechanisms for countering financial crime amid increasing threats to the state's economic security during martial law. This study aimed to assess the intensity of the impact of destabilising factors on operational and investigative activities in the area of money laundering and the illicit legalisation of proceeds. The research methodology was based on an expert survey involving 40 specialists, who were asked to complete a questionnaire using the pairwise comparison method with the Saaty scale. Seven key destabilising factors were identified, with the most influential being the globalisation of financial flows, the proliferation of digital currencies, and the inadequacy of the regulatory and legal framework. The impact of each factor was evaluated across three scenarios: realistic, pessimistic, and optimistic. For each scenario, reciprocal comparison matrices were constructed, on the basis of which normalised weights and factor rankings were calculated. It was found that, under a negative development scenario, the threat posed by internal abuses and insufficient technical training of personnel increases significantly. It was concluded that effective counteraction to financial crime requires the simultaneous reform of legislation, the modernisation of the technical infrastructure of law enforcement agencies, and the strengthening of international cooperation. The importance of adapting legal mechanisms to the rapid evolution of financial technologies was also emphasised. The practical value of the findings lies in their potential application by operational unit managers, policymakers, and financial security analysts to improve systems for identifying and neutralising financial threats

Keywords: money laundering; illicit legalisation of proceeds; financial security; factor ranking; negative factors; destabilisation

Suggested Citation

Article's History: Received: 28.02.2025 Revised: 22.05.2025 Accepted: 25.06.2025

Leskiv, H., Babjak, A., Savchyn, H., & Panteleiev, M. (2025). Evaluating the intensity of destabilising factors affecting operational and investigative activities in money laundering and illicit legalisation. *Social & Legal Studios*, 8(2), 39-48. doi: 10.32518/sals2.2025.39.

*Corresponding author

Copyright © The Author(s). This is an open access Article distributed under the terms of the Creative Co mmons Attribution License 4.0 (https://creativecommons.org/licenses/by/4.0/)

Introduction

Contemporary society is marked by a high degree of change that impacts economic stability, making the analysis of destabilising factors that undermine financial security norms essential to a deeper understanding of these processes. Under current political and social conditions – particularly during a period of martial law – the issue of countering money laundering and the illicit legalisation of proceeds has gained particular significance from both legal and politico-social perspectives. Such processes pose not only a criminal-law threat but also a profound social danger, as they undermine public trust in state institutions, foster the shadow economy, and contribute to the spread of corrupt practices. From a political standpoint, the legalisation of criminal proceeds is a destructive factor, facilitating illegitimate influence, financing anti-state activities, and diminishing the effectiveness of national security policy. In response, society is increasingly demanding transparency, accountability, and justice – pressing issues that shape new directions for reforming the law enforcement system. Within this context, operational and investigative activity in the sphere of financial security should be regarded as a key component not only of criminal law enforcement but also as a strategic instrument of state governance.

Contemporary academic studies focusing on the development of measures to counter money laundering and illicit financial legalisation often emphasise the importance of operational and investigative activities as a fundamental tool for ensuring financial security. At the same time, C. Alexandre and J. da Silva (2023), in their research, analyse how the use of machine learning and riskoriented strategic planning can significantly enhance the efficiency of multidisciplinary rapid response systems in combating financial crime. Their findings suggest that intelligent analytical systems can increase the speed of anomaly detection within financial flows severalfold, thereby enabling the timely identification of potential threats. This approach not only improves existing financial monitoring processes but also optimises the allocation of operational and investigative resources. The present study examines the features of developing and implementing a financial monitoring system in Ukraine, with particular attention to the importance of adapting existing approaches to national circumstances. The authors note that, despite certain positive developments, the Ukrainian financial monitoring system requires substantial improvements and reform of existing mechanisms to ensure an effective response to money laundering.

Theoretical developments in operational and investigative activity by J. Kertész (2020) and J. Albanese (2021) encompass philosophical, organisational, and tactical dimensions, the synthesis of which provides a foundation for effective counteraction against various forms of financial crime. The researchers highlight the importance of a comprehensive approach to investigating financial offences – one that integrates diverse methods and technologies alongside continuous evaluation of effectiveness and the ongoing refinement of the legal and regulatory framework. They also stress the importance of employing innovative technologies to enhance the efficiency of efforts to combat money laundering and the illicit legalisation.

Another significant area of research involves the use of expert systems and data mining techniques for forecasting and detecting financial fraud. G. Rusanov and Y. Pudovochkin (2021), along with J. Akinbowale *et al.* (2020), propose a model of an expert system based on data analysis algorithms to identify patterns characteristic of financial crime. Their methodology allows for the automation of large-scale data analysis, which is particularly valuable in investigating complex money laundering schemes. The adoption of such approaches significantly improves the speed and accuracy of anomaly detection, thereby facilitating a swifter response from law enforcement agencies.

V. Alkema *et al.* (2024) and S. Vasyuk *et al.* (2024) emphasise the importance of modelling the efficiency of the State Financial Monitoring Service in the context of countering money laundering and the financing of terrorism. They propose an analytical model that enables the assessment of the performance of existing control mechanisms and the identification of potential system weaknesses. The authors highlight that the application of modern modelling techniques contributes to optimising monitoring processes and enhancing coordination among the various bodies responsible for financial security. From the perspective of bankers and regulators, money laundering risks are viewed as one of the most significant threats to the stability of financial systems. I. Bespalko (2020) and S. Cherniavskyi (2023) note that, for financial institutions, control over financial flows is a critical element in maintaining client trust and market stability. They stress that only a comprehensive approach – incorporating both internal control mechanisms and external regulation – can ensure an effective response to financial crime.

Scholars and practitioners alike clearly indicate that contemporary challenges – such as the rise of digital currencies, the globalisation of financial flows, and deficiencies in regulatory frameworks – significantly complicate the detection and prevention of financial crime (Witbooi *et al.*, 2020; Loskutov, 2023). In such conditions, operational and investigative activity requires a strategic reassessment, adaptation to emerging technologies, and the strengthening of institutional capacity. For this reason, the study of destabilising factors and their impact on the effectiveness of operational and investigative measures remains highly relevant in practice.

The current state of economic activity is marked by a wide range of destabilising influences affecting various sectors of the economy. H. Kaya and N. Lumpkin-Sowers (2020), in their study, examine the relationship between global crises and crime rates, including financial crime. They argue that economic instability and growing uncertainty contribute to increased risks of financial offences, which in turn will undoubtedly have a negative impact on the dynamics and efficiency of operational and investigative efforts.

This study aimed to assess the intensity of the impact of destabilising factors on operational and investigative activity in the field of money laundering and the illicit legalisation of proceeds. The object of the research is operational and investigative activity within the broader context of ensuring national financial security. The objectives of the study include identifying key destabilising factors, constructing their structural model, and establishing priorities for optimising management decisions in the field of financial crime prevention.

Materials and methods

The study focuses on assessing the intensity of the impact of destabilising factors on operational and investigative activities in the field of money laundering and the illicit legalisation. As this issue is multidimensional – encompassing

economic, legal, and social aspects – a comprehensive approach was adopted, combining both qualitative and quantitative methods of analysis. The use of an integrated methodology enables the generation of objective results and the development of recommendations for improving operational and investigative practices.

To ensure the reliability and enhance the academic significance of the study, 40 experts in financial monitoring, law enforcement work, and anti-money laundering were engaged. The sample was formed by reviewing public profiles of respondents on the ORCID platform, examining the register of members of the Ukrainian branch of the Association of Certified Anti-Money Laundering Specialists, and consulting official websites of banks and author profiles in academic journals. This number of specialists was selected to ensure the representativeness of expert assessments and conclusions, as well as to incorporate all key approaches and emerging perspectives on the issue. Experts were selected based on their professional experience, qualifications, competence, and knowledge in the relevant fields. To collect and systematically organise expert opinions, a questionnaire method was employed, allowing for the structured gathering of information according to pre-defined parameters. The questionnaire for the experts was designed to allow each respondent to provide an individual assessment of the impact of each destabilising factor on operational and investigative activity. It included both open-ended and closedended questions, enabling the collection of both quantitative and qualitative data. The closed questions were based on numerical scales to determine the intensity of impact, while the open questions allowed experts to justify their choices in greater detail and with supporting arguments. The survey design adhered to the American Sociological Association's Code of Ethics (1997) and the ICC/ESOMAR International Code on Market, Opinion and Social Research and Data Analytics (2016).

The expert assessment methodology was based on the classical three-round Delphi method and covered the period from 15 January to 20 February 2025. In the first round, all potential participants were sent an open online questionnaire (via Google Forms) by email, requesting them to identify and briefly justify which destabilising factors they considered to have the greatest impact on operational and investigative activity related to money laundering and the illicit legalisation of proceeds. After the responses were summarised, the first round produced a consolidated list of nine proposals, which formed the basis of the second round – a structured survey in Qualtrics featuring pairwise comparison matrices.

To determine the relative weight of each destabilising factor (as identified by the experts) within the system of operational and investigative activity, the pairwise comparison method based on the Saaty scale was employed. This method enabled the comparison of each pair of factors with respect to their impact, identifying the strength of preference for one factor over another. As a result, a reciprocal comparison matrix was constructed, where each value reflects the relative importance of the factors, allowing for the calculation of normalised weights. The selected method proved to be an effective tool for analysing a complex system, as it facilitated the quantitative assessment of qualitative characteristics, thereby ensuring the validity of the subsequent conclusions and recommendations.

Prior to the main stage of the study, a pilot survey was conducted among a small group of experts to test the clarity of the questionnaire wording, the appropriateness of the selected rating scale, and the overall structure of the survey. The results were analysed, and adjustments were made to the phrasing of the questions and the accompanying instructions. This testing phase improved the quality of the data collected and reduced the likelihood of misunderstandings among experts during the main round of the survey. Specialists in financial supervision, law enforcement agencies, and IT technologies assessed the influence of each factor across the three proposed scenarios. The relative weights of the factors were determined using the pairwise comparison method with the Saaty scale (Table 1).

Table 1. Scale of relative importance of the impact of destabilising factors

Score	Assessment criterion	Qualitative assessment
1	The expected outcomes of both factors are equivalent	No preference between the two factors
3	One factor slightly outweighs the other	Weak preference for one factor
5	One factor significantly outweighs the other	Clear preference for one factor
7	One factor greatly outweighs the other	Strong preference for one factor
2,4,6	Intermediate values	Auxiliary comparative assessments

Source: developed by the authors

One of the crucial stages in implementing the selected methodology is the verification of the consistency of the expert assessments. To this end, the consistency ratio (CR) was incorporated into the methodology, following the approach developed by Saaty and widely applied by researchers. In accordance with this method, the results were compared with critical threshold values, which served to evaluate the reliability of the expert judgements. If the consistency ratio exceeded the standardised level, additional instructions were provided to the experts, or a more detailed analysis of the questionnaires was conducted. The use of this approach contributes significantly to the internal validation of the data and ensures that subsequent conclusions are based on more stable and reliable indicators.

Results

The growing role of digital technologies, the increasing speed of transactions, and the global movement of financial flows present new challenges for law enforcement. In this context, it is essential to examine the patterns of transition from traditional to innovative methods of conducting financial operations. The intensive use of modern technologies can both enhance control efficiency and enable the development of new money laundering schemes, necessitating a thorough analysis of every aspect of the financial system and operational and investigative activity. The latter comprises a set of measures aimed at detecting, analysing, and preventing illegal financial transactions. Despite certain positive trends, the national financial monitoring system still

requires substantial improvement and reform of existing mechanisms to ensure an effective response to money laundering (Rekunenko *et al.*, 2020). From a theoretical perspective, it is important to understand how destabilising factors influence the quality and effectiveness of these measures, as violations of system functionality can allow illicit schemes to penetrate the financial environment. Analysing the interconnections between individual components of this activity makes it possible to construct a model that accounts for both internal and external influencing factors. Understanding the issue of money laundering requires an analysis of the economic dimensions that characterise the movement of financial resources. It is essential to grasp how economic processes interact with social and technological change, giving rise to new risks for the state. Analysing these dynamics helps to outline the broader picture of how destabilising factors affect financial security. For the purpose of this study, seven factors were selected as the most relevant in the area of anti-money laundering.

F1. The spread of digital currencies and anonymising technologies. The rapid growth in the use of digital currencies and technologies that ensure anonymity enables criminal groups to conduct transactions beyond the scope of traditional financial oversight. Global financial flows and international payment systems process vast volumes of transactions: according to SWIFT, approximately 45 million financial messages were transmitted through its system each day in 2022. The scale of these operations presents numerous opportunities for criminals to anonymise funds through multi-step transfers across various jurisdictions. The IMF and World Bank note that remittance flows remained resilient even during periods of economic crisis (Monthly FIN Traffic Evolution, 2022).

F2. Globalisation and the complexity of cross-border financial transactions. The internationalisation of financial markets presents additional challenges for operational investigations due to the movement of funds across jurisdictions. Bitcoin and other cryptocurrencies – classified as virtual assets (VAs) – offer criminals new channels for money laundering, combining a high level of anonymity with rapid transfer speeds. Global estimates indicate that in 2021, the value of crypto assets obtained through illicit means reached approximately 14 billion USD (around 0.15% of total transaction volume). By 2023, losses from crypto-related fraud exceeded 5.6 billion USD (Countering Ransomware Financing, 2023).

F3. Sophistication of money laundering methods (multi-level schemes). The ongoing refinement and development of money laundering techniques enable criminals to more effectively conceal traces of illicit transactions. One of the most widespread methods is trade-based money laundering. Research by GFI revealed that between 2009 and 2020, approximately 1.6 trillion USD in potential trade misinvoicing was identified across 134 countries. These schemes disguise the transfer of funds under the guise of legitimate commercial contracts, significantly complicating detection (Report Finds Trade…, 2021).

F4. Inadequate regulatory oversight and legislative discrepancies. Weak regulation and inconsistencies in legal frameworks between countries hinder effective action against financial crime. Poor legislation and low levels of compliance significantly increase the vulnerability of financial systems. For example, in 2019, MONEYVAL noted that Ukraine had made “only limited progress” in addressing the strategic deficiencies in its AML/CFT system identified during the 2017 assessment (MONEYVAL, 2019). At the global level, the FATF (2025) reports that, as of February 2025, 114 out of 139 assessed jurisdictions had strategic deficiencies, with 28 still remaining on the “grey or black list” due to non-compliance with recommendations.

F5. Abuse of internal networks within financial institutions. Corrupt practices within financial institutions enable evasion of oversight and undermine anti-money laundering efforts. The widespread use of offshore structures conceals the identities of ultimate beneficial owners and complicates the tracing of legalisation pathways. High-profile data leaks have exposed thousands of offshore arrangements used by global elites (What Are the Panama Papers…, 2016; Pandora Papers, 2021). The Panama Papers, for instance, revealed 11.5 million documents from Mossack Fonseca, implicating 143 politicians.

F6. Insufficient technical expertise and outdated investigative methods. The lack of modern technologies and qualified personnel in law enforcement agencies reduces the effectiveness of investigations. In the 21st century, technology has become a tool of criminal enterprise. From electronic payments to decentralised platforms, criminal groups actively exploit cyber capabilities to commit financial crimes. For instance, the FBI National Press Office (2023) estimated losses from cryptocurrency-related fraud at 5.6 billion USD – a 45% increase in 2023 alone. As a result, investigators must possess advanced technical tools, including cyber intelligence systems and big data analytics, to detect anomalies that expose cybercriminals (Methods and Trends, 2022).

F7. Growth in volume and speed of financial transactions. The significant rise in the number and speed of financial operations places additional pressure on monitoring systems, potentially leading to missed detections of suspicious transactions. Institutions with weak internal controls or corrupt management may themselves become enablers of money laundering. In the case of PrivatBank, for example, artificial offices and companies controlled by former owners were used to channel 52 billion USD out of the institution over several years (Economic News, 2019).

This study and modelling process considers three possible scenarios. Under the realistic scenario (1), current trends continue without significant change, and the destabilising factors maintain their existing intensity. In the pessimistic scenario (2), the negative influence of these factors increases – due to heightened technological complexity, weak regulatory mechanisms, and other challenges – leading to a rise in overall impact. The optimistic scenario (3) assumes a reduction in the influence of certain factors, driven by enhanced international cooperation, the adoption of modern technologies, and legislative reform.

For each factor, experts assessed the changing intensity of influence across all three scenarios: realistic, pessimistic, and optimistic. Each scenario involves the construction of a 7×7 square reciprocal comparison matrix, where each cell represents the relative importance of factor i compared to factor j. The factors F1–F7 correspond to the list outlined above. An example matrix is shown in Table 2. The logic of arranging factors within such matrices is based on mutual importance. For instance, if cell (F2, F1) = 2, this means that globalisation and the complexity of cross-border transactions (F2) are considered twice as important as the spread of digital currencies (F1). The values 1, 2, 3, 4, and their

reciprocals represent varying "strengths of preference" of one factor over another. Values along the main diagonal are set to 1, while the remaining elements follow the rules of reciprocal symmetry (e.g. if $a_{12} = 1/2$, then $a_{21} = 2$).

Table 2. Pairwise comparison matrix of destabilising factors under the realistic scenario

	F1	F2	F3	F4	F5	F6	F7
F1	1	1/2	1	1/2	3	1	1
F2	2	1	2	1	4	2	2
F3	1	1/2	1	1/2	3	1	1
F4	2	1	2	1	4	2	2
F5	1/3	1/4	1/3	1/4	1	1/2	1/2
F6	1	1/2	1	1/2	2	1	1
F7	1	1/2	1	1/2	2	1	1

Source: developed by the authors

In the pessimistic scenario, expert evaluation focuses on a worst-case development, meaning the "weight" of factors reflects the anticipated rise in risks. The highest weights were assigned to F3 and F4. If regulatory mechanisms weaken, criminals are afforded greater freedom to invent new schemes. According to the experts, F3 is the dominant factor – since in a context of non-transparent financial flows (F4), any innovation in money laundering methods significantly increases both risk and investigative complexity (Table 3).

Table 3. Pairwise comparison matrix of destabilising factors under the pessimistic scenario

	F1	F2	F3	F4	F5	F6	F7
F1	1	1	1/2	1/3	2	1	1
F2	1	1	1/2	1/2	2	1	1
F3	2	2	1	1	3	2	2
F4	3	2	1	1	4	3	3
F5	1/2	1/2	1/3	1/4	1	1/2	1/2
F6	1	1	1/2	1/3	2	1	1
F7	1	1	1/2	1/3	2	1	1

Source: developed by the authors

In the optimistic scenario, where effective countermeasures are implemented, the overall influence of negative factors decreases. As a result, the comparative assessments tend to approach equality, except for a slight advantage retained by some foundational factors. Following the Saaty method, the matrix's largest eigenvalue (λmax) is calculated, from which the consistency index (CI) and consistency ratio (CR) are derived. For 7×7 matrices, the typical random index (RI) value is approximately 1.32 (Table 4).

Table 4. Inconsistency levels of the pairwise comparison matrices

Scenario	λmax	CI	CR
Realistic	7.2	0.0286	0.022
Pessimistic	7.4	0.0571	0.043
Optimistic	7	0	0

Source: developed by the authors

Based on the obtained normalised weights, a final ranking of the destabilising factors was compiled for each scenario (Table 5). Under the realistic scenario, the most significant influences are globalisation (F2) and the methods of money laundering, along with deficiencies in regulatory oversight (F3 and F4). This indicates that the current structure of international financial operations and the persistence of established money laundering schemes remain key challenges for operational investigations. Under the pessimistic scenario, the intensity of negative impact increases. The most influential factors are the refinement of money laundering methods (F3) and weak regulatory control (F4), highlighting the urgent need for legislative reform and enhanced oversight of financial flows. The issue of internal abuses within institutions (F5) also becomes more prominent. In the optimistic scenario, the influence of certain factors decreases due to the implementation of modern technologies and regulatory reforms. However, core threats such as the proliferation of digital currencies (F1) and globalisation (F2) remain relevant and require continued attention.

Table 5. Consolidated ranking of destabilising factors

Level of influence	Realistic scenario	Pessimistic scenario	Optimistic scenario
1	F2. Globalisation and the complexity of cross-border financial transactions	F3. Sophistication of money laundering methods F4. Inadequate regulatory oversight	F1. The spread of digital currencies F2. Globalisation (codominant)
2	F3. Sophistication of money laundering methods F4. Inadequate regulatory oversight	F4. Inadequate regulatory oversight (co-leader with F3)	F6. Insufficient technical expertise
3	F1. The spread of digital currencies and anonymising technologies	F2. Globalisation and the complexity of cross-border financial transactions	F7. Growth in volume and speed of financial transactions
4	F6. Insufficient technical expertise	F6. Insufficient technical expertise	F3. Sophistication of money laundering methods
5	F7. Growth in volume and speed of financial transactions	F7. Growth in volume and speed of financial transactions	F4. Inadequate regulatory oversight F5. Abuse of internal networks
6	F5. Abuse of internal networks within financial institutions	F5. Abuse of internal networks within financial institutions	–
7	–	F1. The spread of digital currencies and anonymising technologies	F5. Abuse of internal networks within financial institutions

Source: developed by the authors

This highlights the need for continuous improvement of operational and investigative activities, with a particular emphasis on advanced technologies for analysing financial transactions. According to the consolidated ranking across all scenarios, the most influential factors were found to be weaknesses in the legislative framework, insufficient technical capacity of operational and investigative efforts, and the challenges posed by the globalisation of financial flows (Fig. 1). Under current martial law conditions in Ukraine, priority should be given to reforming legislation related to financial monitoring and operational and investigative procedures. It is essential to specify requirements for harmonising national legislation with international standards, particularly the FATF Recommendations (2023), through amendments to the Law of Ukraine No. 361-IX (2019). Although this legal act is based on FATF approaches, it still requires further refinement and adaptation to contemporary challenges. In particular, despite the existing provisions, the mechanism for identifying ultimate beneficial owners remains insufficiently effective, allowing perpetrators to conceal control over assets through offshore structures or shell companies. It is necessary to introduce mandatory periodic verification of the accuracy of beneficial ownership data and establish liability for its deliberate concealment or distortion. The law contains general provisions on financial monitoring but does not mandate the compulsory use of automated or predictive analytical systems. Amending Articles 6 and 8 would enable the introduction of requirements for primary financial monitoring entities to apply big data tools and machine learning algorithms, as implemented in leading EU countries. Although the law formally endorses such an approach, its implementation remains fragmented. There is a clear need to clarify legislative requirements for assessing transaction risks, the origin of assets, and client typologies – especially in the context of wartime conditions and large-scale capital movements. The law lacks clearly defined procedures for data exchange between the State Financial Monitoring Service, law enforcement agencies, the State Tax Service of Ukraine, the National Agency for Corruption Prevention, and other relevant institutions. It would be advisable to introduce provisions for automatic exchange of financial intelligence between agencies, ensuring compliance with human rights principles while prioritising prompt action under martial law. The procedures for holding individuals and institutions accountable for violating AML/CFT requirements also require greater specificity – particularly concerning fictitious account openings, failure to monitor cryptocurrency transactions, and the use of digital wallets.

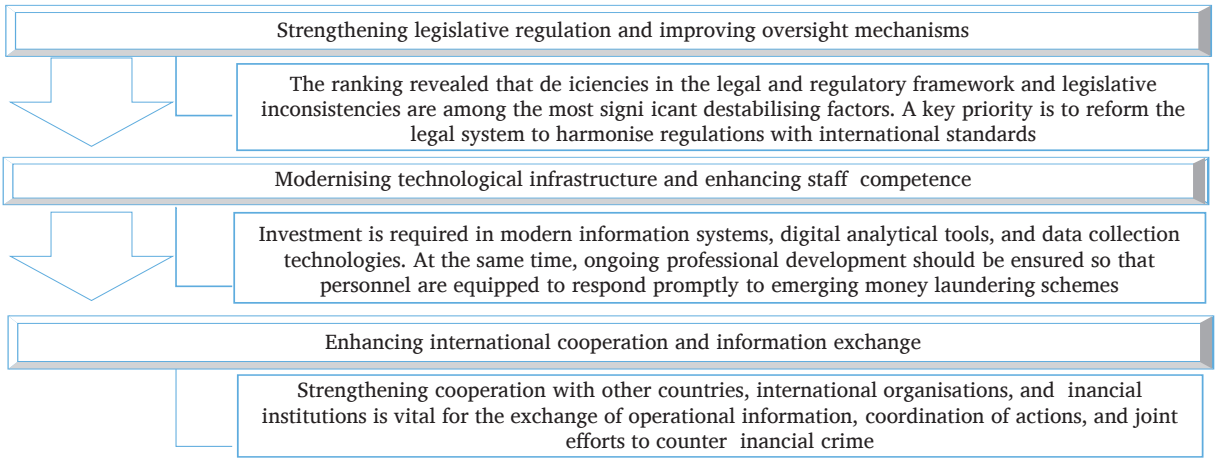


Figure 1. Measures to enhance the operational capacity of operational and investigative authorities in response to emerging destabilising factors

Source: developed by the authors

It is advisable to ratify and implement the provisions of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005), which provides for direct access to cross-border financial data. Ratifying this Convention would represent a significant step towards Ukraine's integration into the European financial and legal space. In particular, Article 46 obliges states to ensure the immediate availability of information on the financial accounts of persons suspected of criminal activity upon request from a competent authority in another state. Article 17 establishes the obligation to criminalise the financing of terrorism as an independent offence, which is particularly important in the context of military aggression and increasing risks of terrorist operations. Articles 7-10 regulate measures for the identification, freezing, seizure, and confiscation of assets, which is especially relevant in addressing financial crimes disguised as legitimate transactions. Article 34 provides for the establishment of specialised bodies or units authorised to exchange information internationally without unnecessary procedural barriers, which is vital for enhancing the effectiveness of operational and investigative procedures. Thus, implementation would enable Ukrainian authorities to receive and transmit financial information in real time, significantly increasing the efficiency of efforts to combat money laundering, terrorist financing, and tax evasion. Moreover, given the growing transnational nature of financial crime (Bilokin, 2025), ratification of the Convention would ensure full legal access to mechanisms for the international exchange of evidence – an essential tool for investigative and analytical units involved in operational and investigative activities.

In conclusion, the proposed measures – including legislative reform and strengthened regulatory oversight, modernisation of the technological infrastructure alongside professional development, and intensified international cooperation – are mutually reinforcing. Together, they support a comprehensive approach to countering money laundering. Each of these measures addresses critical areas identified in the consolidated ranking of destabilising factors and would contribute to the development of a more resilient system of operational and investigative activity, capable of responding effectively to the challenges of the modern financial environment under martial law.

Discussion

P. Berzin and R. Volynets (2018) examine innovations in the risk management of economic entities. Their approach is based on the implementation of modern analytical methods to reduce business-related risks. At the same time, their research draws attention to specific destabilising factors that affect operational and investigative activity, employing expert surveys to quantitatively assess their impact. Consequently, the findings of P. Berzin and R. Volynets (2018) may be viewed as part of a broader risk management system, whereas the present study focuses on analytics directly related to the prevention of financial crime within the context of operational and investigative activity. Unlike their study, which is limited to the private sector, the current research is centred on the public dimension of security – specifically, operational and investigative activity in the fight against money laundering. This study uses expert surveys and the Saaty method to determine the intensity of influence exerted by destabilising factors, enabling the construction of a hierarchy of threats.

M. Souto (2020), in his research, analyses money laundering, cybercrime, and the criminal liability of legal entities. His research focuses on legal and regulatory aspects, emphasising the responsibility of business entities for the use of illicit financial schemes. The approach presented in this study, based on expert surveys and the analysis of destabilising factors, offers a complementary perspective: it explores not only legal consequences but also the impact of external factors on operational and investigative activity. Unlike M. Souto, who focuses on the liability of parties involved in legal relations, this research expands the analytical scope to a systemic level. Accordingly, the findings of P. Tertychnyi *et al.* (2022) propose a time-aware and interpretable predictive monitoring system to combat money laundering using machine learning. Their technological approach is aimed at developing systems capable of real-time transaction analysis and risk forecasting. The present study, by relying on expert assessments of destabilising factors, lays a qualitative foundation for the further integration of such technological solutions. The current Article demonstrates that, under a pessimistic scenario, the primary threats arise from deficiencies in the regulatory framework and internal abuses – risk zones that could be most effectively addressed through future IT-based solutions in line with the approach of P. Tertychnyi *et al.* (2022). S. Lyeonov *et al.* (2021) focus on forecasting the risk of money laundering through financial intermediaries using quantitative models. Their approach is grounded in mathematical modelling and predictive algorithms for evaluating risks in the financial sector. This study, while also incorporating a quantitative component, is primarily focused on identifying the destabilising factors that directly affect operational and investigative activities. Accordingly, the findings of M. Blikhar *et al.* (2022) analyse measures to counter financial crimes within the system of combating the legalisation (laundering) of criminal proceeds. Their Article concentrates on the practical aspects of implementing measures aimed at strengthening the response to financial crime. By contrast, the present study establishes a theoretical foundation through the identification and quantitative evaluation of destabilising factors influencing operational and investigative work.

Comparative analysis shows that this research not only expands existing approaches to risk assessment in the field of anti-money laundering but also complements them by integrating expert surveys and the method of pairwise comparisons to determine the impact of destabilising factors on operational and investigative activities. Unlike other studies that focus on risk forecasting, optimisation of internal mechanisms in banking institutions, or the legal liability of business entities, this study centres on the practical dimensions of rapid response. In doing so, it provides a robust academic basis for the further development of integrated risk management systems that address the technological, organisational and legal aspects of combating financial crime, thereby enhancing the effectiveness of anti-money laundering efforts amid contemporary challenges.

Conclusions

The study successfully achieved its objective: to assess the intensity of the impact of destabilising factors on operational and investigative activities in the field of money laundering and the illicit legalisation of proceeds. This was accomplished through a comprehensive analysis of the extent to

which such factors affect operational and investigative activities related to money laundering and illicit legalisation. Following an expert assessment involving 40 professionals in the fields of financial monitoring, law enforcement work and financial crime prevention, a substantial volume of both qualitative and quantitative data was collected regarding the influence of individual destabilising factors on the area under investigation. Subsequently, the use of the pairwise comparison method enabled the construction of reciprocal comparison matrices, which served as the basis for calculating normalised weights that reflect the relative significance of each factor. Three scenarios were developed – realistic, pessimistic and optimistic – within which respective reciprocal comparison matrices were created, normalised weights were calculated, and comparative analysis was conducted. The consistency of expert judgements was confirmed by calculating the consistency ratio, thereby ensuring the validity and reliability of the results obtained.

As a result of the study, the destabilising factors exerting the greatest influence under various conditions were identified, and priorities for improving decision-making in the field of financial crime prevention were established. Scientifically grounded conclusions were formulated regarding the need to strengthen the regulatory and legal framework, modernise technical tools for rapid response, and enhance the human resource capacity of law enforcement bodies. The analysis of the findings revealed that the most critical factors affecting operational and investigative activity are the rise of digital currencies, the globalisation of financial flows, and the inadequacy of the legislative framework. The calculation of consistency ratios confirmed the high reliability of expert evaluations, enabling the development of a stable model reflecting the impact of destabilising factors. The results highlight the need to focus efforts on optimising anti-money laundering measures through regulatory reform and the implementation of advanced monitoring technologies. These findings contribute to a deeper scientific understanding of the systemic influence of destabilising factors on operational and investigative work and hold practical value for the development of an effective national financial security strategy. Future research should consider expanding the range of factors analysed, taking into account regional specificities, and evaluating the integration of cutting-edge digital technologies into real-time operational and investigative practices. It would also be advisable to rank these technologies according to their effectiveness.

Acknowledgements

None.

Funding

The study was not funded.

Conflict of interest

None.

References

[1] Akinbowale, O.E., Klingelhöfer, H.E., & Zerihun, M.F. (2020). An innovative approach in combating economic crime using forensic accounting techniques. *Journal of Financial Crime*, 27(4), 1253-1271. doi: 10.1108/JFC-04-2020-0053.

[2] Albanese, J.S. (2021). Organized crime as financial crime: The nature of organized crime as reflected in prosecutions and research. *Victims & Offenders*, 16(3), 431-443. doi: 10.1080/15564886.2020.1823543.

[3] Alexandre, C.R., & da Silva, J.B. (2023). Incorporating machine learning and a risk-based strategy in an anti-money laundering multiagent system. *Expert Systems with Applications,* 217, article number 119500. doi: 10.1016/j.eswa.2023.

[4] Alkema, V., Hryhoruk, P., Skhidnytska, H., & Sylkin, O. (2024). Resilience and strategic management: ways to ensure economic and social security of Ukrainian enterprises during long-term warfare. *Clio. Journal of History, Human Sciences and Critical Thought*, 9, 740-767. doi: 10.5281/zenodo.14567108.

[5] American Sociological Association's Code of Ethic. (1997). Retrieved from https://www.asanet.org/wp-content/uploads/savvy/images/asa/docs/pdf/CodeofEthics.pdf.

[6] Berzin, P., & Volynets, R. (2018). Mechanism features of damaging the stock market and its significance in criminal law. *Scientific Bulletin of Polissya*, 2(14), 93-98. doi: 10.25140/2410-9576-2018-2-2(14)-93-98.

[7] Bespalko, I.L. (2020). The exercise of proportionality within the application of measures to ensure criminal proceedings. *Actual Problems of National Jurisprudence*, 2, 119-124. doi: 10.15421/392057.

[8] Bilokin, R. (2025). Globalisation and criminal process: Prosecutorial supervision of operational and investigative activities in the context of transnational threats. *Scientific Journal of the National Academy of Internal Affairs*, 30(1), 9-20. doi: 10.63341/naia-herald/1.2025.09.

[9] Blikhar, M., Vinichuk, M., Komarnytska, I., Zaiats, O., & Kashchuk, M. (2022). Counteraction to financial crimes in the system of fight against legalization (laundering) of criminally obtained funds. *Financial and Credit Activity Problems of Theory and Practice*, 1(42), 73-83. doi: 10.55643/fcaptp.1.42.2022.3704.

[10] Cherniavskyi, S. (2023). Forensic methods of investigation of criminal offenses in the sphere of economic activity in Ukraine: Theory and practice. *Philosophical and Methodological Problems of Law*, 25(1), 190-192. doi: 10.33270/01232502.190.

[11] Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism. (2005, April). Retrieved from https://rm.coe.int/168008371f?utm_source=chatgpt.com.

[12] Countering Ransomware Financing. (2023). Retrieved from https://www.fatf-gafi.org/en/publications/Methodsandtrends/countering-ransomware-financing.html.

[13] Economic news. (2019). *Kolomoisky and Bogolyubov withdrew 5.5 billion from PrivatBank through a branch in Cyprus – OCCRP*. Retrieved from https://www.radiosvoboda.org/a/news-kolomojskyy-i-boholiubov-vyvely-ponad-5-mlrd-cherez-kipr-occrp/29893061.html.

[14] FATF. (2025). *High-risk jurisdictions subject to a call for action*. Retrieved from https://www.fatf-gafi.org/en/countries/black-and-grey-lists.html?utm_source=chatgpt.com.

[15] FBI National Press Office. (2023). *2023 cryptocurrency fraud report*. Retrieved from https://surli.cc/wothmx.

[16] ICC/ESOMAR International Code on Market, Opinion and Social Research and Data Analytics. (2016). Retrieved from https://esomar.org/uploads/attachments/ckqtawvjq00uukdtrhst5sk9u-iccesomar-international-code-english.pdf.

[17] Kaya, H.D., & Lumpkin-Sowers, N.L. (2020). The global crisis and crime: A look into manufacturing firms. *Socio Economic Challenges*, 4(3), 66-76. doi: 10.21272/sec.4(3).66-76.2020.

[18] Kertész, J., & Wachs, J. (2020). Complexity science approach to economic crime. *Nature Reviews Physics*, 3, 70-71. doi: 10.1038/s42254-020-0238-9.

[19] Law of Ukraine No. 361-IX "On Preventing and Combating the Legalisation (Laundering) of Proceeds from Crime, the Financing of Terrorism and the Financing of the Proliferation of Weapons of Mass Destruction". (2019, December). Retrieved from https://zakon.rada.gov.ua/laws/show/361-20#Text.

[20] Loskutov, T.O. (2023). Legal regulation of the principle of proportionality in criminal proceedings under martial law. *Analytical and Comparative Jurisprudence*, 1, 524-529. doi: 10.24144/2788-6018.2023.01.91.

[21] Lyeonov, S., Kuzmenko, O., Bozhenko, V., Mursalov, M.M., Zeynalov, Z.G., & Huseynova, A. (2021). Forecasting the risk of money laundering through financial intermediaries. *Financial and Credit Activity Problems of Theory and Practice*, 4(35), 191-201. doi: 10.18371/fcaptp.v4i35.222015.

[22] Methods and trends. (2022). Retrieved from https://www.fatf-gafi.org/en/topics/methods-and-trends.html#:~:text=14%20Mar%202023.

[23] MONEYVAL. (2019). *Anti-money laundering and counter-terrorist financing measures. Ukraine: 1st enhanced follow-up report & technical compliance re-rating*. Retrieved from https://www.fatf-gafi.org/content/dam/fatf-gafi/fsrb-fur/Moneyval-Follow-Up-Report-Ukraine.pdf.coredownload.pdf.

[24] Monthly FIN traffic evolution. (2022). Retrieved from https://www.swift.com/about-us/who-we-are

[25] Rekunenko, I., Kobets, Zh., & Shvydko, I. (2020). Features of formation and application of financial monitoring system in Ukraine. *Visnyk of Sumy State University. Economy Series*, 1, 104-117.

[26] Report finds trade misinvoicing continues to be a massive and persistent problem. (2021). Retrieved from https://gfintegrity.org/press-release/report-finds-trade-misinvoicing-continues-to-be-a-massive-and-persistent-problem/.

[27] Rusanov, G., & Pudovochkin, Y. (2021). Money laundering in the modern crime system. *Journal of Money Laundering Control*, 24(4), 860-868. doi: 10.1108/JMLC-08-2020-0085.

[28] Souto, M. (2020). Money laundering, cybercrime and criminal responsibility of legal persons. *Internal Security*, 12(1), 125-150. doi: 10.5604/01.3001.0014.3193.

[29] Tertychnyi, P., Godgildieva, M., Dumas, M., & Ollikainen, M. (2022). Time-aware and interpretable predictive monitoring system for Anti-Money Laundering. *Machine Learning with Applications*, 8, article number 100306. doi: 10.1016/j.mlwa.2022.100306.

[30] Vasyuk, S., Panchenko, V., Panchenko, O., Svyrydiuk, N., & Kuzminov, M. (2024). Strategies of police and analytical support for financial crime prevention in a context of global geopolitical crisis. Guidelines for ensuring financial security in Ukraine. *Clio. Journal of History, Human Sciences and Critical Thought*, 9, 659-687. doi: 10.5281/zenodo.14567007.

[31] What are the Panama Papers? A guide to history's biggest data leak. (2016). Retrieved from https://www.theguardian.com/news/2016/apr/03/what-you-need-to-know-about-the-panama-papers.

[32] Witbooi, E., Ali, K.-D., Santosa, M.A., Hurley, G., Husein, Y., Maharaj, S., Okafor-Yarwood, I., Arroyo Quiroz, I., & Salas, O. (2020). Organized crime in the fisheries sector threatens a sustainable ocean economy. *Nature*, 588, 48-56. doi: 10.1038/ s41586-020-2913-5.

Оцінювання інтенсивності впливу дестабілізуючих факторів на оперативно-розшукову діяльність у сфері відмивання й незаконної легалізації коштів

Галина Леськів
Кандидат технічних наук, доцент
Львівський державний університет внутрішніх справ
79007, вул. Городоцька, 26, м. Львів, Україна
https://orcid.org/0000-0002-4900-9466

Андрій Баб'як
Кандидат юридичних наук, доцент
Львівський державний університет внутрішніх справ
79007, вул. Городоцька, 26, м. Львів, Україна
https://orcid.org/0000-0002-2284-3864

Галина Савчин
Кандидат юридичних наук
Львівський державний університет внутрішніх справ
79007, вул. Городоцька, 26, м. Львів, Україна
https://orcid.org/0000-0002-5522-1578

Микита Пантелєєв
Аспірант
Львівський державний університет внутрішніх справ
79007, вул. Городоцька, 26, м. Львів, Україна
https://orcid.org/0000-0002-3305-8634

Анотація. Актуальність дослідження зумовлена необхідністю удосконалення механізмів протидії фінансовим злочинам в умовах зростання загроз економічній безпеці держави під час воєнного стану. Метою роботи була оцінка інтенсивності впливу дестабілізуючих факторів на оперативно-розшукову діяльність у сфері відмивання коштів та незаконної легалізації доходів. Методологія дослідження базувалась на експертному опитуванні 40 фахівців за допомогою анкетування та застосуванні методу парних порівнянь за шкалою Сааті. У ході дослідження було ідентифіковано сім ключових дестабілізуючих факторів, серед яких найвпливовішими виявлено глобалізацію фінансових потоків, поширення цифрових валют, а також недосконаліть нормативно-правової бази. Було проведено оцінювання впливу кожного з факторів у межах трьох сценаріїв – реалістичного, песимістичного та оптимістичного. За кожним сценарієм сформовано обернено-симетричні матриці порівнянь, на основі яких розраховано нормалізовані ваги та рейтинги факторів. Установлено, що в умовах негативного розвитку ситуації значно зростає загроза від внутрішніх зловживань та недостатньої технічної підготовки кадрів. Зроблено висновок, що ефективна протидія фінансовим злочинам потребує одночасного реформування законодавства, модернізації технічної бази правоохоронних органів і посилення міжнародної співпраці. Додатково підкреслено важливість адаптації правових механізмів до швидкоплинних змін фінансових технологій. Практична цінність результатів полягає у можливості їх використання керівниками оперативних підрозділів, розробниками державної політики та аналітиками сфери фінансової безпеки для вдосконалення системи виявлення та нейтралізації фінансових загроз

Ключові слова: відмивання коштів; незаконна легалізація доходів; фінансова безпека; ранжування факторів; негативні фактори; дестабілізація

UDC 349:711.4
DOI: 10.32518/sals2.2025.49

Соціально-правові студії. 2025. Т. 8, № 2
Social & Legal Studios. 2025. Vol. 8, No. 2

Prevention of security threats in public space in the context of urban development

Aldona Kipane*
Doctor of Law, Associate Professor
Riga Stradins University
LV-1007, 16 Dzirciema Str., Riga, Latvia
https://orcid.org/0009-0002-0694-7185

Andrejs Vilks
Doctor of Law, Professor
Riga Stradins University
LV-1007, 16 Dzirciema Str., Riga, Latvia
https://orcid.org/0009-0007-7120-4114

Kristine Kuznecova
PhD in Law, Associate Professor
Daugavpils University
LV-5401, 13 Vienibas Str., Daugavpils, Latvia
https://orcid.org/0009-0001-3060-998X

Anatolijs Krivins
PhD in Law, Associate Professor
Daugavpils University
LV-5401, 13 Vienibas Str., Daugavpils, Latvia
https://orcid.org/0009-0000-5594-1199

Abstract. The purpose of this study was to explore effective approaches to ensuring security in public spaces of modern cities through the analysis of international practices and the integration of architectural, technological, and social solutions into urban planning. The methodology of the study was based on the conceptual framework of the smart city theory and the principles of sustainable urban development, using systematic and comparative analysis, as well as the examination of real-life examples. The study analysed a wide range of threats, including criminal, anthropogenic, natural, socio-political, and information. The findings showed that the most effective strategies are integrated strategies that combine architectural solutions, such as the "safe design" concept – prevention through Environmental Design, technological innovations such as video surveillance systems with analytical capabilities, and social initiatives such as community patrol programmes. The analysis of cases such as Amsterdam: The Transformation of Bijlmermeer and Nordic Safe Cities confirmed the significance of integrating security measures into urban planning. The findings showed that such integrated approaches not only reduce crime, but also contribute to the creation of safe and comfortable conditions for social interaction. A major factor in the success of these strategies is their adaptability to the local context and the active engagement of the public in the planning and implementation of security measures. The findings demonstrated that successful strategies must be flexible, adapted to the local context, and involve the community in the planning process. Therewith, a series of challenges were identified, including the necessity of balancing security and openness of urban space, risks of social segregation, and challenges related to privacy. The findings have implications for the development of urban planning practices, as they confirm the effectiveness of comprehensive strategies that ensure safety while maintaining the open nature of public spaces

Keywords: urbanism; social integration; architectural design; preventive measures; video surveillance; technological solutions

Suggested Citation

Article's History: Received: 03.03.2025 Revised: 26.05.2025 Accepted: 25.06.2025

Kipane, A., Vilks, A., Kuznecova, K., & Krivins, A. (2025). Prevention of security threats in public space in the context of urban development. *Social & Legal Studios*, 8(2), 49-61. doi: 10.32518/sals2.2025.49.

*Corresponding author

Copyright © The Author(s). This is an open access Article distributed under the terms of the Creative Commons Attribution License 4.0 (https://creativecommons.org/licenses/by/4.0/)

Introduction

The rapid urbanisation and technological advances of the 21st century have created unprecedented challenges in ensuring public safety in urban environments. As cities continue to grow and develop, the need for effective strategies to prevent security threats in public spaces is becoming increasingly urgent. The complexity of modern urban landscapes, coupled with the integration of smart technologies and the Internet of Things (IoT), has created a multifaceted security landscape that requires innovative approaches to address potential vulnerabilities. The convergence of physical and digital infrastructures in urban environments has expanded the range of security challenges, requiring a comprehensive understanding of both conventional and emerging threats. Furthermore, the COVID-19 pandemic has highlighted the significance of incorporating public health considerations into urban security planning, adding another layer of complexity to the already daunting task of protecting urban populations. In this context, the development of robust, adaptive, and integrated security measures has become paramount to ensure the resilience and sustainability of urban communities.

Modern research has contributed greatly to addressing various aspects of urban security and development. M.A. Khaliji and K.J. Ghalehteimouri (2024) explored the impact of rapid urbanisation on social, cultural, and environmental issues in metropolitan cities, highlighting the need for better urban privacy management and collaboration among security experts. Their study highlighted the impact of factors such as diverse political perspectives and legal differences on urban security vulnerabilities. J. Laufs *et al.* (2020) conducted a systematic review of smart city security technologies, proposing a classification system for security measures based on their functions and integration with conventional policing and urban planning. The study underscored the significance of addressing both technological innovations and established security practices when developing comprehensive urban security strategies. J. Chen *et al.* (2024) investigated the relationship between urban form and crime in the United States of America, finding both linear and non-linear associations between various urban characteristics and types of criminal activity. Their findings provide valuable information for long-term urban planning and the development of safer, more sustainable urban environments. K. Kiełek (2022) focused on the determinants of safety in urban public spaces, emphasising the critical role of visibility, design, and citizen behaviour in creating safe environments. The study highlighted the necessity of collaborative efforts between residents, authorities, and urban planners to improve public safety.

P. Piroozfar *et al.* (2019) investigated the effectiveness of Crime Prevention through Environmental Design (CPTED) principles in Brixton town centre, London. Their mixed methodology approach demonstrated a reduction in crime following the implementation of CPTED measures, while also identifying ongoing stakeholder concerns for further safety improvements. L. da Silva Tomadon *et al.* (2024) conducted a bibliometric analysis of smart city and sustainability indicators, stressing the growing interest in integrating technology and sustainability to improve the quality of life in cities. The study underscored the value of developing comprehensive indicators for monitoring and managing sustainable urban development. K. Ahmad *et al.* (2022) explored the ethical and philosophical challenges associated with the introduction of artificial intelligence (AI) in smart cities, emphasising the need for human-centred approaches to technology deployment. Their study highlighted the significance of addressing safety, reliability, interpretability, and ethical issues in the application of AI in the urban environment. N.A. Megahed and E.M. Ghoneim (2021) examined the role of building design strategies in mitigating the spread of airborne diseases, especially in the wake of the COVID-19 pandemic. Their study proposed a conceptual model that combines technical control methods, design approaches, and air purification techniques. The purpose of this model is to improve the cleanliness of air inside buildings and reduce health hazards in urban environments.

P.M. Rao and B.D. Deebak (2023) addressed security and privacy issues in IoT-enabled smart sustainable city environments, focusing on authentication and key management protocols. Their study pointed out the importance of robust security measures to address the challenges posed by interconnected devices and heterogeneous networks in smart cities. Z.A. Baig *et al.* (2020) presented an intelligent system for detecting denial-of-service attacks in wireless sensor networks, demonstrating the criticality of developing advanced security mechanisms for IoT-based urban infrastructure. R. Kitchin and M. Dodge (2017) explored the paradoxical nature of smart city technologies that simultaneously mitigate and create new urban risks and vulnerabilities. Their study proposed a set of systemic interventions to address cybersecurity challenges in smart city initiatives. Finally, C. Ma (2021) provided a comprehensive overview of cybersecurity challenges in smart cities, focusing on four main components: smart grids, smart buildings, smart transport systems, and smart healthcare. The study emphasised the need for flexible systems with strong information security capabilities to prevent major security incidents and maintain public trust.

Although researchers have addressed a wide range of issues – from technological solutions to architectural planning – most studies focus on individual aspects of security, without offering a holistic, integrated approach to addressing security in the urban environment. There is no comprehensive analysis of the relationship between a variety of security measures and their combined effect on the overall level of security in urban space. Furthermore, the balance between implementing security measures and maintaining the comfortable, open nature of public spaces has been understudied; additionally, no systematic approach to assessing the cost-effectiveness of various security measures in the long term has been developed. Considering this, the purpose of this study was to identify key issues and assess the effectiveness of existing approaches to preventing security threats in public space in the context of modern urban development. The study focused on the following tasks:

1) to investigate and classify the major types of security threats in the public space of modern cities;

2) to analyse and compare international practices of applying architectural, technological, and social solutions to improve the security of public spaces;

3) to evaluate the effectiveness of integrating security measures into urban planning and development processes based on case studies.

Materials and methods

The study was based on the conceptual framework of the "smart city" theory and the principles of sustainable urban development, which involve the integration of technological, social, and environmental aspects into urban planning and management processes. The "safe design" and "integrated urban development" concepts contained in the Leipzig Charter on Sustainable European Cities (2007) also served as a theoretical framework. The study employed a combination of general scientific and special methods. The method of system analysis was used to consider the safety of public spaces as a complex system of interconnected elements, which helped to identify key factors of influence and their interaction. The comparative method was applied to compare and contrast various approaches to ensuring safety in the urban environment, which helped to identify the most effective practices and evaluate their potential for adaptation in specific contexts. Real-life projects to improve the safety of public spaces, such as Amsterdam: The Transformation of Bijlmermeer (2009) and Nordic Safe Cities (2020), were thoroughly analysed, which enabled the assessment of the practical effectiveness of diverse approaches and the identification of key success factors. The forecasting method was used to analyse trends in the global market for smart city security solutions.

The study focused on initiatives aimed at improving the security of public spaces. The regulatory framework was based on international regulations, namely European Convention on Human Rights (1950), Directive of the Council of European Union No. 2008/114/EC "On the Identification and Designation of European Critical Infrastructures and the Assessment of the Need to Improve their Protection" (2008), Revised European Social Charter (1996). These regulations considerably contributed to a better understanding of urban security issues and the significance of personal data protection in the implementation of technological innovations. The analysis was based on strategic documents, such as Sustainable Development Strategy of Latvia until 2030 (2010) and A. Morán's (2022) study, which help to integrate security measures into long-term urban planning. Documentation of projects such as Amsterdam: The Transformation of Bijlmermeer (2009) and Greater Manchester Combined Authority (2021) provided valuable insights into the practical implementation of safety measures and their effectiveness in the urban environment.

The study used data from statistical and analytical services, including forecasts for the development of security solutions in smart cities from Global Public Safety Solution for Smart City Market (2023). This enabled the study to consider the possibilities of developing technological solutions to improve security in the urban environment. Valuable information was also provided by the official websites of international organisations and projects, such as Smart Nation Singapore (2024) and the UN-Habitat: United Nations Human Settlements Programme (2024), which offered relevant data on the latest approaches to urban security. The sources used had an interdisciplinary approach, which contributed to a comprehensive analysis of the problems of public space security, combining theoretical concepts with practical experience of their implementation. This enabled a thorough analysis of the problem and the proposal of effective strategies for ensuring security in the urban environment.

Results

Research and classification of the key types of security threats in the public space of modern cities. Guaranteeing safety in the public areas of modern cities is a key challenge for governments and local administrations around the world. A comprehensive understanding and management of the various potential hazards in the urban environment provides the foundation for developing effective protection strategies and implementing adequate protective measures. In the context of rapid technological development and active social transformations inherent in modern urbanised communities, there is a strong call for regular updates and improvements to the methods of categorising security threats. European Convention on Human Rights (1950) in its Articles 2, 3, 5, and 8 sets out the fundamental principles of human security that must be ensured in the urban environment.

Directive of the Council of European Union No. 2008/114/EC (2008) defines critical infrastructure as an essential element of urban security. Specifically, Article 2(a) specifies critical infrastructure as a key part that ensures vital public functions, health, safety, security, and economic or social well-being of people and requires special protection measures. There are the following major categories of security threats in the public space of modern cities, based on the classification of the Department of Homeland Security (2023): criminal threats, which include various forms of criminal activity, from petty offences to organised crime; anthropogenic threats related to the functioning of urban infrastructure and industrial facilities; natural threats arising from natural disasters and extreme weather events; socio-political threats that may manifest themselves in the form of riots, terrorist acts, or other forms of social tension; information and cyber threats that are becoming increasingly relevant in the context of the digitalisation of urban space.

In the context of technological development, new threats associated with the introduction of modern technologies into the urban environment deserve special attention. The development of video surveillance and face recognition systems has a double effect: on the one hand, it increases the level of security, while on the other hand, it creates potential risks to the privacy of citizens. Regulation of the European Parliament and of the Council No. 2016/679 (2016) (GDPR) sets strict requirements for the collection and processing of personal data, which directly affects the use of such systems in urban areas. Specifically, Article 35 of this Regulation requires a data protection impact assessment before implementing technologies that may pose a major risk to the rights and freedoms of individuals. This calls for a balance between security and privacy in the urban environment.

With the development of the smart city concept and the introduction of IoT into urban infrastructure, the vulnerability of critical systems to cyberattacks is increasing. Directive of the of the European Parliament and of the Council No. 2016/1148 (2016) sets out cybersecurity requirements for operators of essential services, including urban utilities and transport systems. According to this Directive, cities must implement adequate technical and organisational measures to manage the risks associated with the security of the network and information systems they use in their operations.

Growing social inequality, increased migration processes, and changes in the demographic structure of urban populations can create the potential for social tensions and conflicts. Revised European Social Charter (1996) defines

standards of social rights of citizens, including the right to housing, healthcare, and social protection, which directly affects the creation of a safe and inclusive urban environment. The practical exercise of these rights requires an integrated approach to urban planning and social policy. To effectively manage risks and plan security measures, it is vital not only to identify the types of threats but also to assess their potential impact and probability of occurrence.

Safe City Index, developed by the Economist Intelligence Unit (2021), assesses the safety of cities in four key categories: digital safety, healthcare, infrastructure safety, and personal safety. Each category includes a set of indicators that enable a comprehensive assessment of the security of the urban environment. For example, the digital security category includes an assessment of the level of cyber defence of critical infrastructure, the availability of personal data protection policies, and the level of digital literacy of the population.

The Urban Resilience Framework methodology, developed under the of UN-Habitat (2024) initiative, aims to increase the ability of urban centres to withstand a variety of challenges, from natural disasters to socio-economic shocks. The approach involves a comprehensive assessment of urban systems across several key dimensions, including social well-being, economic development, infrastructure, and governance. For each dimension, a set of indicators has been developed to assess a city's preparedness for various types of threats and its ability to recover from crises. Not only the conventional aspects of physical security should be considered, but also the emerging challenges of digitalisation, climate change, and social transformation.

In the context of Latvia, which is a member of the EU, the implementation of the above-mentioned international standards and approaches to urban security is particularly relevant. Law on Local Governments (1994) provides local authorities with broad powers in the field of public order and security in the territory of municipalities. Law on Spatial Development Planning (2011) requires the integration of security aspects into the territorial planning and urban development processes.

The urban security assessment system reflects the multidimensional nature of threats and the interconnectedness of various aspects of urban security. The central element of the system is the overall security of the urban environment, which is shaped by five key components: physical security, cybersecurity, environmental security, social security, and economic security. Each of these components has its specific challenges and threats that require dedicated analysis and management. Physical security, which has conventionally been considered the core aspect of urban security, covers a wide range of threats, from petty offences to severe crimes and terrorist acts. International practices show that effective physical security requires a comprehensive approach that combines technological solutions (e.g., video surveillance systems) with social crime prevention programmes (Department of Homeland Security, 2023). The CPTED concept, which is being actively implemented in many European cities, involves the integration of security principles into architectural and urban planning design. This theory assumes that proper planning and rational use of architectural space can reduce both fears of crime and the factual number of offences, which ultimately improves the overall quality of life of residents.

Cybersecurity is becoming an increasingly critical element of urban security in the context of the development of smart cities and the digitalisation of urban services. Directive of the of the European Parliament and of the Council No. 2022/2555 (2022) sets new, stricter cybersecurity requirements for a wide range of organisations, including municipal services. According to this Directive, cities must implement comprehensive cyber threat management mechanisms. These mechanisms should address not only the technological aspects of protecting information systems, but also organisational and personnel issues. Particular emphasis is placed on protecting critical infrastructure, such as water supply, energy and transport systems, from cyberattacks.

The environmental sustainability of cities is becoming increasingly significant in the context of global climate change. Paris Agreement (2015) defines global targets for reducing greenhouse gas emissions and adapting to climate change, which directly affect urban development policies. Cities face the need to adapt to sea level rise, extreme weather events, and other climate-related risks. The programme, initiated by the Rockefeller Foundation (2013), helps cities around the world develop and implement strategies to increase resilience to various environmental and socio-economic challenges.

Social security is a key aspect of sustainable urban development. In the context of social security, special attention is paid to social cohesion, integration of migrants and refugees, and ensuring equal access to urban services and infrastructure. Manifesto For a New Urbanity: European Urban Charter II (2008) emphasises the role of social inclusion and citizen engagement in urban governance as key elements of a safe and sustainable urban environment.

The economic security of cities is intricately linked to their ability to ensure sustainable economic development and create employment opportunities for their residents. The EU's draft action plan (European Council, 2000) concerning Lisbon strategy and its successor, the Europe 2020 strategy (European Commission, 2010), set goals for creating a competitive and innovative economy, which directly affects the economic security of cities. In this context, cities are developing strategies for economic diversification, support for small and medium-sized businesses, development of innovation clusters, and investment attraction.

Integration of all these security aspects calls for a comprehensive approach to urban planning and management. The "integrated urban development" concept, set out in the Leipzig Charter on Sustainable European Cities (2007), emphasises the necessity of harmonising sectoral policies and involving all stakeholders in urban development processes. This concept implies that security issues should not be considered in isolation, but in the context of the overall socio-economic and spatial development of the city. In the Latvian context, the implementation of these international approaches and standards is based on specific national features and priorities. Sustainable Development Strategy of Latvia until 2030 (2010) identifies the creation of a safe and inclusive urban environment as one of the key priorities. The strategy emphasises the significance of integrating security aspects into all areas of urban planning and management, from infrastructure development to social policy. Latvian cities, notably Riga, are actively pursuing innovative approaches to urban security. Therewith, special attention is paid to compliance with the requirements of the GDPR (2016) on the ethical use of augmented reality technologies in public places.

These trends reflect a comprehensive approach to urban security that addresses not only technical aspects but also social, economic, and environmental factors. This approach requires close cooperation between various city services, active community engagement, and ongoing evaluation of the effectiveness of the measures implemented. A crucial element is the adaptation of international practices to local conditions, considering the specific features of a particular city or region. In this context, the exchange of practices between cities, both at the national and international levels, is of particular import. This allows for the effective implementation of innovative solutions and their adaptation to local circumstances.

International practices of applying architectural, technological, and social solutions to improve the safety of public spaces. Provision of security for public spaces in modern cities requires a comprehensive approach that combines architectural, technological, and social solutions. International experience demonstrates a wide spectrum of innovative approaches, the effectiveness of which varies depending on the cultural and socio-economic context. In the field of architectural solutions, the CPTED concept has become the cornerstone of many initiatives to improve the safety of the urban environment. This concept, developed in the US and widely adapted in Europe, is based on the principle that proper design and efficient use of the built environment can lead to a reduction in crime rates and an increased sense of security among the population.

In the Netherlands, for instance, the Police Label Secure Housing programme sets standards for secure housing design that include elements such as natural surveillance, access control, and territorial reinforcement. These principles have been integrated into national building codes, leading to a considerable reduction in crime rates in new housing developments. In the UK, Official Police Security Initiative "Secured by Design" (2024), developed by the police, offers a comprehensive approach to designing safe buildings and spaces. This initiative includes recommendations for lighting, landscaping, and building layout that promote natural surveillance and reduce opportunities for criminal activity. Notably, the effectiveness of these architectural solutions heavily depends on their integration with social programmes and technological security features.

In the area of technological solutions, video surveillance systems are still one of the most prevalent tools for ensuring security in public spaces. However, modern approaches extend far beyond mere surveillance. For example, Smart Nation Singapore (2024) foresees the introduction of an integrated system of sensors and cameras that not only record events but also analyse behavioural patterns to predict potential threats. This system uses artificial intelligence algorithms to detect abnormal behaviour and automatically alert the relevant services. Notably, the implementation of such systems requires a careful balancing act between security and privacy, which is regulated by documents such as the GDPR (2016). Global trends also confirm the rising significance of technological solutions in ensuring the security of public spaces. A vivid example of the forecast for the development of the smart city security solutions market is presented in Figure 1.

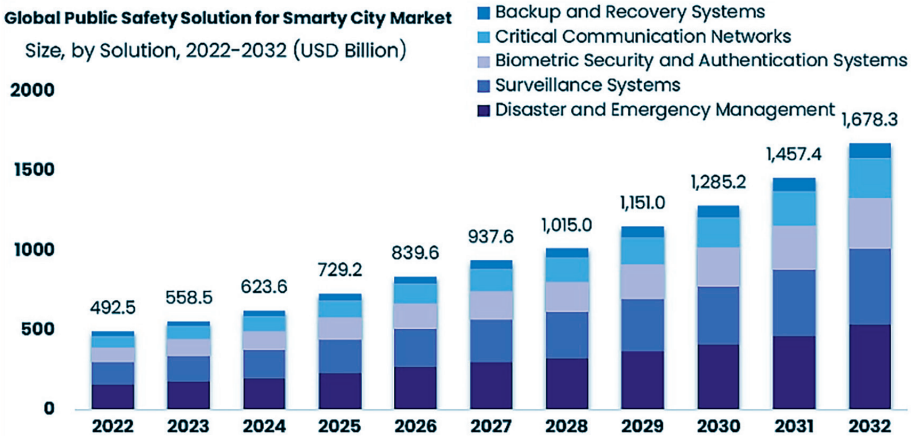


Figure 1. Development forecast for the global market of security solutions in smart cities, 2022-2032
Source: compiled by the authors based on Global Public Safety Solution for Smart City Market (2023)

Figure 1 illustrates the forecast for the global smart city security market for 2022-2032. The graph shows market growth across multiple solution categories, including backup and recovery systems, critical communications networks, biometric security and authentication systems, surveillance systems, and emergency and disaster management systems. The market is forecast to grow significantly from around USD 500 billion in 2022 to over USD 1.5 trillion by 2032. Particularly notable growth is expected in the surveillance and emergency management segment, reflecting the growing demand for integrated security solutions in urban environments. This trend highlights the relevance of investing in technology and infrastructure to improve the security of public spaces in the context of smart cities. Social initiatives play a key role in creating a safe urban environment, complementing architectural and technological solutions. The Community Policing programme (Brown, 1989) is an example of an approach that is being actively introduced in many countries, including the United States, the United Kingdom, and Scandinavian countries. This model of policing is based on active cooperation between the police and local communities to identify and address security issues in their early stages. In Denmark, for example, the State Safety Programme (SSP) (Danish Crime Prevention Council, 1998) creates a platform for cooperation between multiple institutions to prevent youth crime.

A comparative analysis of the effectiveness of diverse approaches to ensuring the safety of public spaces reveals that the most successful strategies are integrated strategies that incorporate elements of architectural design, technological innovation, and social programmes. For instance, the Xinjiang Square redevelopment project in Urumqi, China (State Council Approves Urumqi's City Plan, 2017) demonstrates the effectiveness of such an integrated approach. The project included the redevelopment of the space following the CPTED principles, the installation of a modern video surveillance system with analytical capabilities, and the implementation of public engagement programmes to increase social cohesion and responsibility for the safety of the shared space.

Notably, the effectiveness of certain approaches may vary substantially depending on the cultural and socio-economic context. For example, high-tech solutions that are successfully implemented in Singapore or Dubai may be less effective or even unacceptable in the context of European cities with their strong traditions of privacy protection. Therefore, adapting international practices to local conditions and needs is critical to successfully improving the security of public spaces. In the context of Latvia, as in other Baltic countries, special attention is paid to the balance between technological solutions and social programmes. Sustainable Development Strategy of Latvia until 2030 (2010) underscores the significance of creating inclusive and safe public spaces as a key element of sustainable urban development. This implies not only the introduction of modern security technologies, but also the active involvement of citizens in the planning and management of urban space.

Overall, global experience demonstrates that the most successful methods for enhancing public space safety are those that are integrated, flexible, and adaptable. They build a multi-layered protection system that not only reacts to threats but also actively seeks to create a safer and more inclusive urban environment by combining "hard" measures (technological and architectural solutions) with "soft" measures (social programmes and civic engagement initiatives).

Notable for their long-term effects and capacity to organically incorporate security features into the urban landscape are architectural solutions like the UK's "Secured by Design" initiative and the Netherlands' Police Label Secure Housing (Official Police Security Initiative, 2024). Through environmental design, these methods improve passive security and work especially well in large-scale urban redevelopment projects and new construction. However, they are difficult to integrate into existing infrastructure and may need a large initial expenditure.

Rapid deployment, high adaptability, and the ability to make decisions based on data are some advantages of technological solutions, as demonstrated by initiatives such as Smart Nation Singapore and Smart City Málaga (Smart Nation Singapore, 2024). These solutions work particularly well in high-risk metropolitan areas and smart cities. However, their high maintenance costs, privacy issues, and heavy reliance on dependable technical infrastructure sometimes hinder their effectiveness.

Social initiatives that promote crime prevention by active citizen participation, such Community Policing and Denmark's State Safety Programme (SSP), highlight the value of developing trust between communities and law enforcement (Brown, 1989; Danish Crime Prevention Council, 1998). Although these strategies produce long-lasting social cohesion, they take a long time to produce benefits and rely significantly on public participation. They work best in places with strong community structures or high levels of social friction, especially in small to medium-sized cities.

The benefits of integrating architectural, technological, and social measures are demonstrated by integrated plans, such as the SmartEnCity project in Europe and the rebuilding of Xinjiang Square in China (SmartEnCity, 2016; State Council Approves Urumqi's City Plan, 2017). These methods provide thorough and flexible security solutions appropriate for a variety of intricate metropolitan settings. High costs, complex coordination needs, and the need to efficiently balance multiple components, however, might make its implementation challenging. They are usually used in major metropolitan projects when long-term security planning is essential to more general development objectives. While each of these approaches has unique advantages and works well in certain situations, a comparative study of these approaches shows that integrated tactics are typically the most successful in the long run. Their strength is in integrating the advantages of each approach while addressing specific drawbacks, creating a more secure, resilient, and inclusive urban environment.

Analysis of international practices also reveals a growing trend towards the use of innovative technologies to improve the safety of public spaces. For example, in Spain, the Smart City Málaga project (European Commission, 2016) includes the introduction of smart lighting that not only optimises energy consumption but also improves safety by adaptively controlling brightness depending on the presence of people and environmental conditions. This solution demonstrates how technological innovations can simultaneously address the issues of safety, energy efficiency, and comfort in the urban environment.

Within Latvia and other Baltic states, considerable attention is focused on developing smart security approaches that consider the specifics of the region, including climate factors and historical background. For example, SmartEnCity (2016) is also relevant for Latvia, demonstrates a comprehensive approach to creating a safe and sustainable urban environment. The project includes the renovation of buildings based on energy efficiency and safety principles, the introduction of smart lighting and monitoring systems, and the active engagement of the community in urban planning and management processes. A comparative analysis of the various approaches to securing public spaces indicates that the most effective strategies are integrated strategies that combine architectural, technological, and social solutions. Such strategies enable not only the response to existing threats, but also the creation of an environment that is naturally conducive to security and social interaction. For example, the reconstruction project of the Republic square in Paris (Urban Green-Blue Grids, 2013) demonstrates how the reimagining of urban space with the CPTED principles, the introduction of modern monitoring technologies, and active community engagement can transform a previously problematic area into a safe and attractive public space.

Overall, the analysis of international practices of applying architectural, technological, and social solutions to improve the safety of public spaces highlights the necessity of a flexible and adaptive approach. Successful strategies are characterised by the ability to integrate diverse types of

solutions, consider the local context, and actively involve the community in the planning and implementation of security measures. In this context, the experience of Latvia and other Baltic countries can be particularly valuable for understanding how small and medium-sized cities can effectively adapt and implement best practices for securing public spaces in the face of limited resources and specific regional challenges.

Assessment of the effectiveness of integrating security measures into urban planning and development processes. Amsterdam: The Transformation of Bijlmermeer (2009) is an illustrative example of an integrated approach to the transformation of a problematic urban area using the principles of safe design. The core components of the project included the reorganisation of residential areas following the principles of natural surveillance and access control, the introduction of multifunctional land use, the adoption of the "living streets" concept with active ground floor façades, and the development of a network of safe routes for pedestrians and cyclists. Particular emphasis was placed on incorporating security measures into architectural solutions in a way that did not cause a sense of excessive surveillance or restriction of freedom of movement. An essential element of the project was the active engagement of residents in the planning and decision-making processes, which helped to reinforce social cohesion and responsibility for the shared space. Particular emphasis was placed on incorporating security measures into architectural solutions in a way that did not cause a sense of excessive surveillance or restriction of freedom of movement. An essential element of the project was the active engagement of residents in the planning and decision-making processes, which helped to reinforce social cohesion and responsibility for the shared space. Following the redesign, reported crimes in Bijlmermeer fell by approximately 50% between 1995 and 2005, including significant reductions in violent crime and burglary (Amsterdam: The Transformation of Bijlmermeer, 2009). Additionally, surveys conducted post-renovation showed a marked increase in the perceived safety among residents, with over 70% indicating they felt safer in their neighbourhoods compared to before the transformation. The evaluation of the Bijlmermeer project shows a substantial improvement in objective safety indicators and subjective sense of security among residents, as well as a positive impact on the economic development of the area.

Another noteworthy example in urban development is the strategic planning of Future Melbourne in Melbourne, Australia. According to A. Morán (2022) the Future Melbourne's strategic planning, a comprehensive approach to preventing security threats in public spaces was implemented. One of the key aspects of the strategy was the installation of smart technologies, such as networks of surveillance cameras with analytical capabilities and sensors integrated into the city's infrastructure. This enables not only real-time monitoring but also data analysis to identify risks and optimise the urban environment. Melbourne experienced a 9.8% decrease in crime rates between 2017 and 2021, coinciding with the implementation of these smart technologies (Victoria Police, 2022). Pilot zones equipped with surveillance innovations saw faster police response times and a 15% reduction in theft-related crimes. An integral element of the process was the involvement of an interdisciplinary team consisting of city planners, security experts, IT specialists, and community representatives, which ensured that technology was integrated with ethical and privacy concerns. Pilot projects in selected districts helped to evaluate the effectiveness of the innovative solutions and make the necessary adjustments before scaling them up to the city level.

Another case is the Project Safe Neighbourhoods (Sampson, 2019), which is being implemented in Columbia, South Carolina, within the framework of the national Project Safe Neighbourhoods (PSN) initiative. The project aims to reduce security threats in urban public spaces through the implementation of integrated solutions that address a variety of risks, including criminal, anthropogenic, natural, and cyber threats. Columbia observed a 17% reduction in gun-related crimes between 2017 and 2019 during the rollout of PSN tools such as ShotSpotter, body-worn cameras, and license plate readers (Sampson, 2019). The U.S. Department of Justice reported that the implementation of NIBIN technology helped reduce firearm recidivism and facilitated more successful prosecutions of repeat offenders. The primary goal of the project is to create a safe environment for citizens through modern monitoring technologies, such as video surveillance, analytical software, and tools such as ShotSpotter, which detects gunshots, as well as a network of cameras, including body-worn cameras (BWCs) and automated licence plate readers (LPRs).

Modernisation of the city's infrastructure includes improved lighting, surveillance areas, and safe transport routes, following the principles of projects such as Ceasefire Columbia. Another vital element is the use of personal data protection principles according to European standards, such as the GDPR (2016), which ensures the protection of citizens' privacy in the monitoring and information exchange processes. The project also supports the active engagement of citizens in reporting incidents through mobile platforms, which improves cooperation with law enforcement agencies and increases their efficiency. For example, the use of National Integrated Ballistic Information System (NIBIN) data provides a better insight into the threats posed by firearms. A key aspect is partnerships between local authorities, businesses, and civil society organisations to coordinate efforts and share security data. These partnerships are designed to build trust in the community and ensure that information technology is integrated to fight crime.

Nordic Safe Cities (2020) is an example of a comprehensive approach to preventing security threats in the urban environment, tailored to the specific features of urban development. The project encompasses various aspects of urban security, including combating online hate, countering disinformation, engaging youth in promoting inclusiveness, and expanding local security alliances. According to the Sweden Hate Crime Report 2020 (2020), there has been a 20% drop in youth-involved hate crimes between 2015 and 2020, partly attributed to proactive school programmes and social outreach embedded in this initiative. Key elements of the project include the implementation of a strategy to prevent violent extremism through proactive measures aimed at work with schools and social services, visits to families of new parents, awareness-raising in kindergartens, and cooperation between social services and schools to identify threats. The project pays special attention to the development of urban intervention teams and rehabilitation programmes for individuals seeking to leave extremist environments. Stockholm is also focusing on increasing the

competence of city services, developing individual action plans for each district and implementing special programmes to prevent right-wing extremism, including cooperation with the police and educational activities for strategic units of the city. A balance is also struck between the effectiveness of security measures and the protection of citizens' privacy, which is reflected in the development and implementation of special data processing and storage protocols according to the requirements of the GDPR (2016).

Greater Manchester Combined Authority (2021) is a key element of the city's comprehensive strategy for the development of the city and the safety of public spaces. It aims to reduce crime in high-risk areas, with a particular focus on protecting women and girls in public spaces. According to Greater Manchester (2021), the initiative led to a 12% decline in public space crimes against women within two years of implementation. Areas with enhanced lighting and surveillance saw notable decreases in harassment reports, while community feedback indicated a rise in perceived safety, especially in transit areas and public parks. Under this initiative, a series of measures have been implemented to improve safety on transport routes, including better lighting at bus stops and the introduction of modernised video surveillance systems. This allows for more effective monitoring of traffic, improving the ability of the police and other services to respond quickly to incidents. Specifically, the installation of surveillance cameras with instant image sharing between transport management systems and local authorities is an effective element of the programme, which enables better monitoring of public spaces and prompt intervention. "Safe hubs" are also being created – spaces where people can get help. Furthermore, public education campaigns and staff training are being implemented to raise awareness of harassment and other threats.

The analysis of these cases reveals a series of key factors that influence the effectiveness of integrating security measures into urban planning and development processes. Firstly, it is an integrated approach that considers the relationship between the physical environment, technological solutions, and social programmes. Successful projects, such as Amsterdam: The Transformation of Bijlmermeer (2009) and Future Melbourne (Morán, 2022), demonstrate the synergy between architectural solutions that facilitate natural surveillance and access control, technological systems for monitoring and analysing the situation, and social initiatives aimed at increasing public engagement and responsibility. Secondly, it is critical to actively engage the community at all stages of project planning and implementation, which not only increases the effectiveness of safety measures but also promotes a sense of ownership and responsibility for the shared space among residents, as evidenced by Greater Manchester Combined Authority (2021). Thirdly, successful projects are characterised by flexibility and adaptability, which allows for adjustments to safety measures according to changes in the urban environment and emergent challenges, as is particularly evident in Nordic Safe Cities (2020) approach. An essential aspect is also to ensure the long-term sustainability of security measures, which requires not only adequate funding, but also the development of local capacity to manage and maintain the implemented systems.

At the same time, the analysis also reveals potential obstacles to integrating security measures into urban planning. One of the key challenges is balancing security and openness of urban space, as an overemphasis on security measures can lead to the creation of "fortified" spaces that, although safe, lose their attractiveness and vitality. This issue is particularly relevant for projects that implement large-scale technological solutions, as in the case of Melbourne. Another issue is the risk of social segregation, when security measures are disproportionately applied in certain areas of the city, creating a sense of "safe islands" in a "dangerous sea". Another major challenge is to strike a balance between technological solutions and the protection of citizens' privacy, especially in the context of the use of video surveillance and data analysis. In this context, the development and implementation of clear legal frameworks and ethical standards for the use of technology to ensure urban security.

Based on this analysis, a series of recommendations can be offered regarding best practices for integrating security into urban planning and development. First, it is vital to ensure early integration of security issues into urban planning processes, starting with strategic planning and the development of city master plans, as was the case in Melbourne. This allows considering the security aspects at the systemic level and avoiding the need for expensive and often ineffective "retrofit" solutions. Second, it is recommended to use the Security by Design approach, which involves integrating security elements into architectural and urban planning solutions in a fashion that blends seamlessly into the urban environment and does not create a sense of excessive control, as was implemented in Amsterdam: The Transformation of Bijlmermeer (2009). Third, it is essential to develop mechanisms of public participation and co-design in urban security issues, which allows considering the genuine needs and concerns of residents and increasing the effectiveness of security measures, as evidenced by Greater Manchester Combined Authority (2021). Furthermore, it is recommended to develop cross-sectoral cooperation and exchange of practices, both at the national and international level, which is particularly relevant in the context of emerging challenges such as cybersecurity of urban infrastructure or climate.

Discussion

The study of security in public urban spaces identified key factors that substantially affect urban planning and management. The results suggest the necessity of a comprehensive approach to urban security that is consistent with modern urban concepts. A valuable finding is the need to integrate technological solutions into urban infrastructure to enhance security. This is consistent with the findings of Y. Cai *et al.* (2021), who emphasise the value of smart urban systems in crime prevention and public safety. They found that the introduction of smart surveillance and data analytics systems can significantly reduce crime in urban areas. The current findings extend this understanding by demonstrating how such technologies can be effectively integrated into the existing urban fabric without compromising citizens' privacy. At the same time, a prominent aspect is the emphasis on social cohesion as a key factor in the safety of the urban environment. F.M. Calamunci and F.F. Frattini (2023) support this idea in their study of the impact of social capital on crime in urban areas. The present findings confirm the conclusions of these researchers, showing how targeted measures to increase social cohesion can be integrated into urban development strategies to create safer public spaces.

The data analysis also revealed the significance of adaptive urban design for safety improvement. This is consistent with the findings of K.G.N.U. Rannaweera (2024), who emphasised the role of "flexible" urban spaces in promoting positive social interaction and reducing opportunities for criminal activity. The current study showed how adaptive design can be applied not only to new projects, but also to the renovation of existing urban areas. The issue of lighting as a security factor is echoed in the study by A. Chalfin *et al.* (2022). The researchers found a considerable reduction in crime rates in areas with improved street lighting. The data obtained supports these findings, demonstrating how intelligent lighting systems can be integrated with other security measures to create a comprehensive approach to securing public spaces. An essential aspect is the consideration of the role of public engagement in ensuring the safety of the urban environment. This theme echoes the findings of J.R. Sampson (2019), who emphasised the value of collective efficiency in crime prevention. This is supported by the present findings, which show how active community input into the planning and implementation of security measures can greatly increase their effectiveness.

Equally necessary is the importance of addressing gender-related aspects in the planning of safe urban spaces. This is consistent with the study by C. Listerborn (2020), who examined the issue of urban security from a gender perspective. The obtained results complement his study by presenting concrete strategies for integrating a gender-sensitive approach into the overall structure of urban security. Z.S. Venter *et al.* (2022) confirmed the issue of using green areas to improve the safety of the urban environment. Researchers found a positive impact of urban green spaces on reducing crime and increasing the sense of safety among residents. The current findings demonstrate how strategic planning of green spaces can be integrated into the overall city security strategy. Another major aspect is the consideration of the impact of urban mobility on safety. This theme resonates with the study by M. Chanieabate *et al.* (2023), who investigated the relationship between transport infrastructure and safety in urban areas. The data suggests that integrating safety measures into transport system planning can create safer urban environments.

The significance of cultural and artistic initiatives in creating safe urban spaces was also noted. This is consistent with the study by J. Sharp *et al.* (2005), who examined the role of public art in strengthening social cohesion and increasing community safety. The study showed how cultural projects can be integrated into urban security strategies to create more inclusive and safer public spaces. The issue of economic development as a factor of urban security is echoed in the study by M.K. Anser *et al.* (2020). Their study found a link between economic inequality and crime rates in urban areas. This is supported by data that demonstrates how economic development strategies can be integrated into the overall urban security framework to create more stable and safer communities.

Another aspect is the importance of intersectoral cooperation in ensuring the safety of urban space. This is consistent with the study by C.B. Sanders and D. Langan (2019), who examined the role of partnerships between various city services in improving safety. The findings indicate concrete mechanisms for implementing such cooperation in practice to maximise its effectiveness. The issue of using data and analytics to predict and prevent security threats is confirmed by S. Egbert and S. Krasmann (2019). The researchers showed the potential of predictive analytics to reduce crime rates in urban areas. The current findings illustrate how such technologies can be ethically and effectively integrated into urban security systems. A prominent aspect is the consideration of the impact of architectural design on the safety of the urban environment. This subject resonates with the study by E. Shyshkin and A. Pankeieva (2024), who investigated the "protective space" principles in urban planning. This is supported by the data obtained, which show how modern architectural solutions can be integrated into the existing urban fabric to improve safety without creating a "fortress" atmosphere.

A need has arisen to factor in the psychological aspects of how people perceive security in the urban environment. This is in line with the findings of J. Wang *et al.* (2019), who studied the relationship between the physical environment and subjective sense of security. The current findings expand on this idea by showing ways to create urban spaces that are not only factually safe, but also perceived as such by residents. The study also highlighted the significance of a comprehensive approach to urban safety that accommodates the needs of diverse population groups. This is consistent with the findings of O. Demirbilek (2020) on the impact of inclusive design on safety and quality of life in urban areas. The obtained results suggest concrete methods for integrating inclusive practices into the overall urban security system. Another key aspect is the consideration of the role of artificial intelligence and the IoT in improving the safety of the urban environment, which echoes the study by N.V. Doohan *et al.* (2022), who explored the potential of AI-based systems to prevent and respond to security threats in cities. The data demonstrates how such advanced technologies can be integrated into existing urban systems while respecting citizen privacy and ethical standards.

The study highlighted the importance of a comprehensive, interdisciplinary approach to ensuring security in urban spaces. It showed that effective strategies for preventing security threats should incorporate technological, social, economic, and psychological factors. The findings are consistent with current trends in urban studies, but also offer fresh perspectives and practical recommendations for urban planners and policy makers. Specifically, the study pointed to the value of balancing technological solutions with social initiatives, emphasising the role of public engagement and social cohesion in creating secure urban spaces. The study also found that effective security strategies must be adaptive and accommodate the specifics of each urban area, which is also consistent with the findings of W. Salet and J. de Vries (2019) on the significance of contextualised approaches to urban security.

The study also highlighted the need to integrate security measures into broader urban development strategies, including economic, cultural, and environmental initiatives. This is in line with the "resilient cities" concept developed by F. Aram (2024) and demonstrates how security can form an integral part of the overall sustainable development of urban spaces. Further research could focus on the long-term effects of implementing such integrated strategies and adapting them to various cultural and socio-economic contexts, as well as developing methodologies to evaluate the effectiveness of integrated approaches to urban security at varying scales, from neighbourhoods to entire cities.

Conclusions

The subject of this study was the primary types of security threats in the public space of modern cities and international practices of applying architectural, technological, and social solutions to improve the security of public spaces. The study successfully fulfilled its purpose by conducting a comprehensive analysis of these aspects and evaluating the effectiveness of integrating security measures into urban planning and development processes.

The analysis of legal regulation indicates that ensuring the safety of public spaces in modern cities requires a robust and multi-layered legal framework. Important international and European legal instruments that define the responsibilities of state authorities and private entities involved in urban security include conventions, regulations, and directives. These normative acts establish a balance between security and fundamental rights, particularly regarding freedom of movement, privacy, and personal data protection. At the municipal level, the provisions of these international documents are implemented through national legislation, such as laws on local self-government and spatial planning, which promote the integration of security aspects into urban and territorial development programmes. Furthermore, the legal framework mandates conducting risk assessments when implementing video surveillance systems and other technologies that handle large volumes of data, as well as supports the application of "safe design" approaches in planning processes. However, the study identified issues related to inconsistent application of norms, fragmentation of legislation, and insufficient regulation of the integration of advanced technologies such as artificial intelligence and the IoT into existing legal frameworks.

The study findings showed that integrated strategies that combine architectural, technological, and social solutions are most effective. Such an integrated approach allows not only responding to existing threats, but also creating an environment that naturally promotes security and social interaction. A prominent aspect of successful strategies is their flexibility and adaptability to the local context, as well as the active engagement of the community in the planning and implementation of security measures. The study also identified potential challenges in integrating security measures into urban planning, including the need to balance security and openness of urban space, the risks of social segregation, and challenges related to the protection of citizens' privacy.

The findings obtained substantially influence the development of the theory and practice of urban planning and security management in public spaces. They emphasise the necessity of applying an interdisciplinary approach to solving urban security problems and the significance of considering the local context when adapting international practices. Promising areas for further research in this area include investigating the long-term effects of integrated security strategies on the socio-economic development of cities, studying the impact of the latest technologies (such as AI and the IoT) on urban security, and developing methodologies for assessing the effectiveness of security measures that consider both objective and subjective indicators.

Acknowledgements

None.

Funding

This article has been developed within the framework of grant No. RSU-PAG-2024/1-0015 "Prevention of security threats and risks in the political protection, social, socio-economic and informative fields".

Conflict of interest

None.

References

[1] Ahmad, K., Maabreh, M., Ghaly, M., Khan, K., Qadir, J., & Al-Fuqaha, A. (2022). Developing future human-centered smart cities: Critical analysis of smart city security, data management, and ethical challenges. *Computer Science Review*, 43, article number 100452. doi: 10.1016/j.cosrev.2021.100452.

[2] Amsterdam: The Transformation of Bijlmermeer. (2009). Retrieved from https://garcia-somoza.com/en/noticias/amsterdam-la-transformacion-de-bijlmermeer/.

[3] Anser, M.K., Yousaf, Z., Nassani, A.A., Alotaibi, S.M., Kabbani, A., & Zaman, K. (2020). Dynamic linkages between poverty, inequality, crime, and social expenditures in a panel of 16 countries: Two-step GMM estimates. *Journal of Economic Structures*, 9(1), article number 43. doi: 10.1186/s40008-020-00220-6.

[4] Aram, F. (2024). Resources of urban green spaces and sustainable development. *Resources*, 13(1), article number 10. doi: 10.3390/resources13010010.

[5] Baig, Z.A., Sanguanpong, S., Firdous, S.N., Vo, V.N., Nguyen, T.G., & So-In, C. (2020). Averaged dependence estimators for DoS attack detection in IoT networks. *Future Generation Computer Systems*, 102, 198-209. doi: 10.1016/j.future.2019.08.007.

[6] Brown, L.P. (1989). *Community policing: A practical guide for police officials*. Retrieved from https://www.ojp.gov/pdffiles1/nij/118001.pdf.

[7] Cai, Y., Li, D., & Wang, Y. (2021). Intelligent crime prevention and control big data analysis system based on imaging and capsule network model. *Neural Processing Letters*, 53(4), 2485-2499. doi: 10.1007/s11063-020-10256-1.

[8] Calamunci, F.M., & Frattini, F.F. (2023). When crime tears communities apart: Social capital and organised crime. *Eni Enrico Mattei Foundation Working Papers*, 8. doi: 10.2139/ssrn.4437773.

[9] Chalfin, A., Hansen, B., Lerner, J., & Parker, L. (2022). Reducing crime through environmental design: Evidence from a randomized experiment of street lighting in New York City. *Journal of Quantitative Criminology*, 38(1), 127-157. doi: 10.1007/s10940-020-09490-6.

[10] Chanieabate, M., He, H., Guo, C., Abrahamgeremew, B., & Huang, Y. (2023). Examining the relationship between transportation infrastructure, urbanization level and rural-urban income gap in China. *Sustainability*, 15(10), article number 8410. doi: 10.3390/su15108410.

[11] Chen, J., Li, H., Luo, S., Su, D., Zang, T., & Kinoshita, T. (2024). Exploring the complex association between urban form and crime: Evidence from 1,486 U.S. counties. *Journal of Urban Management*, 13(3), 482-496. doi: 10.1016/j.jum.2024.05.008.

[12] da Silva Tomadon, L., do Couto, E.V., de Vries, W.T., & Moretto, Y. (2024). Smart city and sustainability indicators: A bibliometric literature review. *Discover Sustainability*, 5(1), article number 143. doi: 10.1007/s43621-024-00328-w.
[13] Danish Crime Prevention Council. (1998). *State Safety Programme Cooperation: Basis and organization*. Retrieved from https://dkr.dk/media/6901/uk-ssp-cooperation-basis-and-organisation.pdf.
[14] Demirbilek, O. (2020). Better life in urban areas for all with inclusive design. In A. Qamhaieh, E. An & A. Marey (Eds.), *Rapid cities – responsive architectures* (pp. 22-24). Dubai: AMPS.
[15] Department of Homeland Security. (2023). *Homeland threat assessment 2024*. Retrieved from https://www.dhs.gov/publication/homeland-threat-assessment.
[16] Directive of the Council of European Union No. 2008/114/EC "On the Identification and Designation of European Critical Infrastructures and the Assessment of the Need to Improve their Protection". (2008, December). Retrieved from https://eur-lex.europa.eu/eli/dir/2008/114/oj/eng.
[17] Directive of the of the European Parliament and of the Council No. 2016/1148 "On the Measures for a High Common Level of Security of Network and Information Systems Across the Union". (2016, July). Retrieved from https://eur-lex.europa.eu/eli/dir/2016/1148/oj.
[18] Directive of the of the European Parliament and of the Council No. 2022/2555 "On Measures for a High Common Level of Cybersecurity Across the Union", Amending Regulation (EU) No 910/2014 and Directive (EU) 2018/1972, and Repealing Directive (EU) 2016/1148 (NIS 2 Directive)". (2022, December). Retrieved from https://eur-lex.europa.eu/eli/dir/2022/2555.
[19] Doohan, N.V., Kadam, S., Phursule, R., Wadne, V.S., & Junnarkar, A. (2022). Implementation of AI based safety and security system integration for smart city. *International Journal of Electrical and Electronics Research*, 10(3), 518-522. doi: 10.37391/IJEER.100319.
[20] Economist Intelligence Unit. (2021). *Safe City Index 2021: New expectations demand a new coherence*. Retrieved from https://impact.economist.com/projects/safe-cities/assets/documents/Safe-Cities-Index-2021_eng.pdf.
[21] Egbert, S., & Krasmann, S. (2019). Predictive policing: Not yet, but soon preemptive? *Policing and Society*, 30(8), 905-919. doi: 10.1080/10439463.2019.1611821.
[22] European Commission. (2010). *Europe 2020: A strategy for smart, sustainable and inclusive growth*. Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52010DC2020.
[23] European Commission. (2016). *Málaga Smart City: A wide range of solutions for local energy sustainability, public sector transparency and open government*. Retrieved from https://joinup.ec.europa.eu/collection/open-government/document/malaga-smart-city-wide-range-solutions-local-energy-sustainability-public-sector-transparency-and.
[24] European Convention on Human Rights. (1950). Retrieved from https://www.echr.coe.int/documents/d/echr/convention_ENG.
[25] European Council. (2000). *Information society for all – draft action plan*. Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52000DC0330.
[26] Global Public Safety Solution for Smart City Market. (2023). Retrieved from https://market.us/report/public-safety-solution-for-smart-city-market/#overview.
[27] Greater Manchester Combined Authority. (2021). *Greater Manchester secures half a million pounds for Safer Streets initiative*. Retrieved from https://www.greatermanchester-ca.gov.uk/news/greater-manchester-secures-half-a-million-pounds-for-safer-streets-initiative/.
[28] Greater Manchester. (2021). *Police and crime annual report*. Retrieved from https://www.greatermanchester-ca.gov.uk/media/5589/gmca_police-and-crime-annual-report-2020_2022_v3.pdf.
[29] Khaliji, M.A., & Ghalehteimouri, K.J. (2024). Urban security challenges in major cities, with a specific emphasis on privacy management in the metropolises. *Discover Environment*, 2(1), article number 74. doi: 10.1007/s44274-024-00116-3.
[30] Kiełek, K. (2022). The importance of safety and security in urban space. *Humanities and Social Sciences Reviews*, 10(6), 21-23. doi: 10.18510/hssr.2022.1063.
[31] Kitchin, R., & Dodge, M. (2017). The (in)security of smart cities: Vulnerabilities, risks, mitigation, and prevention. *Journal of Urban Technology*, 26(2), 47-65. doi: 10.1080/10630732.2017.1408002.
[32] Laufs, J., Borrion, H., & Bradford, B. (2020). Security and the smart city: A systematic review. *Sustainable Cities and Society*, 55(4), article number 102023. doi: 10.1016/j.scs.2020.102023.
[33] Law on Local Governments. (1994, June). Retrieved from https://likumi.lv/ta/en/en/id/57255-on-local-governments.
[34] Law on Spatial Development Planning. (2011, December). Retrieved from https://likumi.lv/ta/en/en/id/238807-spatial-development-planning-law.
[35] Leipzig Charter on Sustainable European Cities. (2007, May). Retrieved from https://territorialagenda.eu/wp-content/uploads/leipzig_charter_2007.pdf.
[36] Listerborn, C. (2020). Gender and urban neoliberalization. In A. Datta, P. Hopkins, L. Johnston, E. Olson & J.M. Silva (Eds.), *Routledge Handbook of gender and feminist geographies* (pp. 184-193). London: Routledge. doi: 10.4324/9781315164748.
[37] Ma, C. (2021). Smart city and cyber-security; technologies used, leading challenges and future recommendations. *Energy Reports*, 7, 7999-8012. doi: 10.1016/j.egyr.2021.08.124.
[38] Manifesto For a New Urbanity: European Urban Charter II. (2008, May). Retrieved from https://rm.coe.int/urban-charter-ii-manifesto-for-a-new-urbanity-publication-a5-58-pages-/168095e1d5.
[39] Megahed, N.A., & Ghoneim, E.M. (2021). Indoor air quality: Rethinking rules of building design strategies in post-pandemic architecture. *Environmental Research*, 193, article number 110471. doi: 10.1016/j.envres.2020.110471.
[40] Morán, A. (2022). *Future Melbourne's strategic planning*. Brooklyn, NY: Public Agenda.
[41] Nordic Safe Cities. (2020). *Stockholm: Safe city action*. Retrieved from https://nordicsafecities.org/member-cities/stockholm/.

[42] Official Police Security Initiative "Secured by Design". (2024). *Homes guide 2024*. Retrieved from https://www.securedbydesign.com/images/HOMES%20GUIDE%20May%202024.pdf.
[43] Paris Agreement. (2015, December). Retrieved from https://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf.
[44] Piroozfar, P., Farr, E.R.P., Aboagye-Nimo, E., & Osei-Berchie, J. (2019). Crime prevention in urban spaces through environmental design: A critical UK perspective. *Cities*, 95, article number 102411. doi: 10.1016/j.cities.2019.102411.
[45] Rannaweera, K.G.N.U. (2024). Urban harmony: Balancing fear of crime with sustainable and innovative community development. *International Journal of Social Science, Technology and Economics Management*, 1(2), 311-329. doi: 10.59781/NUEM4918.
[46] Rao, P.M., & Deebak, B.D. (2023). Security and privacy issues in smart cities/industries: Technologies, applications, and challenges. *Journal of Ambient Intelligence and Humanized Computing*, 14, 10517-10553. doi: 10.1007/s12652-022-03707-1.
[47] Regulation of the European Parliament and of the Council No. 2016/679 "On the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation)". (2016, April). Retrieved from http://data.europa.eu/eli/reg/2016/679/oj.
[48] Revised European Social Charter. (1996, April). Retrieved from https://rm.coe.int/168007cf93.
[49] Rockefeller Foundation. (2013). *100 resilient cities: Helping cities around the world become more resilient to physical, social, and economic shocks and stresses*. Retrieved from https://www.rockefellerfoundation.org/100-resilient-cities/.
[50] Salet, W., & de Vries, J. (2019). Contextualisation of policy and law in sustainable urban development. *Journal of Environmental Planning and Management*, 62(2), 189-204. doi: 10.1080/09640568.2017.1418304.
[51] Sampson, J.R. (2019). Neighbourhood effects and beyond: Explaining the paradoxes of inequality in the changing American metropolis. *Urban Studies*, 56(1), 3-32. doi: 10.1177/0042098018795363.
[52] Sanders, C.B., & Langan, D. (2019). New public management and the extension of police control: Community safety and security networks in Canada. *Policing and Society*, 29(5), 566-578. doi: 10.1080/10439463.2018.1427744.
[53] Sharp, J., Pollock, V., & Paddison, R. (2005). Just art for a just city: Public art and social inclusion in urban regeneration. *Urban Studies*, 42(5-6), 1001-1023. doi: 10.1080/00420980500106963.
[54] Shyshkin, E., & Pankeieva, A. (2024). Use of protective structures of civil protection in urban development. *Scientific Journal of Polonia University*, 64(3), 226-236. doi: 10.23856/6429.
[55] Smart Nation Singapore. (2024). *Smart Nation 2:0: A thriving digital future for all*. Singapore: Ministry of Digital Development and Information.
[56] SmartEnCity. (2016). *Tartu – from Hrustsovkas to Smartkovskas*. Retrieved from https://smartencity.eu/about/lighthouse-cities/tartu-estonia/.
[57] State Council Approves Urumqi's City Plan. (2017). Retrieved from https://english.www.gov.cn/policies/latest_releases/2017/01/12/content_281475539981127.htm.
[58] Sustainable Development Strategy of Latvia until 2030. (2010, June). Retrieved from https://www.varam.gov.lv/sites/varam/files/content/files/lias_2030_en.pdf.
[59] Sweden Hate Crime Report 2020. (2020). Retrieved from https://www.hatecrime.osce.org/reporting/sweden/2020.
[60] UN-Habitat: United Nations Human Settlements Programme. (2024). Retrieved from https://www.un.org/youthenvoy/2013/08/un-habitat-united-nations-human-settlements-programme/.
[61] Urban Green-Blue Grids. (2013). *Republic square*. Retrieved from https://urbangreenbluegrids.com/projects/place-de-la-republique-paris/.
[62] Venter, Z.S., Shackleton, C., Faull, A., Lancaster, L., Breetzke, G., & Edelstein, I. (2022). Is green space associated with reduced crime? A national-scale study from the Global South. *Science of the Total Environment*, 825(12), article number 154005. doi: 10.1016/j.scitotenv.2022.154005.
[63] Victoria Police. (2022). *Annual report 2021-2022*. Retrieved from https://www.police.vic.gov.au/sites/default/files/2022-09/Victoria-Police-Annual-Report-2021-2022.pdf.
[64] Wang, J., Long, R., Chen, H., & Li, Q. (2019). Measuring the psychological security of urban residents: Construction and validation of a new scale. *Frontiers in Psychology*, 10, 2423. doi: 10.3389/fpsyg.2019.02423.

Попередження загроз безпеці в публічному просторі в контексті розвитку міст

Альдона Кіпане
Доктор юридичних наук, доцент
Ризький університет імені Страдіня
LV-1007, вул. Дзірцема, 16, м. Рига, Латвія
https://orcid.org/0009-0002-0694-7185
Андрейс Вілкс
Доктор юридичних наук, професор
Ризький університет імені Страдіня
LV-1007, вул. Дзірцема, 16, м. Рига, Латвія
https://orcid.org/0009-0007-7120-4114
Крістіне Кузнецова
Доктор філософії в галузі права, доцент
Даугавпілський університет
LV-5401, вул. Вієнібас, 13, м. Дауґавпілс, Латвія
https://orcid.org/0009-0001-3060-998X
Анатолій Кривіньш
Доктор філософії в галузі права, доцент
Даугавпілський університет
LV-5401, вул. Венібас, 13, м. Дауґавпілс, Латвія
https://orcid.org/0009-0000-5594-1199

Анотація. Метою цього дослідження було вивчення ефективних підходів до забезпечення безпеки в громадських просторах сучасних міст через аналіз міжнародних практик та інтеграцію архітектурних, технологічних і соціальних рішень у міське планування. Методологія дослідження ґрунтувалася на концептуальних засадах теорії «розумного міста» та принципах сталого розвитку міст, із застосуванням системного та порівняльного аналізу, а також вивченням прикладів з реального життя. У дослідженні проаналізовано широкий спектр загроз, включаючи кримінальні, техногенні, природні, соціально-політичні та інформаційні. Результати показали, що найбільш ефективними є комплексні стратегії, які поєднують архітектурні рішення, такі як концепція «безпечного дизайну» – запобігання через екологічний дизайн, технологічні інновації, такі як системи відеоспостереження з аналітичними можливостями, та соціальні ініціативи, такі як програми громадського патрулювання. Аналіз таких випадків, як Амстердам: трансформація Бейлмермеєра та Північні безпечні міста, підтвердив важливість інтеграції заходів безпеки у міське планування. Результати показали, що такі комплексні підходи не лише зменшують рівень злочинності, а й сприяють створенню безпечних і комфортних умов для соціальної взаємодії. Важливим фактором успіху цих стратегій є їх адаптивність до місцевого контексту та активна участь громадськості у плануванні й впровадженні заходів безпеки. Дослідження продемонструвало, що ефективні стратегії повинні бути гнучкими, враховувати локальні особливості і залучати спільноту до процесу планування. Водночас було визначено низку викликів, серед яких необхідність балансування безпеки та відкритості міського простору, ризики соціальної сегрегації та проблеми, пов'язані з приватністю. Отримані результати мають важливе значення для розвитку практик міського планування, оскільки підтверджують ефективність комплексних стратегій, які забезпечують безпеку, зберігаючи відкритий характер публічних просторів

Ключові слова: урбанізм; соціальна інтеграція; архітектурне проектування; превентивні заходи; відеоспостереження; технологічні рішення

UDC 153.96:351.74a
DOI: 10.32518/sals2.2025.62

Соціально-правові студії. 2025. Т. 8, № 2
Social & Legal Studios. 2025. Vol. 8, No. 2

Psychological specificity of police officers' professional actions under martial law

Dmytro Shvets
Doctor of Law, Professor
Lviv State University of Internal Affairs
79007, 26 Horodotska Str., Lviv, Ukraine
https://orcid.org/0000-0002-1999-9956

Zoryana Kisil*
Doctor of Law, Professor
Lviv State University of Internal Affairs
79007, 26 Horodotska Str., Lviv, Ukraine
https://orcid.org/0000-0003-1405-4547

Roman-Volodymyr Kisil
PhD in Law
Lviv State University of Internal Affairs
79007, 26 Horodotska Str., Lviv, Ukraine
https://orcid.org/0000-0003-2276-5250

Abstract. The armed aggression of the russian federation against Ukraine has significantly transformed both the nature and conditions of police duties. This necessitates an examination of the psychological factors influencing police officers' professional actions under martial law, in order to ensure their effectiveness, resilience to stress, and appropriate response to wartime threats. This study aimed to analyse the current state of scholarly research into the impact of psychological characteristics on police officers' professional performance in conditions of martial law. The research applied both general scientific and sector-specific methods, including systems analysis, the method of alternatives and grouping, structural-functional analysis, comparative analysis, and hermeneutics. A synthesis of a wide range of academic studies has revealed that police work under martial law is marked by psychological tension and specific risks associated with the execution of both shock-assault and search-and-assault operations in populated areas, as well as in mitigating the consequences of armed conflict or emergencies. As part of the study, a systematic analysis of academic research was conducted concerning the specifics of performing professional duties in extremely challenging conditions, closely resembling combat situations. The real and immediate threat to police officers' lives and health in such contexts leads to the severe depletion of their psychological resources, resulting in stress, depression, and emotional exhaustion. It was found that police officers, who carry out professional duties in locations where people have died, conduct exhumations, and document the atrocities committed by russian aggressors, are exposed to traumatic experiences that go beyond ordinary perceptions of life circumstances. Scholars emphasise that the psychological transformation of police officers during wartime affects the performance of their professional duties both directly and indirectly. The findings of this study may be used in future academic research on the topic and to develop practical recommendations aimed at reducing the impact of stressors on police officers' mental health, enhancing their self-control, improving decision-making in complex wartime conditions, and facilitating adaptation to rapidly changing combat environments

Keywords: stressor; psychological readiness; mental health; psycho-emotional tension; stressful and hazardous activity; extremity

Suggested Citation **Article's History**: Received: 08.03.2025 Revised: 02.05.2025 Accepted: 25.06.2025

Shvets, B., Kisil, Z., & Kisil, R.-V. (2025). Psychological specificity of police officers' professional actions under martial law. *Social & Legal Studios*, 8(2), 62-70. doi: 10.32518/sals2.2025.62.

*Corresponding author

Copyright © The Author(s). This is an open access Article distributed under the terms of the Creative Commons Attribution License 4.0 (https://creativecommons.org/licenses/by/4.0/)

Introduction

Professional activity under martial law exerts a profound influence on the lives and occupational sphere of police officers, at times manifesting in changes to their personal traits and qualities, established behavioural patterns, and the nature of their social interactions and relationships. Simultaneously, the transformation of an individual police officer during wartime affects the performance of professional duties both directly and indirectly. War imposes stricter demands not only on the professional knowledge, skills, and competencies of every officer but also on the deeper capacities of their personality and physical endurance, as well as on their integrity and strength of will. In such critical conditions, the ability to engage in effective "psychological processing" of both external and internal processes becomes especially important.

According to S. Boychuk (2022), during wartime, police officers often carry out their professional duties under conditions of complete or partial operational uncertainty. Their work frequently involves difficult and high-pressure situations, the development of which is extremely hard to predict but nevertheless requires appropriate and immediate responses. According to S. Boychuk (2022), the performance of police duties related to resisting the aggressor requires a high level of psychological adaptability, with tolerance of uncertainty being a particularly important factor. This refers to the ability of an individual to withstand unexpected and unpredictable circumstances, to make decisions in the absence of complete information, and to function without despair in unstructured and ambiguous situations where outcomes cannot be reliably anticipated.

R. Bera (2021) rightly notes that the challenging circumstances arising in the course of police officers' professional duties may lead to a sense of overwhelming pressure. These situations demand significant dedication, engagement, and the capacity to act decisively, which in turn becomes an additional source of emotional tension. This emotional strain is often accompanied by a diminished sense of personal security and balance and may trigger internal value conflicts. Prolonged exposure to such stress may result in chronic fatigue, reduced efficiency and quality of work, professional maladjustment, and, ultimately, resignation from police service.

According to O. Sklyar *et al.* (2022), stressors in the professional activity of police officers during wartime are often linked to critical life circumstances, prolonged traumatic experiences, and persistent problems that exert influence over extended periods. The authors emphasise that, since 2022, police officers have been constantly exposed to emotional strain while carrying out duties involving a high degree of danger. The principle of "continuity" in the performance of professional tasks under martial law is being fulfilled at 120%. O. Sklyar *et al.* (2022) note that police officers are consistently equipped with personal protective gear, remain armed, risk their health and lives, rescue civilians from under rubble, provide first aid, and face large numbers of armed individuals. Even routine emergency calls to line 102 are now considered high-risk situations. The exceptional conditions under which these duties are carried out – constant air raid alerts, the potential use of ballistic weapons against police personnel – contribute to physical exhaustion, psychological depletion, emotional and professional burnout, panic attacks, and other mental health issues. Consequently, certain psychological difficulties arise during service and the execution of professional tasks, including a decrease in professionalism and a general reduction in the desire to perform their duties.

According to Z. Kisil *et al.* (2019), police officers performing their duties during wartime constantly operate in a space between life and death. This reality often leads to the development of both acute and chronic PTSD, unmotivated affective reactions, and depression. N.C. Porter and P. Gavin (2024) rightly observe that police work represents an extremely demanding challenge, as organisational and operational stressors – constantly encountered by officers – have a detrimental effect on their mental health. In their study, the authors provide a comprehensive overview of stress factors directly associated with police work. Reflecting on the potential psychological transformations of police officers in wartime, M. Budanova (2023) notes that the duties of officers in the National Police of Ukraine are carried out in highly specific and psychologically intense conditions, with martial law itself serving as an objective source of strain. Beyond the typical psychological pressures, the full spectrum of wartime realities – experienced by all Ukrainian citizens – also affects the performance of police duties. In summarising findings from research into the psychological effects of armed conflict on law enforcement personnel, the researcher concludes that individual transformations among police officers may be both positive and negative. Some may contribute to professional growth, while others may present difficulties for future reintegration into peacetime service. Military operations have an objectively negative impact on the resilience and professional sphere of any individual, including law enforcement officers. This is reflected in changes to their personality traits and characteristics, familiar patterns of behaviour, and inherent modes of social interaction and relationships. The psychological metamorphoses experienced by contemporary police officers, both directly and indirectly, influence their ability to carry out professional duties, particularly in safeguarding the rights and freedoms of Ukrainian citizens.

M. Lohvynenko (2024) argues that police work is inextricably linked to the increasing diversity and scale of criminal activity, including organised and transnational crime, acts of terrorism, corruption, cybercrime, and arms trafficking. In Ukraine, the armed aggression of the russian federation has become an additional aggravating factor. These conditions have led to a rise in fatal incidents, injuries, trauma, disability, psychosomatic disorders, and suicidal behaviour among police officers. The rapid escalation in crime and violent incidents continually threatens the safety and well-being of police personnel while simultaneously increasing risks to their mental health and professional effectiveness.

H. Douglas and A. Gatens (2022) argue that within the context of high-pressure professional duties, police officers may at times experience psychological difficulties specifically linked to stress. Stigma surrounding mental health, entrenched masculinity within police culture that resists change, concerns over confidentiality, and time constraints all serve as barriers that discourage officers from seeking psychological support when dealing with stress. H. Douglas and A. Gatens (2022) rightly point out that, despite these challenges, many departments do offer a range of counselling services aimed at addressing such issues. They also note that professional training for police officers can aid in recognising the symptoms of stress and in strengthening their

resilience to stressors. The research conducted by H. Douglas and A. Gatens (2022) indicates that officers are significantly more likely to seek treatment when they feel encouraged and supported by their peers. Therefore, the development of a police community that does not judge or stigmatise mental health issues is essential.

The above review of scholarly contributions highlights the absence of in-depth, foundational research directly addressing the impact of psychological factors on police officers' professional conduct under martial law. In light of this, the present article aimed to analyse the influence of psychological specificity on the professional actions of police officers in wartime conditions.

To achieve this aim, a range of general and specialised research methods has been applied. The systems method was used to select and organise a body of relevant academic studies in line with the stated research focus. The descriptive method facilitated the exposition of key scholarly positions, outlining the findings and their theoretical significance. The comparative method enabled an analytical approach to synthesising previous research and made it possible to compare viewpoints and results. Grouping and systematisation methods supported the examination of how psychological factors influence professional behaviour among police officers under martial law. Finally, the method of synthesis was employed to formulate the study's conclusions.

Psychological specificity of police actions under martial law

The armed aggression of the russian federation against Ukraine has significantly heightened the demands placed on police professionalism, particularly their capacity to carry out duties under enemy fire, interact with large numbers of victims, endure prolonged emotional strain, and document the aftermath of war crimes. Following the Decree of the President of Ukraine No. 64 "On the Introduction of Martial Law in Ukraine" (2022), and in response to the military aggression of the russian federation, all structural units of the National Police of Ukraine are engaged in measures to repel the invader and safeguard the country's territorial integrity.

Since the first days of martial law, police officers have been performing their duties in all areas affected by enemy incursions, including towns, cities, and settlements liberated from occupation. Certain units of the National Police of Ukraine have taken part in the liberation of Ukrainian territories from the aggressor, while others carry out their tasks amid continuous mortar and artillery fire, consistently assisting affected civilians and documenting war crimes committed by russian forces. Police actions are conducted by their respective functions, often in territories located close to active combat zones.

Ukraine's Minister of Internal Affairs, I. Klymenko, notes that despite the concentration of a significant number of police officers on carrying out professional tasks related to the implementation and enforcement of martial law measures, the security situation in the country remains at an acceptable level (Department of Communication of the Ministry of Internal Affairs of Ukraine, 2024). This applies both to the overall crime situation and to the fight against criminal activity in specific regions. Police officers deal daily with the consequences of serious war crimes committed by russian forces against the civilian population of Ukraine. Minister Klymenko highlights that the majority of these crimes involve executions, the destruction of infrastructure, and the deaths of Ukrainian civilians as a result of artillery or air strikes (Klymenko revealed how…, 2024). In his view, all actions involving the killing of people or the destruction of infrastructure must be regarded as war crimes. From the earliest days of the full-scale invasion, officers of the National Police of Ukraine have been documenting war crimes in cooperation with their colleagues from the Security Service of Ukraine. The structural units of the National Police of Ukraine are deployed across the entire territory of the country, with additional security forces operating in areas close to the front line. As noted by I. Klymenko, the Ukrainian side possesses greater mobility for documenting all war crimes and has a larger number of personnel dedicated to this task. Every missile strike or shelling is recorded by police investigators and forensic experts. As of 10 November 2024, investigators from the National Police of Ukraine had initiated 135,147 criminal proceedings concerning crimes committed on Ukrainian territory by servicemen of the armed forces of the russian federation and their accomplices. According to the Office of the Prosecutor General (National Police of Ukraine, 2024a), since the beginning of the full-scale invasion, 16,847 crimes against Ukraine's national security have been documented, and 128,872 war crimes committed by the russian federation have been registered. According to juvenile prosecutors, as a result of Russian aggression, 1,812 children have been affected – including 537 killed and 1,275 injured or maimed to varying degrees. I. Klymenko states that approximately 70% of the war crimes documented by police officers are transferred to the SSU, the Office of the Prosecutor General, and the International Criminal Court (Klymenko revealed how…, 2024). The entire process is carried out rapidly and efficiently. In June 2024 alone, police officers recorded over 150,000 war crimes.

As early as the first days of the military invasion, police officers were already engaged in territorial defence tasks, as noted by S. Boychuk (2023). They operated in cities blockaded by russian federation forces, escorted humanitarian convoys, evacuated civilians, countered sabotage groups of russian aggressors, and provided essential assistance to the population.

The President of Ukraine has repeatedly commended Ukraine's police officers in uniform who, despite the war, manage to maintain internal security and bravely serve alongside other units of Ukraine's Security and Defence Forces. On the occasion of National Police Day, V. Zelenskyi praised the work of the police, emphasising their crucial role. He noted that the National Police of Ukraine evacuates civilians from front-line towns and villages and supports those under Russian shelling. Police officers are consistently among the first to arrive at the sites of missile and drone strikes, offering immediate assistance to all affected individuals (NPU Communication Department, 2024).

Performing duties in extremely difficult, combat-adjacent conditions – where there is a constant and tangible threat to life and health – significantly depletes police officers' psychological resources. As Boychuk (2023) rightly observes, the ongoing psychological pressure experienced by officers becomes a source of stress, depression, emotional, and mental exhaustion. Those working in areas where people have died, carrying out exhumations, and documenting atrocities committed by russian aggressors are exposed to traumatic experiences that surpass the limits of ordinary human perception.

The professional duties of police officers in areas near active combat zones are marked by a constant threat of enemy attacks and shelling, involving the use of lethal weapons and posing a continual risk to their lives (Maksymenko & Medvedev, 2018). While in peacetime scholars, such as O. Sashurina (2023) and R. Wijayanti and H. Fauzi (2020) referred to the potential for extreme circumstances in police work, under wartime conditions, such high-risk and dangerous situations have become the routine backdrop against which professional tasks are carried out.

Z. Kisil *et al.* (2019) identify a number of key determinants contributing to the extremity and riskiness of police duties – factors which may, at times, lead to the development of negative personality traits and professional distortion. These include: the high diversity of professional tasks; lack of order and inconsistency in available information sources (including the risk of misinformation); the need to maintain a high level of alertness and rapid concentration; irregular and often unpredictable working hours; restrictions on personal freedom; constant exposure to threats to life and safety (both physical and psychological); the potential use of firearms and protective equipment; ongoing threats – both psychological and physical – directed at officers and their families by offenders; difficult relationships with the individuals involved in their work; and psychological and emotional overload related to the nature of their duties.

According to N. Yarema and I. Pampura (2018), all the key characteristics inherent in police work during peacetime – such as a strong commitment to upholding the rule of law and protecting human rights and civil liberties; the need for rapid decision-making and high levels of accountability; the exercise of official authority; emotional intensity and psychological and physical strain; the presence of both organisational and extreme external factors; the complexity of those involved in professional interactions; tolerance for uncertainty; and the importance of teamwork within structural units – have remained under martial law, but have gained even greater significance and urgency.

In accordance with Paragraph 6 of Resolution No. 76 of the Cabinet of Ministers of Ukraine (2023), conscripts working in the National Police of Ukraine, in state authorities, and other governmental bodies are subject to reservation from mobilisation. At the same time, I. Klymenko notes that from the outset of the full-scale invasion, law enforcement officers have had to cope with additional responsibilities linked to their role in resisting and containing the enemy's armed aggression (Communications Department of the Ministry of Internal Affairs of Ukraine, 2023). Pursuant to Resolution No. 30 of the Cabinet of Ministers of Ukraine (2023), an interregional territorial body within the National Police of Ukraine was established – the United Assault Brigade of the National Police of Ukraine "Lyut" of the Special Purpose Police Department – with the status of a legal entity. The United Assault Brigade of the National Police of Ukraine "Lyut" currently comprises six thousand personnel.

The Head of the National Police of Ukraine, I. Vyhivskyi, stated that in order to fulfil combat missions aimed at repelling the aggressor's attacks, three brigades were established within the NPU, with a total authorised strength of eight thousand police officers. The first – the Consolidated Special Purpose Police Brigade – was formed based on the Department of Preventive Activities; the second – the Consolidated Brigade of the Patrol Police Department of Ukraine "Khyzhak"; and the third – the Consolidated Brigade of the Special Purpose Police Units "KORD" (National Police of Ukraine, 2024b).

The Minister of Internal Affairs, I. Klymenko, highlighting the specific nature of police activity under martial law, stressed that if one subtracts from the total 75,000 officers currently serving in the National Police of Ukraine those deployed to the front or likely to be sent, only 30,000 to 35,000 officers remain available to ensure public order, investigate crimes, and carry out all police functions across the entire country. He further stated that, should conditions on the frontline worsen, "we must all be prepared to take up arms" (Klymenko revealed how…, 2024).

Under wartime conditions, the quality of police officers' performance in carrying out their duties can often determine the fate, life, and health of individuals. War imposes harsh and uncompromising demands on members of Ukraine's Security and Defence Forces, compelling them to make extremely difficult decisions in the absence of sufficient time and information – where objective understanding of circumstances and accurate assessment of both one's own resources and the enemy's capabilities become critically important.

The position of V. Barko *et al.* (2022) is entirely valid, as they characterise police work as "an extremely stressful profession". They argue that the concept of "stress" in the context of police duties remains under-analysed by researchers, and that the impact of stress on police officers' tactical decision-making has yet to be sufficiently addressed through empirical research. Police work is marked by constant unpredictability and challenges, including acts of violence directed against law enforcement personnel. P. Galanis *et al.* (2021) describe incidents in which suspects threaten officers, actively resist arrest, physically assault them, or even open fire. L. Kryvoruchko *et al.* (2023) distinguish such incidents as "acute police stress", in contrast to "chronic police stress", noting that the latter has received far more attention in police studies than the former.

P. Galanis *et al.* (2021) argue that life-threatening situations, such as the use of firearms, are inherently stressful for police officers due to the "…unpredictability and uncontrollability of the environmental challenge". However, under martial law, for units regularly engaged in armed conflict, such situations may become more predictable and manageable. L. Kryvoruchko *et al.* (2023) reasonably observe that in wartime, life-threatening circumstances are perceived as stressful primarily when "…the burden is acute or chronically intolerable".

I. Okhrimenko *et al.* (2023) found that "…occupational stress among law enforcement personnel results from an imbalance between an individual's internal resources and the demands of the external environment, which manifest in the specific nature of police work". C. Porter and P. Gavin (2024) rightly note that "…organisational stress, operational stress, and the occupational impact of the job are negatively affecting most police officers. Even police officers who appear more resilient have reported difficulties with their mental health as a direct consequence of the job".

P. Gullon-Scott and L. Longstaff (2022), in the context of their study on levels of stress, anxiety, and depression among police officers in the United Kingdom, state that "… policing is considered a highly stressful role, and police officers are at risk of mental health issues during their service. The current results highlight significant levels of stress,

anxiety and depression in serving police officers. The most significant stressors reported were organisational issues such as fatigue, paperwork, need to stay in physical condition, not enough time with friends and family, lack of healthy eating, and shift work".

S. Stevelink *et al.* (2020), based on research involving over 40,000 police officers and staff in the United Kingdom, report that "...9.8% indicated probable depression, 8.5% reported probable anxiety, and 3.9% showed signs of probable post-traumatic stress disorder". A study of 16,857 officers and frontline staff in the United Kingdom, conducted by a team of sociologists from the University of Cambridge in collaboration with the charity Police Care UK, revealed that "...90% of police workers who responded had been exposed to trauma (Police Workforce, 2019). Of these, one in five reported experiencing either post-traumatic stress disorder or what's known as "complex PTSD" – yet over two-thirds of those suffering are unaware".

J. McCanney *et al.* (2022) note that, in relation to police work, "...compassion fatigue or depersonalisation is often associated with high-intensity careers such as policing". In their study, the researchers found that many officers reported becoming desensitised as a result of repeated exposure to trauma. Police officers frequently felt unable to engage with victims or offenders after spending extended periods in this line of work. In a survey conducted among officers in England and Wales, S. Charman and S. Bennett (2022) reported that 65% of respondents who voluntarily left the force cited "...the impact of the job on their personal life" as the reason. C. Porter·and R. Lee (2023) rightly observe that "...effective policing is essential for reducing crime and maintaining public safety. In carrying out their role, officers regularly encounter traumatic incidents. Without adequate support, the prolonged impact of such events can lead to the deterioration of officers' mental health. Due to police culture – particularly the stigma surrounding seeking help for mental health issues – many officers suffer in silence. This can result in serious mental health conditions, including depression, anxiety or post-traumatic stress disorder (PTSD)". P. Galanis *et al.* (2021) argue that "...police officers face significant work-related stressors and influences such as violence, occupational injuries, job pressure and demands, lack of support, physical threats in operational settings, long working hours, exhaustion and fatigue. Policing is a stressful and demanding profession, and officers are considered a high-risk group for mental health conditions such as post-traumatic stress disorder, anxiety disorders, depression, suicidal ideation, and behaviours".

A collective monograph edited by G. Katolyk (2022) expresses the view that law enforcement officers who are constantly exposed to stress factors often derive little satisfaction from their duties and are more prone to symptoms of psychosomatic illness and maladaptive behaviour (e.g. interpersonal conflict, social withdrawal, breaches of professional discipline, and the development of various addictions). These behaviours may intensify over time, as excessive workloads impair cognitive capacity, narrow worldviews, and reduce behavioural flexibility. Ongoing structural changes within law enforcement agencies, particularly under martial law, are also considered stress-inducing. In carrying out professional duties under hazardous and extreme conditions, police officers may experience negative consequences at physiological, emotional, and behavioural levels. In some cases, stress reactions may be immediate and short-lived, while in others they may gradually progress over time.

Under wartime conditions, S. Boychuk (2022) argues, an individual's readiness for change takes on exceptional significance in the professional actions of police officers and becomes a vital personal attribute that ensures survival in extreme and high-risk environments. This is because, under martial law, virtually every professional situation involves elements of uncertainty and unpredictability. O. Sklyar *et al.* (2022) contend that the psychological training of personnel within the National Police of Ukraine requires an innovative approach. According to the results of an oral survey conducted among police officers, many were not psychologically prepared for full-scale warfare in the country. Not all were able to make swift and appropriate decisions at the scene, and some were not ready to use lethal force or take another person's life. Most officers reportedly faced a psychological conflict: whether to act strictly in accordance with legal norms or to yield to overwhelming emotional pressure.

M. Budanova (2023) maintains that Military operations exert an objectively negative influence on the viability and professional environment of any individual, particularly law enforcement personnel. This impact manifests in changes to personal traits and qualities, established behavioural patterns, and the inherent nature of social relationships and interactions. M. Budanova (2023) rightly points out that the effects of martial law cause long-term physical and psychological harm to both children and adults, while also diminishing human and material capital. In her view, deaths resulting from military action are merely "the tip of the iceberg".

To comprehend the depth of the issues arising in the actions of police officers under martial law, it is first necessary to identify the unique stress factors involved, including:

1. Cumulative traumatic experience: police officers are constantly exposed to violence, tragedy, and death. While traumatic experience is an inherent part of their duties, it can, at times, have a cumulative psychological impact, potentially leading to post-traumatic stress disorder.

2. High-stakes decision-making: officers are frequently required to make rapid decisions in dangerous, life-threatening situations. The importance of these decisions and their potential consequences can prove extremely challenging.

3. Public scrutiny: in today's digital age, every action taken by police officers can be recorded and thoroughly examined. Operating under such constant surveillance adds an extra layer of stress – particularly when officers feel misunderstood or unfairly judged by society.

Z. Kisil *et al.* (2019) argue that the consequences of professional activity carried out under intense wartime stressors and the psychological trauma experienced by police officers often manifest in tragic forms. Without appropriate psychological support and intervention, stressors associated with operating in high-risk and extreme conditions may manifest in the following ways:

1. Substance abuse: some officers may turn to alcohol, narcotics or other psychoactive substances as a coping mechanism, which in turn can lead to addiction.

2. Depression: the prolonged impact of traumatic incidents, compounded by the internal pressures of law enforcement work, can sometimes result in a depressive state.

3. Burnout: a persistent sense of overload and a lack of adequate support may lead to burnout, characterised by emotional exhaustion, detachment, and diminished productivity.

4. Suicide: certain police officers may feel unable to escape their emotional pain and begin to contemplate suicide.

S. Dixon (2021) notes that numerous studies indicate that, due to the hazardous and stressful nature of their working environment, police officers are at particularly high risk of suicide. The researcher points out that the suicide rate among law enforcement officers is two to three times higher than that of the general population. At the same time, L. Rabbing *et al.* (2022) point out that police officers are constantly confronted with "...some of the most complex, traumatic, and horrific tragedies experienced and inflicted on people – events that most of the population are entirely unaware are taking place in society". P. Galanis *et al.* (2021) explain that officers "...may indeed arrive at work physically and psychologically healthy, but these atrocities can affect some officers more severely than others, leading to stress-related disorders, substance abuse, and sleep disturbances". A. Purba and E. Demou (2019), A. Maran *et al.* (2022), and D. Lawrence and V. Carleton (2023) argue that the stress-inducing nature of police work results in a range of negative psychological consequences, including post-traumatic stress disorder (PTSD), depression, anxiety, suicidal ideation, and psychological and emotional exhaustion. According to the authors, adverse behavioural outcomes include substance and alcohol abuse, uncontrolled displays of aggression and violence, family difficulties, and reduced professional performance (Violanti *et al.*, 2018).

M. Anoop (2023) argues that the challenges currently faced by police officers extend far beyond the realm of physical danger, which they encounter on a daily basis. In the researcher's view, psychological and emotional burdens can be equally hazardous. Acknowledging and addressing these issues is of critical importance for the personal well-being of police officers and for safeguarding the overall mental health of their departments. As society becomes increasingly aware of the importance of mental health, it is time for police departments to make it a central priority, ensuring protection for those who protect and serve.

Another aspect of police work that gains particular significance during wartime is the unique nature of performing professional duties on the boundary between life and death. R. Mukherjee (2022), in a scholarly study, emphasises that fear is an automatic response to a stimulus that triggers the brain's fight-or-flight mechanisms. When individuals anticipate future events within the context of negative scenarios, these thoughts provoke fear and heighten anxiety. The brain then produces harmful emotional hormones that affect both physical and mental health. At the same time, fear is a necessary emotion, serving as a defence mechanism against present risks and dangers. Moreover, R. Mukherjee (2022) considers it undeniable that being a police officer means risking one's life daily, with the constant threat of being injured or killed while performing professional duties.

O. Sklyar *et al.* (2022) rightly argue that war takes place not only on the front line – it also unfolds within each individual, affecting both physical and psychological states. At times, in the course of carrying out professional duties, something terrifying and unfamiliar to everyday life happens: explosions, air raid alerts, artillery shelling, mass casualties and deaths, among other things. According to the authors, such events leave individuals in shock, shaken by what they have witnessed and endured. The human mind instinctively refuses to accept such experiences as reality and instead attempts to interpret future trajectories, searching for answers to the question: "What lies ahead?" This triggers a survival response – an instinct for self-preservation – often accompanied by a state of numbness, sadness, or emotional paralysis. One police officer from the Main Department of the National Police in Kharkiv Region recalled in an interview: "I knew what I had to do when I heard the explosions and gunfire, but my body froze. My legs wouldn't move – only one thought kept echoing in my head: get up and run". After the initial shock, hours may pass before feelings of despair and horror set in. A kind of "psychological war" begins – an internal conflict with the personal ego and inner self – sparked by an emotional rebellion concerning one's identity under martial law. Questions arise: "Who am I?", "What should I do?", "What is my role?", "Should I use force or not?", and most critically, "What place does my identity occupy in this chaos?".

Under martial law, the actions of the National Police of Ukraine bring urgent attention to the need for enhanced psychological preparedness, ongoing psychological support for personnel, professional training, and cohesion in the execution of operational duties. To be effective in these conditions, police officers must possess a wide-ranging set of skills, including the ability to reassure the public by maintaining calm, and to carry out the duties outlined in Article 2 of the Law of Ukraine No. 580-VIII "On the National Police" (2015), even in the most challenging wartime circumstances. To uphold high standards of professional conduct while remaining psychologically resilient, police officers must demonstrate endurance and adaptability in the face of every challenge that their duties entail.

Conclusions

The present academic investigation aimed to conduct a systematic analysis of a broad range of literary sources – both comprehensive and monographic in nature – concerning the psychological specificity of police officers' professional conduct under martial law. Particular attention was paid to the impact of stress factors on their operational duties, as well as the theoretical and practical dimensions of servicerelated stress in policing. The study yielded results that provide a coherent understanding of the current state of scholarly inquiry on the subject and outline the principal directions for further research in this domain. At the same time, it enabled the organisation of empirical findings and allowed for the development of significant theoretical generalisations based on them.

In conclusion, it should be noted that this analysis of Ukrainian and international psychological scholarship confirms that police conduct under martial law represents an exceptionally complex professional challenge. It is marked by the severity of circumstances that must be documented and addressed, by actions carried out at the threshold between life and death, and by frequent contradictions in the expectations imposed upon police officers in such extreme conditions. The intense interaction of identified determinants – when combined with other factors and conditions such as the high-risk and extreme nature of professional duties, and the elevated level of responsibility for one's actions and their outcomes – consistently places police officers operating in extreme circumstances into a state of unprecedented psychological strain and critical testing of their individual capacities.

Theoretical research on policing has highlighted that the specific features of police activity under martial law

include the extreme nature of operational duties; the necessity of employing coercive policing measures; a consistently high level of stress; and the ability to make decisions under conditions of limited information, time constraints, and uncertainty. The daily execution of professional responsibilities by police officers is invariably accompanied by intense psycho-emotional tension, occupational risk, psychological trauma, and conflict-prone situations. The realities of war often intensify this pressure beyond conventional limits, as officers are required not only to confront crime within the country but also to engage directly in combat at the front. Further research should focus on a deeper understanding of the stress-inducing factors inherent in police work and on the development of practical recommendations aimed at enhancing officers' resilience to stress in wartime conditions.

Acknowledgements

None.

Funding

The study was not funded.

Conflict of interest

None.

References

[1] Anoop, M. (2023). *Mental health and officer well-being: A pressing concern for U.S. Police Departments*. Retrieved from https://www.linkedin.com/pulse/mental-health-officer-well-being-pressing-concern-us-police-menon.

[2] Barko, V.I., Boiko-Buzyl, Y., & Barko, V.V. (2022). Comparative analysis of psychographs of police officers by main types of official activity in the National Police of Ukraine. *Psychological Journal*, 8(1), 149-159. doi: 10.31108/1.2022.8.1.11.

[3] Bera, R. (2021). Stress in police officers' work and their styles of coping with difficult situations. *Resocjalizacja Polska*, 21, 207-226. doi: 10.22432/pjsr.2021.21.13.

[4] Boychuk, S.S. (2022). Readiness for change and tolerance for uncertainty in special police officers with different levels of vitality. In *Mental health of the individual in a crisis society: Collection of materials of the VII all-Ukrainian scientific-practical conference* (pp. 28-32). Lviv: Lviv. State University of Internal Affairs.

[5] Boychuk, S.S. (2023). *Self-regulation as a factor of the vitality of the personality of police officers of the Rapid Action Corps (KORD)*. (Doctoral dissertation, Kharkiv National University of Internal Affairs, Kharkiv, Ukraine).

[6] Budanova, M. (2023). Martial law and possible transformations of the policeman's personality. *Legal Psychology*, 1(32), 79-85. doi: 10.33270/03233201.79.

[7] Charman, S., & Bennett, S. (2022). Voluntary resignations from the police service: The impact of organisational and occupational stressors on organisational commitment. *Policing and Society*, 32(2), 159 -178. doi: 10.1080/10439463.2021.1891234.

[8] Communications Department of the Ministry of Internal Affairs of Ukraine. (2023). *Cases of russian war crimes are already in international courts*. Retrieved from https://surli.cc/bvhqxc.

[9] Decree of the President of Ukraine No. 64 "On the Introduction of Martial Law in Ukraine". (2022, February). Retrieved from https://zakon.rada.gov.ua/laws/show/64/2022#Text.

[10] Department of Communication of the Ministry of Internal Affairs of Ukraine. (2024). *Despite the war, the security situation in the country is maintained at the proper level.* Retrieved from https://mvs.gov.ua/news/igor-klimenko-popri-viinu-bezpekova-situaciia-v-derzavi-utrimujetsia-na-naleznomu-rivni.

[11] Dixon, S.S. (2021). Law enforcement suicide: The depth of the problem and best practices for suicide prevention strategies. *Aggression and Violent Behavior*, 61, article number 101649. doi: 10.1016/j.avb.2021.101649.

[12] Douglas, H.O., & Gatens, A. (2022). *Addressing police officer stress: Programs and practices*. Retrieved from https://icjia.illinois.gov/researchhub/articles/addressingpolice-officer-stress-programs-and-practices.

[13] Galanis, P., Fragkou, D., & Katsoulas, T.A. (2021). Risk factors for stress among police officers: A systematic literature review. *Work*, 68(4), 1255-1272. doi: 10.3233/WOR-213455.

[14] Gullon-Scott, P., & Longstaff, L. (2022). The prevalence of depression, anxiety, stress and their relationship to length of service in the UK police force. *The Police Journal*, 97(1), 131-149. doi: 10.1177/0032258X221140813.

[15] Katolyk, G. (Ed.). (2022). *The existence of fear of life and death in modern realities: Multimodal and multicultural aspects (theoretical and psychotherapeutic experience)*. Lviv: Misioner.

[16] Kisil, Z.R., *et al.* (2019). *Psychological factors of professional stress of employees of the national police of Ukraine: Legal scholarly discussions in the XXI century*. Lviv-Toruń: Liha-Pres.

[17] Klymenko revealed how many police officers are participating in the war with russia. (2024). Retrieved from https://www.slovoidilo.ua/2024/04/13/novyna/bezpeka/klymenko-rozpoviv-skilky-policejskyx-bere-uchast-vijni-rosiyeyu.

[18] Kryvoruchko, L., Pylyp, V., & Makarova, O. (2023). Activities of Ukraine law enforcement agencies to ensure the rights and freedoms of citizens during martial law. *Amazonia Investiga*, 12(64), 228-236. doi: 10.34069/AI/2023.64.04.22.

[19] Law of Ukraine No. 580-VIII "On the National Police". (2015, July). Retrieved from https://zakon.rada.gov.ua/laws/show/580-19#Text.

[20] Lawrence, D.S., & Carleton, B. (2023). *Work and life stressors of law enforcement personnel*. Arlington: CNA Corporation.

[21] Lohvynenko, M. (2024). Best practices in police personal security: A systematic review. *Scientific Journal of the National Academy of Internal Affairs*, 29(2), 67-76. doi: 10.56215/naia-herald/2.2024.67.

[22] Maksymenko, S.D., & Medvedev, V.S. (2018). *Legal psychology*. Kyiv: Publishing House "Slovo".

[23] Maran, D.A., Magnavita, N., & Garbarino, S. (2022). Identifying organizational stressors that could be a source of discomfort in police officers: A thematic review. *International Journal of Environmental Research and Public Health*, 19(6), article number 3720. doi: 10.3390/ijerph19063720.

[24] McCanney, J., Taylor, J.C., & Morris, K. (2022). Professionalising the police pragmatically. *The Police Journal*, 97(1), 18-40. doi: 10.1177/0032258X221128401.

[25] Mukherjee, R. (2022). *Fear and its impact on our lives*. Retrieved from https://www.wisdomtimes.com/blog/fear-and-its-impact-on-our-live.

[26] National Police of Ukraine. (2024a). *Crimes committed by the Russian military during the full-scale invasion of Ukraine (as of 10.11.2024)*. Retrieved from https://galinfo.com.ua/news/zlochyny_vchyneni_viyskovymy_rf_pid_chas_povnomasshtabnogo_vtorgnennya_v_ukrainu_426420.html.

[27] National Police of Ukraine. (2024b). *Newly formed rifle brigades of the National Police of Ukraine have begun combat training*. Retrieved from https://mvs.gov.ua/news/novostvoreni-strilecki-brigadi-nacionalnoyi-policiia-ukrayini-rozpocali-boiovu-pidgotovku.

[28] NPU Communication Department. (2024). *On the occasion of the National Police Day, President Volodymyr Zelenskyy praised police officers*. Retrieved from https://cyberpolice.gov.ua/news/do-dnya-naczpolicziyi-prezydent-volodymyr-zelenskyj-vidznachyv-policzejskyx-5968/.

[29] Okhrimenko, I.M., Barko, V.V., Vavryk, L.V., Chornous, V.D., Okhrimenko, S.S., Aleksandrov, Y.V., & Onishchuk, L.M. (2023). The impact of professional stress on the mental health of law enforcement officers. *Wiadomosci Lekarskie*, 76(6), 1428-1435. doi: 10.36740/WLek202306115.

[30] Police workforce: Almost one in five suffer with a form of PTSD: University of Cambridge 2019. (2019). Retrieved from https://www.cam.ac.uk/policeptsd.

[31] Porter, N.C., & Gavin, P. (2024). Constant pressures from all angles': Understanding the mental health of UK police officers. *The Police Journal: Theory, Practice and Principles*, 98(2), 306-323. doi: 10.1177/0032258X24128021.

[32] Purba, A., & Demou, E. (2019). The relationship between organisational stressors and mental wellbeing within police officers: A systematic review. *BMC Public Health*, 19, article number 1286. doi: 10.1186/s12889-019-7609-0.

[33] Rabbing, L., Bjørkelo, B., Fostervold, K.I., Strømme, H., & Lau, B. (2022). A scoping review of stress measurements and psychometry in police research. *Journal of Police and Criminal Psychology*, 37, 457-482. doi: 10.1007/s11896-022-09498-7.

[34] Resolution of the Cabinet of Ministers of Ukraine No. 30 "On the Establishment of a Territorial Body of the National Police". (2023, November). Retrieved from https://zakon.rada.gov.ua/laws/show/30-2023-%D0%BF#Text.

[35] Sashurina, O.Yu. (2023). Professional deformation of employees of the National Police of Ukraine: A practice-oriented approach. *South Ukrainian Legal Journal*, 2, 114-123. doi: 10.32850/sulj.2023.2.19.

[36] Sklyar, O.S., Boyko, H.O., & Syzykhin, S.V. (2022). The importance of psychological training of police officers for solving tactical and operational tasks under martial law. In *Training of law enforcement officers in the system of the Ministry of Internal Affairs of Ukraine under martial law* (pp. 255-258). Kharkiv: KhNUVS.

[37] Stevelink, S.A, Opie, E, Pernet, D., Gao, H., Elliott, P., Wessely, S., Fear, N., Hotopf, T., & Greenberg, N. (2020). Probable PTSD, depression and anxiety in 40,299 UK police officers and staff: Prevalence, risk factors and associations with blood pressure. *Plos One*, 15(11), article number e0240902. doi: 10.1371/journal.pone.0240902.

[38] Violanti, J.M., Ma, C.C., Mnatsakanova, A., Fekedulegn, D., Hartley, T.A., Gu, J.K., & Andrew, M.E. (2018). Associations between police work stressors and posttraumatic stress disorder symptoms: Examining the moderating effects of coping. *Journal of Police and Criminal Psychology*, 33, 271-282. doi: 10.1007/s11896-018-9276-y.

[39] Wijayanti, R.Y., & Fauzi, H.B. (2020). Factors affecting the work stress of police officers: A systematic review. *Psycho Idea*, 18(2), 115-123. doi: 10.30595/psychoidea.v18i2.6861.

[40] Yarema, N.Yu., & Pampura, I.I. (2018). Psychological analysis of the professional activities of special forces police. *Psychological Journal*, 5(15), 252-266. doi: 10.31108/1.2018.5.15.16.

Психологічна специфіка виконання професійних дій співробітниками поліції за умов воєнного стану

Дмитро Швець
Доктор юридичних наук, професор
Львівський державний університет внутрішніх справ
79007, вул. Городоцька, 26, м. Львів, Україна
https://orcid.org/0000-0002-1999-9956

Зоряна Кісіль
Доктор юридичних наук, професор
Львівський державний університет внутрішніх справ
79007, вул. Городоцька, 26, м. Львів, Україна
https://orcid.org/0000-0003-1405-4547

Роман-Володимир Кісіль
Кандидат юридичних наук
Львівський державний університет внутрішніх справ
79007, вул. Городоцька, 26, м. Львів, Україна
https://orcid.org/0000-0003-2276-5250

Анотація. Збройна агресія рф проти України суттєво трансформувала характер та умови виконання поліцейських обов'язків, що зумовлює необхідність дослідження психологічних особливостей реалізації професійних завдань співробітниками поліції в умовах воєнного стану для забезпечення їхньої ефективності, стресостійкості та адекватного реагування на загрози воєнного часу. Мета дослідження полягала у тому, щоб здійснити аналіз стану наукових досліджень проблематики впливу психологічної специфіки на професійні дії співробітників поліції за умов воєнного стану. У площині наукової розвідки використано загальнонаукові й галузеві методи, зокрема, системний, метод альтернатив та групування, структурно-функціональний, порівняння та герменевтичний. Узагальнення широкого кола наукових розвідок допомогло встановити, що професійним діям співробітників поліції за умов воєнного стану притаманне психологічне напруження і специфічний ризик, пов'язаний з реалізацією як ударно-штурмових так і ударно-пошукових операцій у населених пунктах; в усуненні наслідків збройного конфлікту чи надзвичайних обставин. В контексті дослідження проведено системний аналіз наукових досліджень стосовно специфіки здійснення професійних дій у вкрай складних, максимально наближених до бойових ситуацій, коли існуюча реальна загроза життю та здоров'ю поліцейських, спричиняє значне виснаження їх психологічних ресурсів, що є джерелом стресу, депресії, емоційного виснаження. Встановлено, що співробітники поліції, котрі реалізовуючи професійні учини у місцях гибелі людей, здійснюючи ексгумації, документуючи звірства російських агресорів, отримують важкий досвід, котрий переходить межі ординарного сприйняття життєвих обставин. Ученими констатується, що трансформації особи поліцейського за умов війни як безпосередньо, так й опосередковано чинять вплив на реалізацію ними професійних дій. Результати наукового дослідження можуть бути застосовані для подальших наукових досліджень із позиціонованої проблематики, а також задля розроблення практичних рекомендації щодо зниження рівня впливу стрес-факторів на психічне здоров'я співробітників поліції; підвищення ступеня їхнього самоконтролю; поліпшення якості прийняття рішень за складних воєнних ситуацій; полегшення адаптаційних процесів до швидко мінливих умов бойових дій

Ключові слова: стрес-фактор; психологічна готовність; психічне здоров'я; психоемоційна напруженість; стресогенна й небезпечна діяльність; екстремальність

UDC 347.94
DOI: 10.32518/sals2.2025.71

Соціально-правові студії. 2025. Т. 8, № 2
Social & Legal Studios. 2025. Vol. 8, No. 2

Comparative analysis of the organisational and legal frameworks governing the economic activities of religious organisations

Dinara Osmonova*
Doctor of Philosophical Sciences, Professor
Jusup Balasagyn Kyrgyz National University
720033, 101 Manas Str., Bishkek, Kyrgyz Republic
https://orcid.org/0000-0001-9443-7390

Pavel Bochkov
PhD in Law, Associate Professor
Interregional Academy of Personnel Management
03039, 2 Frometivska Str., Kyiv, Ukraine
https://orcid.org/0000-0002-3218-6706

Almasbek Kanaev
Doctor of Political Science, Professor
Kyrgyz-Kazakh University
720082, 159 Arstanbap Str., Bishkek, Kyrgyz Republic
https://orcid.org/0009-0004-4622-0305

Ulan Sharshenaliev
PhD in Philosophical Sciences, Associate Professor
Jusup Balasagyn Kyrgyz National University
720033, 101 Manas Str., Bishkek, Kyrgyz Republic
https://orcid.org/0009-0002-4685-1815

Nurbolot Bekmatov
Senior Lecturer
Jusup Balasagyn Kyrgyz National University
720033, 101 Manas Str., Bishkek, Kyrgyz Republic
https://orcid.org/0009-0006-8257-3380

Abstract. The study is relevant due to limited research on the economic role of religious organisations in Central Asia and Ukraine, where restrictive legal frameworks hinder their economic activities despite their significant social impact. This study aimed to analyse the organisational and legal aspects of the economic activities of religious organisations in Kyrgyzstan, with a focus on identifying existing problems and proposing solutions within the framework of existing legal norms. The methodology was based on the analysis of existing legal acts, legal doctrines, as well as empirical data and statistical materials on the activities of religious organisations published by national governments. The study also conducted a comparative analysis of the legal systems of Central Asian countries (Kyrgyzstan, Kazakhstan, and Uzbekistan) and Ukraine, which allowed us to identify specific features in the approaches to regulating this area. Among the main findings were the key problems faced by religious organisations in conducting their business activities, such as difficulties in legal regulation, insufficient protection of legal interests, as well as administrative and tax barriers. The study also emphasised the importance of developing mechanisms for raising legal awareness and protecting the interests of religious organisations at all levels of state and public life. The study provides specific recommendations to improve legislation and regulation, enhancing the economic efficiency and social impact of religious organisations in Kyrgyzstan

Keywords: economic activity; legal acts; institutional structures; financial management; confessions

Suggested Citation

Article's History: Received: 18.02.2025 Revised: 24.06.2025 Accepted: 25.06.2025

Osmonova, D., Bochkov, P., Kanaev, A., Sharshenaliev, U., & Bekmatov, N. (2025). Comparative analysis of the organisational and legal frameworks governing the economic activities of religious organisations. *Social & Legal Studios*, 8(2), 71-83. doi: 10.32518/sals2.2025.71.

*Corresponding author

Copyright © The Author(s). This is an open access Article distributed under the terms of the Creative Commons Attribution License 4.0 (https://creativecommons.org/licenses/by/4.0/)

Introduction

Religious organisations occupy a special place in modern society, combining spiritual, social, and cultural aspects of people's lives. However, their role in the economic sphere remains insufficiently studied. Although religious organisations perform socially significant functions – providing assistance to those in need, as well as contributing to education and cultural development – their participation in economic activity often encounters restrictions and misunderstandings. These barriers arise from both legal frameworks and societal perceptions, where the economic involvement of religious institutions is viewed ambiguously.

This issue is particularly acute in Central Asian countries such as Kyrgyzstan, Kazakhstan, and Uzbekistan, where the secular nature of the state clashes with the traditional religiosity of society. In these countries, religious organisations are compelled to adapt to varying legislative conditions, which frequently impose constraints on their economic activity. A similar situation exists in Ukraine, where the legal framework governing religious organisations is undergoing active reform but still contains significant gaps. Consequently, there is a clear need for a comprehensive study of legislative approaches to regulating the economic activities of religious organisations across different countries, which defines the relevance of this research.

A number of other researchers, such as I. Iskakova *et al.* (2023) and H. Choi (2024), have examined the legal aspects of religious freedom in Central Asia. Their studies emphasised that legislative restrictions are frequently linked to concerns regarding the potential political influence of religious structures. At the same time, research by Western scholars – such as the work of V. Hudson and L.N. Leustean (2022), which analysed the transformation of religious organisations' activities in Eastern Europe and Central Asia – demonstrates that balanced legislation enables these organisations to operate effectively without undermining the principles of secularism.

For some researchers, a particularly complex issue lies in analysing the legal regulation of the economic activities of religious organisations while accounting for state intervention and the specific characteristics of religious diversity in Central Asia. T. Bonacker and P. Lottholz (2022), along with E. Rodriguez (2023), focus on the challenges surrounding the interaction between the state and religion in post-Soviet countries, highlighting those transformations in Central Asia are often accompanied by increased state control over religious organisations. This heightened control has a significant impact on their economic activities. In particular, it is noted that such organisations frequently encounter bureaucratic barriers that restrict their ability to develop educational, charitable, and other social initiatives, which, in fact, constitute the foundation of their economic activity.

One of the key problems is limited access to resources and uneven state funding, as discussed by N. Perez (2020b), who studies the mechanisms of financing religious associations and their impact on compliance with the principles of equality and non-discrimination. The author points out that state support, especially in the case of privileged denominations, can increase economic inequality between religious organisations and limit their autonomy. This is especially true for the countries of Central Asia, where religious organisations often play an important role in the local economy, but their economic activities are regulated at the national level with an emphasis on control rather than support.

An important place is occupied by the problem of protecting civil and political rights in the context of the activities of religious organisations, which is considered by A. Dossanova and Zh. Iskakova (2024). The study emphasises that in the countries of the region, legal restrictions often remain that hinder the equal participation of religious organisations in economic life. Similar conclusions are made by E. Rodriguez (2023), who points out that strict restrictions on the economic activities of religious organisations are often due to state concerns about their potential influence on the political situation, which creates an imbalance in the legislation.

The broad context of the interaction of religion, national identity and economic activity is also raised by G. Shani and T. Kibe (2021) and L. Doney *et al.* (2024). These studies emphasize that religious organisations can play an important role in economic development through the mobilisation of local community resources and the development of educational and social projects. However, as the researcher notes, the economic activity of such organisations may be limited due to the lack of unified approaches to regulating their activities at the legislative level.

Based on the analysis of existing studies, it can be concluded that the scientific literature has already addressed issues related to the legal regulation and state support of religious organisations. However, aspects such as institutional support for their business activities, assessment of their contribution to local economies, and interaction with commercial structures remain insufficiently explored. Furthermore, there is a lack of detailed comparative studies that would enable the identification of best practices in legal support for the business activities of religious organisations in the countries of Central Asia and beyond. These gaps represent key areas that warrant further investigation within the scope of this research.

The purpose of this study was to analyse and compare the organisational and legal mechanisms governing the business activities of religious organisations across various legal systems, with the aim of identifying their specific features and shortcomings. To achieve this, the study set out the following objectives: to examine the legal foundations of the business activities of religious organisations; to analyse approaches to the organisational and legal support of such activities in different countries; to identify similarities and differences in regulatory frameworks; and to assess the impact of legal norms on the effectiveness of the business activities of religious organisations.

Materials and methods

The study of the organisational and legal support for the economic activities of religious organisations was conducted with consideration of the legal, socio-economic, and cultural characteristics of the countries of Central Asia and Ukraine. The research included an analysis of legislation and statistical data relevant to this topic. In the course of the study, regulatory documents governing the economic activities of religious organisations were collected and analysed in Kyrgyzstan (Law of the Kyrgyz Republic No. 282, 2008; Concept of State…, 2021), Kazakhstan (Law of the Republic of Kazakhstan No. 483-IV, 2011; Comprehensive Plan for the…, 2020), Uzbekistan (Law of the Republic of Uzbekistan No. LRU-699, 2021), and Ukraine (Law of Ukraine No. 987-XII…, 2025). For this purpose, both national laws and

regulations, as well as international agreements ratified by these countries – such as the International Covenant on Civil and Political Rights (1966) and the Convention of the Commonwealth of Independent States on Human Rights and Fundamental Freedoms (1995) – were utilised. Particular attention was given to provisions related to taxation, property rights, the possibility of receiving financial support from the state, and restrictions on participation in commercial activities.

Statistical data on taxes paid by religious organisations for their commercial activities revealed significant variation across the studied countries. According to reports from National Statistical Committee of the Kyrgyz Republic (2024) and annual report of the United States Commission on International Religious Freedom (2023), religious organisations in Kyrgyzstan and Kazakhstan contribute modest but growing amounts of tax revenue through entrepreneurial ventures, facilitated by relatively flexible legislation such as the Law of the Kyrgyz Republic No. 282 "On Freedom of Religion and Religious Organisations" (2008) and the Law of the Republic of Kazakhstan No. 483-IV. "On Religious Activities and Religious Associations" (2011), which explicitly allow limited commercial activity aligned with charitable purposes. Conversely, in Uzbekistan and Tajikistan, stricter laws like Uzbekistan's Law No. LRU-699 (2021) largely prohibit such economic participation, resulting in negligible tax contributions and frequent legal disputes. Judicial materials, including Administrative Case No. 45/2021 in Uzbekistan, demonstrated conflicts arising from alleged violations of economic regulations by religious organisations, reflecting tensions between state economic interests and religious entities' attempts to engage in commerce. These cases highlighted challenges in balancing regulatory control with protecting the economic rights of religious organisations under national and international law.

Subsequently, a comparative analysis of legislative approaches was conducted. The methodology involved comparing key provisions of legal regulation across the selected countries, examining their practical application and their impact on religious organisations. The control criteria included the extent of participation permitted for religious organisations in economic activities, the transparency of legal regulation, and the degree of compliance with the principles of secularism and religious freedom.

The study was grounded in an examination of practical examples of the participation of religious organisations in economic activities. To this end, information was gathered from open sources, including official reports from government agencies, data from international organisations, and publications covering the activities of religious institutions. Reports from the International Center for Interfaith Dialogue (Dzhumabekov, 2021) were utilised, providing insights into regional challenges, including the threat of extremism, which is linked to the role of religious organisations in promoting stability. In addition, the Human Rights Watch (2023) was consulted, addressing issues of freedom of expression and assembly in the countries of the region. The study also incorporated statistical data provided by national statistical agencies (National Statistical Committee…, 2024), along with reports from foreign organisations, such as the United States Commission on International Religious Freedom (2023). These sources enabled a quantitative assessment of the scale of the economic activities of religious organisations, their contribution to national economies, and their influence on social processes.

Results and Discussion

Fundamentals of the economic activity of religious organisations in Kyrgyzstan, Kazakhstan, and Uzbekistan. The organisational, legal, and tax aspects of the activities of religious organisations in Kyrgyzstan are fundamental to the proper regulation of their economic engagement, particularly in the context of the country's continually evolving socio-economic landscape. Although religious organisations are primarily oriented towards non-material goals, they are permitted to engage in entrepreneurial activities, provided that such actions are strictly regulated by law and align with the objectives set out in their charters. One of the principal legislative acts governing the activities of religious organisations in Kyrgyzstan is the Law of the Kyrgyz Republic No. 282 (2008). This law outlines the procedures for the registration of religious organisations, defines their rights and obligations, and sets limitations on the types of activities in which they may engage. It stipulates that religious organisation must not derive profit in a manner that contradicts their religious purposes, although it allows for certain economic activities that support their operation and contribute to charitable and educational missions (Concept of State…, 2021).

The Tax Code of the Kyrgyz Republic (2022) provides specific tax regulations for non-profit organisations, including religious ones, on the condition that their activities are directed towards public benefit and do not pursue profit-making goals. Notably, religious organisations involved in charitable work, education, and social assistance may be eligible for tax benefits, such as exemptions from income tax and value-added tax (VAT), provided their operations do not result in profit but instead aim to enhance public welfare and address social issues. This framework enables religious organisations to allocate resources more efficiently towards the implementation of social initiatives and the provision of support to those in need, without incurring tax liabilities on the funds received (Dzhumabekov, 2021).

However, in practice, not all religious organisations are able to take advantage of these tax benefits. One of the key challenges lies in the requirement to confirm non-profit status, which involves additional bureaucratic procedures (Comprehensive Plan for the…, 2020). Religious organisations must demonstrate that their activities are not commercially driven and are consistent with the social objectives outlined by law. For instance, in order to qualify for tax exemptions, they are required to provide evidence that income is not used for personal enrichment or commercial purposes. This necessitates meticulous financial reporting and regular audits by tax authorities (Tungatova *et al.*, 2023).

A notable example of the successful utilisation of tax incentives can be found in the activities of several mosques and temples in Bishkek and other major cities in Kyrgyzstan. For example, the Al-Nur Mosque established an educational centre that offers courses in the fundamentals of religion and hosts youth events aimed at improving the social climate in the community. This project was fully financed through income generated from property rentals and the sale of religious literature. By receiving tax incentives and support from local authorities, the religious organisation was able to effectively implement its social programme and deliver added value to the local population by enhancing access to education and religious knowledge (Durrani & Thibault, 2024; National Statistical Committee…, 2024).

Another example is the organisation of pilgrimages for the faithful, which constitutes a significant component of many religious organisations' activities. Pilgrimages contribute not only to spiritual growth but also to the development of domestic tourism. In many instances, such organisations arrange travel and offer associated services, including accommodation and catering, thereby generating additional income to support their operations. It is important to emphasise that, in order for such activities to remain lawful, religious organisations must ensure that any profits obtained are strictly allocated to social and charitable initiatives (Iskakova *et al.*, 2023).

Social entrepreneurship is becoming increasingly prevalent among religious organisations in Kyrgyzstan. This trend reflects a growing interest in addressing social challenges through initiatives aimed at enhancing societal well-being and fostering local economic development. Leveraging their strong ties within local communities, religious organisations are well-positioned to implement projects targeting issues such as unemployment, poverty, and education (Law of the Republic of Uzbekistan No. LRU-699, 2021). Notable examples of successful social projects include the establishment of educational courses, vocational training programmes for the unemployed, and initiatives related to environmental protection and the promotion of human rights (Tse *et al.*, 2023; Zharovska, 2023).

One prominent example is the creation of a network of educational centres organised by religious organisations across several regions of the country. These centres offer free education for both children and adults, along with training programmes in professions that are in demand in the labour market. Such initiatives yield positive social outcomes, contributing to the reduction of unemployment and poverty in specific regions (Report of the United States…, 2024). It is important to note that the successful implementation of these initiatives often depends on support from the state and private donors. This underscores the significance of cooperation between religious organisations and governmental bodies in achieving sustainable development goals (Hunter, 2001).

Despite their successes in the realm of social entrepreneurship, religious organisations face several challenges. One of the primary difficulties involves the need to comply with complex tax and legal regulations, which can be particularly burdensome for organisations engaged in charitable and social support activities. Furthermore, limited awareness of the legal opportunities for tax incentives means that many organisations fail to take full advantage of available benefits, thereby constraining their potential (Tungatova *et al.*, 2023). Another persistent issue is the absence of a clear and consistent practice for confirming the non-profit status of religious organisations. Some organisations encounter challenges in registering and documenting their activities, which demands considerable time and effort, ultimately hindering the development and implementation of their social projects (Perez, 2020a).

An analysis of legislation and statistical data indicates that religious organisations in Kyrgyzstan and Kazakhstan have greater opportunities for engaging in business activities than those in Uzbekistan or Turkmenistan. The study by P. Bochkov (2023) confirms that the economic activity of religious organisations is closely linked to the availability of preferential tax treatment, which serves as an incentive for their involvement in socio-economic projects. P. Bochkov's research provides a detailed examination of the administrative and legal aspects of religious organisations' participation in economic activities. He emphasises that effective legislative regulation not only fosters the development of religious organisations but also contributes to the enhancement of social stability. His study identifies fundamental principles underlying the economic activity of such organisations, including transparency, feasibility, and alignment with the specific nature of their religious mission.

Religious organisations in Central Asia are not confined to spiritual activities alone; rather, they are increasingly engaged in the economic life of their respective regions (Auanasova *et al.*, 2025). The growing share of income derived from rent and agriculture may be attributed to expanding opportunities for commercial development. These include, for example, the allocation of land for agricultural purposes, the leasing of real estate for religious activities, and other economic initiatives. This trend is corroborated by the research of M.B. Olcott (2016), who noted that many religious organisations have begun to implement social and educational programmes, raising funds through the establishment of training centres and the organisation of seminars.

As a result of their active participation in economic activities, religious organisations exert a significant influence on local economies, particularly in rural areas, where their social role is often highly pronounced. In some regions of Kyrgyzstan, religious organisations function as key centres of social support and education for local residents. This is largely due to the fact that many religious institutions provide educational and medical services and offer assistance to disadvantaged populations. Such involvement not only enhances their social standing but also contributes to the improvement of the economic situation in these regions.

Legislation and government regulation of religious activity in Central Asia. Legislative changes governing the activities of religious organisations play a crucial role in determining their ability to engage in economic activities. Research by S. Schier-Happell (2021) indicates that in Kyrgyzstan and Kazakhstan, there has been a noticeable trend towards the liberalisation of legislation concerning religious organisations over the past decade. The legalisation of economic activities by religious associations has been partly driven by the need to enhance their financial independence, particularly in the context of recurring economic crises. In contrast, in Uzbekistan and Tajikistan – despite certain initiatives aimed at reforming religious policy – significant legislative barriers for religious organisations persist (United States Commission on International Religious Freedom, 2023).

The legislative frameworks governing the activities of religious organisations in Kyrgyzstan, Kazakhstan, Uzbekistan, Tajikistan, and Ukraine exhibit significant variations in terms of regulatory scope, terminology, and the extent to which economic activities are permitted, reflecting distinct approaches to balancing religious freedom with state oversight. In Law of the Kyrgyz Republic No. 282 (2008) explicitly defines the boundaries within which religious entities may engage in economic activities. Article 15 of this law stipulates that religious organisations may undertake entrepreneurial activities only insofar as these do not contradict their spiritual objectives and must primarily support charitable, educational, and social initiatives. The terminology used emphasises the non-commercial nature of permissible activities, reinforcing the concept of religious organisations as

primarily non-profit entities. This legal framework affords a relatively liberal stance, allowing for the development of social entrepreneurship, as further reinforced by tax provisions that exempt such organisations from income and value-added taxes, provided their activities serve the public good.

Kazakhstan's legislative environment aligns closely with Kyrgyzstan's approach. The Law of the Republic of Kazakhstan No. 483-IV (2011) similarly restricts economic activities to those that align with the organisation's religious mission and public benefit goals. Article 12 highlights the state's recognition of religious organisations' rights to own property and engage in economic undertakings that finance charitable and educational programs. Terminology such as "public benefit" and "non-profit" is consistently applied, underscoring the socio-economic role assigned to these organisations. Kazakhstan's tax code complements this framework by offering incentives and exemptions for qualifying religious entities, thus encouraging economic participation within clearly defined legal limits.

Uzbekistan's regulatory framework is more restrictive. The Law of the Uzbekistan "On Freedom of Conscience and Religious Organisations" (2020) imposes stringent limitations on the economic engagements of religious groups. Article 27 explicitly prohibits religious organisations from owning land or participating in profit-making enterprises. The terminology here is markedly restrictive, framing religious organisations predominantly as spiritual entities devoid of significant economic functions. The law also establishes rigorous registration and reporting requirements, coupled with tight government oversight mechanisms, which together create substantial bureaucratic barriers to economic activity. These provisions reflect a state policy that prioritises control and oversight over facilitation of religious economic initiatives.

Ukraine presents a more nuanced regulatory landscape with its Law of Ukraine No. 987-XII (2025). Article 34 permits religious organisations to conduct entrepreneurial activities so long as these align with their declared missions and do not conflict with their charters. The law is notable for its recognition of the right to own property, including places of worship, educational institutions, and social service facilities. Articles 36 and 37 establish detailed financial oversight provisions aimed at preventing misuse of funds, reflecting a balance between economic freedom and regulatory control. The terminology used such as "entrepreneurial activities," "public benefit," and "charitable work" highlights the multifaceted role of religious organisations in both spiritual and socio-economic spheres. Ukraine's regulatory approach is further distinguished by a comprehensive subsidy system, enabling significant financial independence and expansion of social initiatives.

Kyrgyzstan and Kazakhstan adopt more liberal terminologies and frameworks that facilitate economic engagement, often framing religious organisations as active social entrepreneurs with permissible economic roles. In contrast, Uzbekistan and Tajikistan's legislation employ restrictive terminology emphasising control, supervision, and limitation of economic activities. Ukraine's legislation strikes a middle ground, offering legal recognition and financial autonomy while imposing robust financial controls in response to its specific political context.

These legislative divergences underscore the broader geopolitical and socio-economic dynamics shaping state-religion relations in the region. The more flexible frameworks in Kyrgyzstan and Kazakhstan correspond with policies aimed at supporting religious organisations as contributors to social welfare and economic development. Conversely, the restrictive regimes in Uzbekistan and Tajikistan reflect a precautionary stance prioritising state security and control over religious entities (Khamzin *et al.*, 2022). Ukraine's distinct context, marked by ongoing conflict and political sensitivity, shapes a regulatory environment that balances economic freedoms with stringent oversight (Berdar, 2023).

One significant barrier is stringent state control over the financing of religious organisations. In Tajikistan, all religious organisations must register and undergo strict government oversight, greatly limiting their economic activities. Nonetheless, L. Doney *et al.* (2024) highlight that despite these constraints, religious organisations continue developing charitable and educational networks by leveraging limited resources and international partnerships. Compared to Central Asia, Turkey imposes even stricter restrictions on economic engagement, limiting religious organisations mainly to spiritual activities, as noted by T. Temirbayev *et al.* (2024). Within the CIS, involvement in economic activities varies widely; in Ukraine, many religious organisations actively use real estate and engage in agriculture (Chornopiska, 2022). Moreover, Ukraine's more advanced system of state subsidies significantly boosts their financial independence and supports social initiatives (Bilash & Karabin, 2020; 2023).

According to the Law of Ukraine No. 987-XII (2025), religious associations are permitted to engage in entrepreneurial activities within the limits of the law, provided that such activities do not conflict with their declared goals and charters. A key aspect of this legislation is the recognition of the right of religious organisations to own property, including places of worship, educational institutions, and social facilities. The law further permits these organisations to conduct charitable work, provide educational and medical services, and manage funds received through donations, grants, and income from entrepreneurial activities directly related to their core mission.

In 2020s, the state has also introduced measures to regulate the financial operations of religious organisations in order to prevent the misuse of religious structures for financing anti-state activities. In the context of the ongoing war, religious organisations such as the Ukrainian Orthodox Church of the Moscow Patriarchate have been subject to increased scrutiny and restrictions, including bans on certain activities, which have had a direct impact on their financial operations (Popovych, 2023; Shopina, 2024; Yatsiv *et al.*, 2024). Thus, while the economic activities of religious organisations in Ukraine are legally sanctioned, they remain highly dependent on the broader political and social context, as well as on their relationships with both state institutions and international partners (Chornopiska & Sheptytska, 2023).

The results obtained demonstrate that religious organisations in Central Asia play an important role not only in the spiritual, but also in the economic life of the region. In particular, their involvement in economic activities contributes to enhancing the financial sustainability of religious associations and enables them to exert a significant influence on the socio-economic conditions within their respective regions. However, the findings also reveal considerable variation in the degree of economic engagement by religious organisations across different countries in the region, largely due to disparities in legislative frameworks and economic environments.

It is noteworthy that in countries with more liberal legislation – such as Kyrgyzstan and Kazakhstan – religious organisations are afforded greater freedom to develop their economic activities. This legislative flexibility has facilitated the emergence of a larger number of socially oriented projects. In contrast, in countries with more restrictive regulatory environments – such as Uzbekistan and Tajikistan – religious organisations face considerable obstacles that hinder their ability to participate actively in economic life.

One of the key findings of this study is the substantial involvement of religious organisations in economic activities across Central Asia. While earlier research has largely overlooked this dimension, focusing predominantly on the spiritual functions of religion, the present study highlights the growing economic influence of religious structures. In particular, a significant portion of their income is derived from agricultural activities and property rental, thereby supporting the hypothesis of an expanding economic role for religious organisations (Carvalho & Sacks, 2021).

As noted in the study by F. Karagussov (2022), the period from 2018 to 2022 witnessed an increase in the proportion of income generated through property rental. This trend indicates that religious organisations are increasingly recognising and utilising their financial independence through the management of property assets, which in turn impacts regional socio-economic development. Many religious sites in central Kyrgyzstan have been repurposed for commercial use, including for educational activities or as rental premises for offices and hotels.

Religious organisations actively engage with social structures, as evidenced by a significant increase in financial flows directed towards the development of educational and charitable projects. In Kazakhstan and Kyrgyzstan, a number of religious organisations provide their premises for use as kindergartens and schools, thereby alleviating pressure on government institutions. These educational facilities, often established by religious associations, primarily serve socially vulnerable groups, contributing to poverty reduction in certain regions (Dossanova & Iskakova, 2024).

According to the study by U. Tungatova *et al.* (2023), religious organisations in Kazakhstan have expanded their role beyond traditional educational programmes by offering social services, including assistance to persons with disabilities and the provision of free medical care in remote and sparsely populated areas.

Owing to their growing economic influence, religious organisations are becoming active participants in social reform initiatives, such as programmes aimed at improving the quality of life in rural areas. These initiatives extend beyond the spiritual domain and play a vital role in strengthening societal resilience to economic crises. In regions where government programmes are limited, the development of educational and medical projects by religious organisations significantly contributes to the enhancement of social infrastructure.

Despite the clear positive outcomes of religious organisations' involvement in the economy, a number of limitations continue to prevent them from realising their full potential. In Uzbekistan, for instance, religious organisations face stringent legislative restrictions (United States Commission on International Religious Freedom, 2023). The laws governing religious activity in the country explicitly prohibit religious groups from managing land or participating in profit-generating enterprises.

Research by L. Terebessy (2023) highlights the considerable difficulty religious organisations encounter when attempting to initiate or maintain economic activities in Uzbekistan. The legal framework requires religious institutions to undergo a rigorous registration process, and any commercial project is subject to strict government oversight. These constraints significantly hinder the capacity of religious organisations to develop businesses oriented towards social and educational programmes.

Nevertheless, it is important to acknowledge that religious organisations have identified alternative means of financing their initiatives. One such approach involves attracting support from foreign charitable foundations, which enhances their financial independence and enables them to concentrate on delivering socially significant programmes.

The findings of this study suggest that the economic role of religious organisations in Central Asia is likely to continue expanding in the coming years. In countries undergoing active economic and social reform, religious organisations have the potential to become key actors in the provision of social assistance and the development of local infrastructure. Kazakhstan and Kyrgyzstan, which maintain the most liberal policies towards religious organisations, offer particularly favourable conditions that contribute to the growth of their financial and institutional capacity.

Religious organisations and innovative forms of business. In the countries of Central Asia, religious organisations actively engage with state structures, which provides opportunities to expand their economic influence. However, this interaction is not always seamless and often necessitates ongoing adjustments to legislative frameworks regulating religious activity. In this context, it is important to consider how religious institutions contribute to various sectors of the economy in cooperation with government bodies.

The study by F. Karagussov (2022) demonstrated that in Kazakhstan and Kyrgyzstan – where religious organisations enjoy relatively greater freedom in economic activity – there is a marked trend towards collaboration between state and religious institutions in the provision of social services. In particular, in Kazakhstan, several agreements have been signed concerning the joint financing and implementation of educational and medical projects. This form of cooperation enables more effective solutions to pressing issues such as staffing underdeveloped regions with qualified professionals, as well as the construction and operation of social infrastructure, including hospitals and educational establishments.

One of the most promising areas for religious organisations in Central Asia is the development of innovative forms of business. In the context of evolving economic models and growing interest in sustainable development, religious groups are increasingly recognising their role not only as social and cultural institutions but also as key economic actors capable of contributing to the development of small and medium-sised enterprises.

Despite the growing role of religious organisations in economic, social, and cultural spheres across Central Asia, numerous violations of their rights persist, often stemming from restrictive state policies and regulatory frameworks. These infringements hinder the full realisation of their economic potential and social contributions, raising significant legal concerns under both national and international law. One concrete example of rights violations is the excessive state control over religious organisations' financing and

economic activities, particularly evident in Uzbekistan and Tajikistan. According to the Law of the Uzbekistan "On Freedom of Conscience and Religious Organisations" (2019), religious entities are prohibited from owning land or engaging in profit-making enterprises, severely restricting their ability to develop sustainable economic initiatives. This legal restriction contravenes Article 18 of the International Covenant on Civil and Political Rights (1966), which guarantees the freedom of religion, including the right to manifest one's religion or beliefs in community with others and in public. The broad prohibitions in national law effectively limit this right by curtailing economic activities necessary for sustaining religious communities.

Moreover, the requirement for compulsory registration under strict government oversight, as mandated by Law of the Uzbekistan "On Freedom of Conscience and Religious Organisations" (2020) further impedes religious organisations' autonomy. Such interventions often lack transparency and proportionality, potentially violating Article 9 of the International Covenant on Civil and Political Rights (1966) concerning freedom of association. The Convention of the Commonwealth of Independent States on Human Rights and Fundamental Freedoms (1995) emphasises that states should not impose disproportionate or discriminatory restrictions, especially regarding economic or charitable activities.

Legal cases highlighting these issues include the 2021 administrative proceedings against several religious organisations in Uzbekistan, where courts upheld sanctions for alleged violations of economic activity restrictions (Law of the Republic of Uzbekistan No. LRU-699, 2021). The lack of independent judicial review and clear criteria for limiting economic activities undermine due process guarantees under Article 14 of the International Covenant on Civil and Political Rights (1966).

By contrast, Kyrgyzstan and Kazakhstan present more favourable legal environments, though challenges remain. Law of the Kyrgyz Republic No. 282 (2008) Articles 15 and 16 permits entrepreneurial activities aligned with charitable purposes, but bureaucratic hurdles in confirming non-profit status often delay tax exemptions, as shown in administrative appeals in Bishkek courts. Such delays may constitute indirect discrimination under Article 26 of the International Covenant on Civil and Political Rights (1966). Law of the Republic of Kazakhstan No. 483-IV (2011) Article 12 similarly recognises rights to property ownership and economic activities funding charitable projects. However, opaque licensing and uneven enforcement raise concerns about compliance with the UN Declaration "On the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief" (1981). Law of Ukraine No. 987-XII (2025) Articles 34-37 allows entrepreneurial activities while imposing strict financial controls to prevent misuse. Judicial decisions regarding the Ukrainian Orthodox Church (Moscow Patriarchate), including the 2023 Constitutional Court ruling, highlight tensions between national security and religious freedom. Restrictions must comply with legality, necessity, and proportionality under International Covenant on Civil and Political Rights (1966) Article 18, Paragraph 3.

In Kazakhstan and Kyrgyzstan, a growing number of religious organisations are adopting modern business models, including social enterprises and cooperatives. Research by N. Durrani and H. Thibault (2024) has shown that religious associations in these countries are actively involved in establishing social businesses aimed at addressing issues such as poverty, unemployment, and the shortage of skilled labour. For instance, several successful social enterprises have been launched in Kazakhstan with the purpose of providing vocational training for young people and creating employment opportunities for women and individuals with disabilities.

As highlighted in the work of P. Bochkov (2021), religious organisations also play an important role in fostering favourable conditions for start-ups and small businesses. In Kazakhstan and Kyrgyzstan, new forms of mutually beneficial partnerships have emerged between religious communities and the private sector. Particular attention should be given to initiatives focused on environmental entrepreneurship, which is gaining prominence on the global agenda. In Uzbekistan, for example, religious organisations are actively supporting renewable energy projects, demonstrating an increasing awareness of the importance of sustainability and environmental protection.

A compelling example of social business initiated by religious organisations can be found in Kyrgyzstan, where several mosques and religious communities have established farmer cooperatives to support smallholder farmers in remote regions. These cooperatives aim to improve local living standards, preserve ecosystems, and generate employment in rural areas.

The COVID-19 pandemic has had a significant impact on the economic activities of religious organisations in Central Asia. With restrictions on public gatherings and the closure of religious venues, these organisations were compelled to adapt to new operational conditions. This shift accelerated the development of innovative forms of economic activity, including the adoption of digital technologies and the use of online platforms for charitable fundraising and educational initiatives (Bisaliyev, 2021).

According to the analysis by O.N. Lauta *et al.* (2022), religious organisations in Kazakhstan, Kyrgyzstan, and Uzbekistan responded swiftly to the new circumstances by intensifying their use of online resources to raise funds for charitable purposes, deliver educational content, and conduct virtual worship services. In Kazakhstan, for instance, the number of online courses organised by religious communities increased significantly. Educational events were held via platforms such as Zoom and YouTube, enabling these organisations to reach wider audiences, including young people and individuals with disabilities. A study by T. Bonacker, P. Lottolz (2022) and E. Rodriguez (2023) reveals important aspects of the interaction between the state and religious organisations in post-Soviet countries, particularly in Central Asia, where there is a tendency to increase state control over religious structures. The authors emphasize that this increased control leads to significant bureaucratic obstacles that limit the ability of religious organisations to implement educational, charitable, and social initiatives, which are the main areas of their economic activity. This aspect becomes especially relevant in the context of the transformation processes taking place in the countries of the region, where state policy on religion remains quite rigid and legislative norms are often contradictory.

Comparing these conclusions with the results of the current study reveals both common and distinctive points. The analysis confirms the general tendency for bureaucratic barriers and regulatory restrictions to hinder the development of economic activities of religious organisations, especially in countries with stricter government regulation,

such as Uzbekistan and Tajikistan. At the same time, the study also highlights a much more flexible legal framework in Kyrgyzstan and Kazakhstan, where legislation promotes the development of social entrepreneurship by religious organisations and their active participation in economic life. This suggests that the level of government intervention and the nature of regulatory policy vary significantly across the region, affecting the effectiveness of religious organisations.

A study by E. Koolaee and S. Zangeneh (2024), N. Putri and J. Setiyono (2024) revealed that the number of online religious initiatives rose by 30% in 2021 compared to 2019, largely due to the effects of the pandemic. This digital shift also led to a substantial increase in online donations, particularly in countries where religious organisations actively embraced technological tools to sustain their operations. Thus, the pandemic has served as a catalyst for the digital transformation of religious organisations, accelerating their transition to new forms of economic activity that may form the foundation for their sustainable development in the future. In addition to their economic and social roles, the political influence of religious organisations in Central Asian countries should not be overlooked. Despite concerted efforts by states to limit religious involvement in politics, religious organisations in some countries in the region continue to play a significant role in shaping public opinion and supporting political initiatives (Auanasova & Auanassova, 2024).

According to the study by H. Choi (2024), religious organisations in Kazakhstan and Uzbekistan exert notable influence on electoral processes, including the support of particular political forces or parties. It is important to recognise that this influence can have both positive and negative implications for political stability in the region. On the one hand, religious organisations may act as catalysts for democratic transformation by supporting civil society development and human rights initiatives. On the other hand, their involvement in political processes may contribute to rising radical sentiments and exacerbate tensions among different societal groups.

The influence of religious organisations on political processes in Central Asia is varied. In Kazakhstan and Kyrgyzstan, for example, religious organisations have generally played a positive role, supporting reform agendas and civic initiatives. By contrast, in Uzbekistan, religious institutions are subject to stringent state control, which significantly restricts their ability to participate in political life (Harasymiv, 2023; Choi, 2024).

An additional important dimension of the influence of religious organisations on the economy and society in Central Asia is their active engagement in educational and cultural initiatives. These organisations are involved not only in religious education but also in the development of programmes aimed at the cultural enrichment of society, including support for the arts and the sciences. In Central Asian countries, religious communities play a significant role in developing educational programmes aimed at improving cultural literacy, educating young people, and promoting spiritual and moral values. In Kazakhstan, for example, several major mosques and religious centres have established educational courses that encompass not only Islamic theology but also subjects in the social and natural sciences. This inclusive approach allows them to engage a broader audience (Collins, 2023; Choi, 2024). According to the study by E. Rodriguez (2023), 25 new religious educational centres were registered in Kazakhstan in 2022, 10 of which offered courses in digital technologies and entrepreneurship. This reflects a growing demand for education that integrates traditional religious values with contemporary knowledge and practical skills.

An equally important area of activity is the support of cultural initiatives aimed at preserving the region's historical heritage. In Uzbekistan, for instance, religious organisations are actively involved in the restoration of historical monuments, including mosques and madrassas, thereby contributing to the development of tourism and the cultural sector. In this way, religious organisations serve as key actors in safeguarding cultural and historical heritage, which in turn fosters economic development through the attraction of tourists and investment.

As noted by M. Turner and D. Gak-Vassallo (2024), O. Borzenko *et al.* (2024), religious organisations in Kyrgyzstan are also actively engaged in supporting cultural events that celebrate the traditions of the peoples of Central Asia. These initiatives help to strengthen social capital and promote interethnic harmony. Through religiously affiliated programmes, cultural exchanges, concerts, exhibitions, and festivals are frequently organised, contributing to the development of tourism and enhancing cultural ties among countries in the region.

The impact of religious organisations on social justice and human rights. Between 2021 and 2024, religious organisations in Central Asia increasingly engaged in promoting social justice and human rights, yet significant rights violations persist, particularly in countries such as Uzbekistan and Turkmenistan. In these states, restrictions on the freedom of religious organisations to participate in civil society processes contradict international legal standards, including the Convention of the Commonwealth of Independent States on Human Rights (1995). Such limitations violate Article 18 of the International Covenant on Civil and Political Rights (1966), which protects the freedom of religion and its public manifestation (Bonacker & Lottholz, 2022).

In Kazakhstan, despite positive social initiatives led by religious organisations such as programmes supporting women affected by violence and migrant integration (Iskakova *et al.*, 2023) challenges remain regarding the inconsistent enforcement of protections. Administrative practices occasionally undermine legal guarantees of equality and non-discrimination as enshrined in national legislation and the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981) (Durrani & Thibault, 2024). This issue is exemplified by the situation in Kazakhstan between 2021 and 2023, where religious groups, particularly Protestant communities, encountered repeated difficulties in securing state registration a legal prerequisite for the legitimate exercise of their collective religious activities. According to Forum 18 News Service, registration applications were frequently rejected on the basis of technical or procedural formalities, despite the applicants' compliance with existing legal requirements (Kazakhstan: Religious freedom..., 2022). Such administrative barriers not only constrain religious freedom in practice but also contradict Article 18 of the International Covenant on Civil and Political Rights (1966), which guarantees the right to freedom of thought, conscience, and religion, including the collective manifestation of religious beliefs. These examples reveal a broader inconsistency between Kazakhstan's international human rights commitments and the implementation of domestic administrative procedures, thereby

reinforcing the need for legal reforms aimed at ensuring non-discriminatory access to the rights guaranteed by both national and international legal frameworks.

In Kyrgyzstan, community projects supported by religious leaders most notably by organisations such as the Mutakalim Women's Organisation and the Spiritual Administration of Muslims of Kyrgyzstan (SAMK) have played a visible role in promoting gender equality and addressing domestic violence through culturally sensitive educational programmes and mediation initiatives. For instance, Mutakalim, a well-established Muslim women's NGO based in Bishkek, has organised workshops for imams on women's rights within an Islamic framework, advocating against domestic violence and early marriage while encouraging men to take responsibility in ensuring family wellbeing and gender equity (Iskakova *et al.*, 2023; Human Rights Watch report, 2023).

Despite such efforts, religious organisations in Kyrgyzstan face bureaucratic hurdles and legal uncertainties. For example, while the Law of the Kyrgyz Republic No. 282 "On Freedom of Religion and Religious Organisations" (2008) provides for freedom of religious activity, it also includes vague requirements for registration, including a minimum of 200 founding members, which disproportionately impacts small and local religious initiatives. In several documented cases, such as the administrative review of Mutakalim's legal status in 2021, authorities delayed re-registration processes on procedural grounds, citing ambiguities in statutes regarding the organisation's "social" versus "religious" character (Perez, 2020a; Zalnur *et al.*, 2022). Nonetheless, bureaucratic obstacles and legal ambiguities surrounding the status and activities of religious organisations limit the full realisation of these rights. This situation raises concerns under Article 26 of the International Covenant on Civil and Political Rights (1966), which guarantees equality before the law and protection against discrimination. The local branch of an interfaith community initiative (Interfaith Dialogue Platform) faced administrative warnings for conducting "unauthorised public gatherings" related to anti-violence campaigns in public schools. Although these activities were non-proselytising and coordinated with civil society partners, authorities claimed that their affiliation with religious figures constituted a violation of public order provisions (Terebessy, 2023; Tungatova *et al.*, 2023).

Relevant legal cases in Uzbekistan illustrate these issues: for example, Administrative Case No. 45/2021, where courts-imposed sanctions on religious organisations for economic activities, reflecting a broader pattern of restrictive state control that hinders not only economic but also social and human rights work (Bochkov, 2023). In this case, the judicial authorities imposed sanctions on a religious organisation for engaging in economic activities, reflecting a broader pattern of restrictive state control that hinders not only economic but also social and human rights work. According to sources such as Forum 18 (Kazakhstan: Religious freedom…, 2022) and the United States Commission on International Religious Freedom (2023), religious organisations in Uzbekistan face significant limitations on their economic activities. For instance, the Law of the Uzbekistan "On Freedom of Conscience and Religious Organisations" (2019) prohibits religious groups from conducting forced financial collections and other practices deemed harmful to individual dignity and honour. These judicial decisions, lacking independent review and clear criteria, undermine procedural fairness guaranteed by Article 14 of the International Covenant on Civil and Political Rights (1966).

Overall, while religious organisations in some Central Asian countries contribute significantly to human rights and social justice, existing legal and regulatory barriers frequently restrict their activities. Aligning national laws with international human rights obligations and ensuring transparent, fair judicial processes remain essential to safeguarding these organisations' rights and enhancing their positive social impact. An analysis of the role of religious organisations in the economic and public life of Central Asia reveals that these institutions are increasingly employing innovative methods of engagement with both society and the state. Religious organisations are emerging as influential actors not only in spiritual matters but also in the social, cultural, and economic spheres – thereby significantly contributing to regional development. Their influence on education, cultural preservation, social justice, and business development provides a foundation for the creation of more stable and harmonious societies. Nevertheless, challenges persist, particularly in the form of state control and restrictions on religious freedoms. These issues require further research and a reassessment of relevant state policies.

When comparing Kazakhstan, Uzbekistan, Ukraine, and Kyrgyzstan, it is evident that Kyrgyzstan demonstrates moderate levels of development in the economic activities of religious organisations. In Kyrgyzstan, the focus is primarily on supporting social, educational, and healthcare-related projects. However, the volume of state funding for these initiatives remains limited in comparison to neighbouring countries. In Kazakhstan and Uzbekistan, state investment in such projects is considerably higher, enabling religious organisations to play a more prominent role in public life. In contrast, Ukraine's model is characterised by minimal state involvement, with religious organisations relying more heavily on internal resources and international grants. Thus, the primary distinction among these countries lies in the extent of financial support and the level of state involvement in the economic activities of religious associations.

Conclusions

In the course of this study, which examined the organisational and legal aspects of the economic activities of religious organisations in Kyrgyzstan – alongside a comparative analysis with other Central Asian countries and Ukraine – several key findings were identified that carry both theoretical and practical significance. Firstly, the legal framework in Kyrgyzstan grants religious organisations considerable freedom to engage in economic activities, provided these are directed toward non-commercial objectives, such as social services, education, and cultural development. Religious organisations are exempt from taxes on their core activities, which has facilitated the expansion of social and educational initiatives. However, despite this progressive legal approach, there remains a degree of legal ambiguity – particularly regarding the distinction between non-commercial and commercial activities.

Secondly, comparative analysis with Kazakhstan and Uzbekistan revealed that religious organisations in these countries face more restrictive administrative procedures. In Kazakhstan, the registration process for religious organisations is administratively complex, while in Uzbekistan, religious associations are subject to strict state control. In

contrast, Kyrgyzstan's more flexible legal framework is comparatively favourable for religious organisations seeking to expand their economic activities. Nevertheless, this flexibility also creates a potential risk of misuse, underscoring the need for regulatory mechanisms that enhance transparency and accountability.

The study concluded that regulatory regimes for religious organisations' commercial activities vary greatly across the studied countries, directly affecting the scale and efficiency of their economic engagement. Kyrgyzstan and Kazakhstan feature more flexible laws supporting social entrepreneurship, fostering business models that address social issues and attract investment. In contrast, Uzbekistan and Tajikistan impose strict restrictions that limit property ownership and financial activities, creating bureaucratic barriers and undermining transparency and fairness. Key regulatory challenges include complex non-profit status procedures, unclear legal boundaries for economic activities, and inconsistent law enforcement causing legal uncertainty. Additionally, the lack of independent judicial oversight over sanctions weakens due process protections. These differences impact the financial stability, social role, and innovation potential of religious organisations, highlighting the need to align national laws with international standards and establish transparent, fair regulatory frameworks.

Comparison with Ukraine revealed both similarities and differences in regulating religious activities. Both countries offer tax incentives, but Ukraine has more complex bureaucratic requirements, especially for confirming non-profit status, complicating project implementation. Kyrgyzstan showed greater legal flexibility but needs improvements in registration and oversight to reduce legal uncertainty. Religious organisations in Kyrgyzstan actively engage in social initiatives, yet enhancing the legal framework especially clarifying commercial versus non-commercial activities is crucial for reducing risks and promoting sustainable development.

Future research should aim to expand the empirical base by including a broader range of religious organisations and examining the influence of international factors and transnational networks on the economic activities of religious structures in the region.

Acknowledgements

None.

Funding

The study received no funding.

Conflict of interest

None.

References

[1] United States Commission on International Religious Freedom. (2023). *Annual report*. Retrieved from https://www.uscirf.gov/sites/default/files/2023-05/2023%20Annual%20Report.pdf.

[2] Auanasova, A., Auanassova, K., Nurpeissov, Y., & Ibrayeva, A. (2025). The role of the Jadid movement in state-building processes in Central Asia: The creation and legacy of Turkestan autonomy. *National Identities*. doi: 10.1080/14608944.2025.2477043.

[3] Auanasova, A.M., & Auanassova, K.M. (2024). The struggle for Kazakh statehood in 1917-1918 through the prism of the history of constitutionalism. *Investigaciones Historicas*, 44, 641-661. doi: 10.24197/ihemc.44.2024.641-661.

[4] Berdar, M. (2023). Legal challenges and innovations in executive proceedings in Ukraine and the world: A comparative aspect. *Scientific Journal of the National Academy of Internal Affairs*, 28(4), 47-57. doi: 10.56215/naia-herald/4.2023.47.

[5] Bilash, O., & Karabin, T. (2020). Taxation of religious organisations in Ukraine. *Church and Law*, 9(22), 65-81. doi: 10.18290/kip2091-4.

[6] Bilash, O., & Karabin, T. (2023). Funding of the activities of religious organisations in Ukraine. *Studies in Religious Law*, 26, 115-132. doi: 10.31743/spw.16426.

[7] Bisaliyev, M. (2021). Comparative analysis of organisational and technical issues of ensuring the legal principles of information security in the Republic of Kazakhstan. In M.N. Kalimoldaev (Ed.), *International scientific and practical conference "Actual problems of information security in Kazakhstan (APISK 2021)"* (pp. 21-33). Almaty: Institute of Information and Computing Technologies of the Ministry of Education and Science of the Republic of Kazakhstan.

[8] Bochkov, P. (2021). On the issue of principles of economic activity of enterprises of religious organisations. *Current Problems of Domestic Jurisprudence*, 6, 37-42. doi: 10.32782/392216.

[9] Bochkov, P. (2023). *Administrative and legal principles of the participation of religious organisations in economic relations: Problems of theory and practice*. Kyiv: Lira-K.

[10] Bonacker, T., & Lottholz, P. (2022). The post-imperial politics of security and depoliticisation: Comparing discourses and practices of ordering across Central Asia. *Europe-Asia Studies*, 74(2), 310-334. doi: 10.1080/09668136.2021.2020217.

[11] Borzenko, O., Lambekova, A., Myrzhykbayeva, A., & Panfilova, T. (2024). Reforming international financial organisations in the context of the influsion to socio-economic development of Ukraine and Kazakhstan. *Economic Theory*, 1, 93-119. doi: 10.15407/etet2024.01.093.

[12] Carvalho, J.-P., & Sacks, M. (2021). The economics of religious communities. *Journal of Public Economics*, 201, article number 104481. doi: 10.1016/j.jpubeco.2021.104481.

[13] Choi, H. (2024). Socio-cultural situation and religion in Central Asia. *Mission and Theology,* 64, 459-507. doi: 10.17778/MAT.2024.10.64.459.

[14] Chornopiska, V. (2022). Administrative and legal status of religious organisations in Ukraine: Structure and features of its elements. *Uzhhorod National University Herald. Series: Law*, 68, 205-210. doi: 10.24144/2307-3322.2021.68.35.

[15] Chornopiska, V., & Sheptytska, M. (2023). Legal security of the principle of equality of religious organisations in Ukraine. *Uzhhorod National University Herald. Series: Law*, 1(79), 172-176. doi: 10.24144/2307-3322.2023.79.1.29.

[16] Collins, K. (2023). Introduction: An overview of Islamism in Central Asia. In K. Collins (Ed.), *Politicising Islam in Central Asia: From the Russian revolution to the Afghan and Syrian Jihads* (pp. 3-22). Oxford: Oxford University Press. doi: 10.1093/oso/9780197685068.003.0001.

[17] Comprehensive Plan for the Implementation of State Policy in the Religious Sphere of the Republic of Kazakhstan for 2021-2023. (2020, December). Retrieved from https://adilet.zan.kz/rus/docs/P2000000953#z13.
[18] Convention of the Commonwealth of Independent States on Human Rights and Fundamental Freedoms. (1995, May). Retrieved from https://www.refworld.org/docid/49997ae32c.html.
[19] Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. (1981, November). Retrieved from https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-all-forms-intolerance-and-discrimination.
[20] Doney, L., Meinert, C., Sørensen, H.H., & Kasai, Y. (2024). The meeting of religious traditions and of beliefs in Eastern Central Asia. In L. Doney, C. Meinert, H.H. Sørensen & Y. Kasai (Eds.), *Buddhism in Central Asia III: Impacts of non-Buddhist influences, doctrines* (pp. 1-10). Leiden, Boston: Brill. doi: 10.1163/9789004687288_002.
[21] Dossanova, A., & Iskakova, Zh. (2024). The problem of ensuring and protecting civil and political rights in the countries of Central Asia. *Bulletin of L.N. Gumilyov Eurasian National University. Law Series*, 148(3), 31-54. doi: 10.32523/2616-6844-2024-148-3-31-54.
[22] Durrani, N., & Thibault, H. (2024). *The political economy of education in Central Asia: Evidence from the field*. London: Palgrave Macmillan. doi: 10.1007/978-981-99-8517-3.
[23] Dzhumabekov, K. (2021). *Religious extremism in Central Asia: Origins, trends, solutions*. Retrieved from https://religions-congress.org/ru/news/novosti/914.
[24] Harasymiv, T. (2023). The influence of religious organisations on the solution of international legal problems in globalisation. *Bulletin of Lviv Polytechnic National University. Series: Legal Sciences*, 10(3), 7-12. doi: 10.23939/law2023.39.007.
[25] Hudson, V., & Leustean, L.N. (2022). *Religion and forced displacement in Eastern Europe, the Caucasus and Central Asia*. Amsterdam: Amsterdam University Press. doi: 10.1017/9789048553938.
[26] Human Rights Watch. (2023). Retrieved from https://www.hrw.org/world-report/2023/country-chapters/kyrgyzstan.
[27] Hunter, S. (2001). Religion, politics, and security in Central Asia. *SAIS Review*, 21(2), 65-90. doi: 10.1353/sais.2001.0043.
[28] International Covenant on Civil and Political Rights. (1966). Retrieved from https://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml.
[29] Iskakova, I., Sopyhanova, A., Rakhimgulova, M., Otarbaeva, A., Saitova, E., & Kussainova, L. (2023). Legal regulation of the activities of religious associations: Issues of theory and practice. *Journal of Law and Sustainable Development*, 11(5), article number e728. doi: 10.55908/sdgs.v11i5.728.
[30] Karagussov, F. (2022). Organisational legal forms for social entrepreneurship in the Republic of Kazakhstan. In S. Moroz & U.K. Zawadzka-Pąk (Eds.), *The XX international scientific conference "Functioning of investments financed from state resources and from other sources in the countries of Central and Eastern Europe"* (pp. 55-68). Białystok: Temida. doi: 10.15290/IPF.2022.05.
[31] Kazakhstan: Religious freedom survey, June 2022. (2022). Retrieved from https://www.forum18.org/archive.php?article_id=2753.
[32] Khamzin, A., Buribayev, Y., & Sartayeva, K. (2022). Prevention of human trafficking crime: A view from Kazakhstan and Central Asian countries. *International Journal of Criminal Justice Sciences*, 17(1), 34-53. doi: 10.5281/zenodo.4756088.
[33] Koolaee, E., & Zangeneh, S. (2024). Socio-cultural integration in Central Eurasia. *Applied Geography*, 54(3), 969-988. doi: 10.22059/jhgr.2021.314329.1008210.
[34] Lauta, O.N., Popova, L.A., & Demchenko, T.I. (2022). Regulation of the activities of religious organisations in the EU in the context of digitalisation. In E.G. Popkova (Ed.), *Business 4.0 as a subject of the digital economy* (pp. 997-1001). Cham: Springer. doi: 10.1007/978-3-030-90324-4_164.
[35] Law of the Kyrgyz Republic No. 282 "On Freedom of Religion and Religious Organisations". (2008, December). Retrieved from http://religion.gov.kg/storage/uploads/file/2c953645db66f1e1e477a011595a18f400de0e17.pdf.
[36] Law of the Republic of Kazakhstan No. 483-IV "On Religious Activities and Religious Associations". (2011, October). Retrieved from https://adilet.zan.kz/eng/docs/Z1100000483.
[37] Law of the Republic of Uzbekistan No. LRU-699 "On Liberty of Conscience and Religious Organisations". (2021, May). Retrieved from https://lex.uz/docs/6117508.
[38] Law of the Uzbekistan "On Freedom of Conscience and Religious Organisations". (2020, October). Retrieved from https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)002-e.
[39] Law of Ukraine No. 987-XII "On Freedom of Conscience and Religious Organisations". (2025, April). Retrieved from https://zakon.rada.gov.ua/laws/show/en/987-12#Text.
[40] National Statistical Committee of the Kyrgyz Republic. (2024). Retrieved from https://stat.gov.kg/ru/.
[41] Olcott, M.B. (2016). Religion and security in Central Asia: Recommendations for the next U.S. administration. *The Review of Faith & International Affairs*, 14(2), 49-58. doi: 10.1080/15570274.2016.1184450.
[42] Perez, N. (2020a). Hegemonic religions, majoritarianism, and the legitimate limits of governmental religious bias. *Religions*, 11(9), article number 438. doi: 10.3390/rel11090438.
[43] Perez, N. (2020b). Governmental-funded religious associations and non-discrimination rules: On immunity and public funding. *Canadian Journal of Law & Jurisprudence*, 33(2), 341-367. doi: 10.1017/cjlj.2020.12.
[44] Popovych, K. (2023). Citizens' access to justice during the introduction and implementation of the legal regime of martial law in Ukraine. *Law Journal of the National Academy of Internal Affairs*, 13(3), 55-64. doi: 10.56215/naia-chasopis/3.2023.55.
[45] Putri, N., & Setiyono, J. (2024). Legal review of the granting of mining business licenses to religious organisations. *International Journal of Social Science and Human Research*, 7(10), 7583-7591. doi: 10.47191/ijsshr/v7-i10-28.
[46] Rodriguez, E. (2023). Religion and state in Central Asia: A comparative regional approach. *International Journal of Social Science Research and Review*, 6(1), 79-99. doi: 10.47814/ijssrr.v6i1.766.

[47] Schier-Happell, S. (2021). Central and East Asia. In S.M. Shaw (Ed.), *Women and religion: Global lives in focus* (pp. 179-214). Santa Barbara: ABC-CLIO. doi: 10.5040/9798216036814.ch-006.
[48] Shani, G., & Kibe, T. (2021). *Religion and nationalism in Asia*. Abingdon: Routledge.
[49] Shopina, I. (2024). Administrative and legal aspects of the activities of religious organisations of Ukraine under the legal regime of martial law. *Analytical and Comparative Jurisprudence*, 4, 467-471. doi: 10.24144/2788-6018.2024.04.77.
[50] Tax Code of the Kyrgyz Republic. (2022). Retrieved from https://invest.gov.kg/wp-content/uploads/2022/12/11-Tax-Code-of-the-Kyrgyz-Republic-unofficial-translation.pdf.
[51] Temirbayev, T., Temirbayeva, A., Ryskiyeva, A., & Kuranbek, A. (2024). Turkish religious communities in modern Kazakhstan: Leaders, vectors of activity. *Eurasian Journal of Religious Studies*, 37(1), 44-52. doi: 10.26577//EJRS.2024.v37.i1.r5.
[52] Terebessy, L. (2023). *Rescuing Islam from Islamists: Reversing the politicisation of religion*. Retrieved from https://www.researchgate.net/publication/376835297_Rescuing_Islam_from_Islamists_Reversing_the_Politicisation_of_Religion_A.
[53] Concept of State Policy of the Kyrgyz Republic in the Religious Sphere for 2021-2026. (2021, September). Retrieved from https://cbd.minjust.gov.kg/430711/edition/1098958/ru.
[54] Tse, N., Naidu, K., & Ramsay, J. (2023). Religion and spirituality in the Asian workforce. In E.S. Ng, J.E. Ramsay, K. Thirumaran & J. Wood (Eds.), *Elgar Companion to managing people across the Asia-Pacific: An organisational psychology approach* (pp. 334-350). Cheltenham: Edward Elgar Publishing Limited. doi: 10.4337/9781802202250.00026.
[55] Tungatova, U., Kurmanaliyeva, A., Kulsariyeva, A., Nazarbek, K., & Assanova, S. (2023). Prevention of religious extremism in Kazakhstan. *Journal of Educational and Social Research*, 13(2), 82-89. doi: 10.36941/jesr-2023-0033.
[56] Turner, M., & Gak-Vassallo, D. (2024). The colonialism of the modern movement and the Post-USSR reaction in Central Asia. *Curator the Museum Journal*, 67(1), 183-193. doi: 10.1111/cura.12605.
[57] Yatsiv, I., Pavlenchyk, N., Pavlenchyk, A., Krupa, V., & Yatsiv, S. (2024). Basic principles of corporate social responsibility management under martial law. *Scientific Bulletin of Mukachevo State University. Series "Economics"*, 11(1), 103-113. doi: 10.52566/msu-econ1.2024.103.
[58] Zalnur, M., Usral, Z., Rustiya, R., & Safarudin, R. (2022). Motivation and forms of student activities in religious organisations. *International Journal of Multidisciplinary Research of Higher Education*, 5(4), 138-144. doi: 10.24036/ijmurhica.v5i4.145.
[59] Zharovska, I. (2023). The role of religious organisations in modern socio-legal relations. *Bulletin of Lviv Polytechnic National University. Series: Legal Sciences*, 10(1), 65-70. doi: 10.23939/law2023.37.065.

Порівняльний аналіз організаційно-правових засад регулювання господарської діяльності релігійних організацій

Динара Осмонова
Доктор філософських наук, професор
Киргизький національний університет імені Жусупа Баласагина
720033, вул. Манаса, 101, м. Бішкек, Киргизька Республіка
https://orcid.org/0000-0001-9443-7390

Павло Бочков
Кандидат юридичних наук, доцент
Міжрегіональна академія управління персоналом
03039, вул. Фрометівська, 2, м. Київ, Україна
https://orcid.org/0000-0002-3218-6706

Алмасбек Канаєв
Доктор політичних наук, професор
Киргизько-Казахстанський університет
720082, вул. Арстанбапа, 159, м. Бішкек, Киргизька Республіка
https://orcid.org/0009-0004-4622-0305

Улан Шаршеналієв
Кандидат філософських наук, доцент
Киргизький національний університет імені Жусупа Баласагина
720033, вул. Манаса, 101, м. Бішкек, Киргизька Республіка
https://orcid.org/0009-0002-4685-1815

Нурболот Бекматов
Старший викладач
Киргизький національний університет імені Жусупа Баласагина
720033, вул. Манаса, 101, м. Бішкек, Киргизька Республіка
https://orcid.org/0009-0006-8257-3380

Анотація. Актуальність статті була зумовлена обмеженим вивченням економічної ролі релігійних організацій у Центральній Азії та Україні, де чинні обмежувальні правові рамки стримували їхню господарську діяльність попри значний соціальний вплив. Метою дослідження був аналіз організаційно-правових аспектів господарської діяльності релігійних організацій у Киргизстані, з акцентом на виявлення наявних проблем та формулювання можливих шляхів їх вирішення в межах чинного правового поля. Методологія ґрунтувалася на аналізі нормативно-правових актів, правових доктрин, емпіричних даних і статистичних матеріалів, оприлюднених національними урядами. У межах дослідження здійснювався порівняльний аналіз правових систем Киргизстану, Казахстану, Узбекистану та України, що дозволяло виокремити специфічні особливості у регуляторних підходах. Серед основних результатів було визначено ключові проблеми, з якими стикалися релігійні організації під час здійснення господарської діяльності, зокрема труднощі правового регулювання, недостатній рівень правового захисту, а також адміністративні й податкові бар'єри. У дослідженні також підкреслювалася необхідність підвищення правової обізнаності релігійних організацій та захисту їхніх інтересів на всіх рівнях суспільного і державного управління. Було запропоновано конкретні рекомендації щодо вдосконалення законодавства, нормативного регулювання та підвищення економічної ефективності і соціального впливу релігійних організацій у Киргизстані

Ключові слова: економічна діяльність; нормативно-правові акти; інституційні структури; фінансовий менеджмент; конфесії

UDC 341.3:340.13
DOI: 10.32518/sals2.2025.84

Соціально-правові студії. 2025. Т. 8, № 2
Social & Legal Studios. 2025. Vol. 8, No. 2

Criminal-legal mechanisms for countering offences motivated by religious beliefs: A criminotheological approach

Zhanna Sadykanova
PhD in Law, Associate Professor
Sarsen Amanzholov East Kazakhstan University
070020, 34 Gvardeiskoi Divisii Str., Ust-Kamenogorsk, Republic of Kazakhstan
https://orcid.org/0000-0003-2613-3349

Indira Smailova*
PhD in Law, Associate Professor
Sarsen Amanzholov East Kazakhstan University
070020, 34 Gvardeiskoi Divisii Str., Ust-Kamenogorsk, Republic of Kazakhstan
https://orcid.org/0009-000678133315

Ainur Ramazanova
PhD in Law, Associate Professor
Sarsen Amanzholov East Kazakhstan University
070020, 34 Gvardeiskoi Divisii Str., Ust-Kamenogorsk, Republic of Kazakhstan
https://orcid.org/0009-0009-3573-469X

Kuanysh Koishybaiuly
PhD in Law, Senior Lecturer
Q University
050000, 125/185 Baizakov Str., Almaty, Republic of Kazakhstan
https://orcid.org/0009-0002-9839-4230

Nurlan Apakhayev
PhD in Law, Associate Professor
Almaty College of Economics, Law and Pedagogy
041609, 80A Raiymbek Batyr Str., Besagash Village, Republic of Kazakhstan
https://orcid.org/0000-0001-7795-2518

Abstract. The aim of the study was a comprehensive analysis of criminal law mechanisms for countering crimes motivated by religious beliefs, using a criminotheological approach to identify contemporary trends in law enforcement practice, problems, and gaps in current legislation. In the course of the study, criminal law mechanisms for countering crimes motivated by religious beliefs were analysed using examples from Kazakhstan, Pakistan, and European countries. It was established that Kazakhstan showed a tendency towards adapting European standards, taking into account national specificities and the influence of regional factors, while in Pakistan, criminal prosecution was often accompanied by religious-political influence, which hindered an objective legal assessment of the acts. It was summarised that the effectiveness of criminal law counteraction to such crimes largely depended on the level of legal culture, the degree of secularism in the state, and the presence of an interdisciplinary approach. It was concluded that effective counteraction to crimes motivated by religious beliefs required a comprehensive approach combining criminal law, theological, and socio-preventive measures. Using the examples of Kazakhstan, Pakistan, and European countries, it was found that the most resilience in combating such crimes was demonstrated by those states where a balance was maintained between the protection of human rights, the secular nature of public order, and the possibility of state-religious dialogue. At the same time, excessive punitiveness (as in the case of Pakistan) or excessive liberalisation (in some European countries) could

Suggested Citation

Article's History: Received: 04.03.2025 Revised: 01.05.2025 Accepted: 25.06.2025

Sadykanova, Zh., Smailova, I., Ramazanova, A., Koishybaiuly, K., & Apakhayev, N. (2025). Criminal-legal mechanisms for countering offences motivated by religious beliefs: A criminotheological approach. *Social & Legal Studios*, 8(2), 84-94. doi: 10.32518/sals2.2025.84.

*Corresponding author

Copyright © The Author(s). This is an open access Article distributed under the terms of the Creative Commons Attribution License 4.0 (https://creativecommons.org/licenses/by/4.0/)

both intensify radical sentiments and hinder the criminal prosecution of offenders. Kazakhstan, being positioned between the two models, demonstrated a desire to develop its own strategy based on international experience but still required clearer theoretical and legal foundations

Keywords: religion; social tension; human rights protection; extremism; terrorism; discrimination

Introduction

Religiously motivated crimes, such as extremism, religious violence, discrimination, and terrorist attacks, occurred in many countries. Human rights, interfaith communication, and public safety were under serious threat. Most states became multinational and multi-faith in the context of globalisation and migration processes. This increased the likelihood of religiously motivated conflicts and required the creation of reliable legal safeguards against such crimes. The criminal laws of countries regulating religion-based crimes differed significantly from one another. For example, international cooperation was hindered by the fact that some states prioritised the protection of freedom of conscience over the fight against extremism. Crimes related to religious beliefs often complicated the link between public security, freedom of expression, and religious freedom. It was necessary to study these aspects to ensure justice and respect for human rights. There were no scientific studies on specific criminal mechanisms that restrained religiously motivated crimes. This especially concerned interdisciplinary approaches combining law, theology, and criminology. Therefore, the study of this topic had significant scientific, practical, and social importance, contributing to the development of more effective criminal justice measures and preventive strategies. Without proper scientific research, it was impossible to effectively prevent religion-based crimes, as this required a deep understanding of the social context, radicalisation mechanisms, and criminal motives. Countries were obliged to comply with international standards such as the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966), which required the development of legislative tools to successfully combat religious crimes while respecting human rights.

As stated by D. Sharipova and S. Beissembayev (2023), the identification, suppression, investigation, prosecution, and prevention of crimes motivated by religious beliefs were part of the criminal legal mechanisms to combat such offences. Specific criminal laws were designed to prevent the use of organised religious groups as justification for unlawful behaviour. According to the scientific study by K. Begalinova *et al.* (2020), crimes motivated by religious beliefs could take many forms, from violent offences to persecution and discrimination based on religious grounds. Terrorist attacks committed under the false pretext of religion incited hatred towards religion. In addition to the threat to national security and global stability, as noted by A.J. Chigozie (2025), these actions had a negative impact on social relations and fuelled interfaith conflict.

B.A. Kalmyrzaev *et al.* (2021) concluded that a criminological approach that combined criminological and theological methods to analyse religiously motivated crimes was a key direction in this context. These allowed the assessment of the influence of religious factors on criminal behaviour, a deeper understanding of criminal motivation, and the development of stronger countermeasures. The study and combat of religiously motivated crime required an interdisciplinary approach. One of the key components of criminal law mechanisms to combat acts of religious hatred or hostility, examined in the work of U. Tungatova and A. Kurmanaliyeva (2023), was the establishment of increased liability for such crimes. This was due to the high social risk associated with such offences, which could incite interfaith strife, destabilise society, and violate fundamental human rights.

According to the study by K. Bishmanov and N. Orynbekov (2023), the training of specialists who could work with religious communities and identify crimes motivated by religious beliefs was necessary. The involvement of religious scholars, theologians, and other experts in the analysis of crimes with a religious context was one of the most important components of criminal legal mechanisms in the fight against crimes motivated by religious beliefs. This contributed to a better understanding of the offender's motivation, the circumstances of the offence, and the effective resolution of law enforcement issues. According to the study by L. Vidino and F. Marone (2022), theologians and religious scholars could help determine whether the offender's actions were dictated by the religious beliefs. The authors examined the suspect's texts, statements, symbols, and the context of the actions. Expert involvement increased the professionalism and impartiality of law enforcement efforts, while reducing the likelihood of escalating religious disputes. As emphasised by N. Seitakhmetova *et al.* (2024), interaction between the state and representatives of various faiths as a preventive measure against crimes based on religious beliefs was a crucial factor in preventing violence and extremism. This work aimed to foster interpersonal understanding, tolerance, and social stability.

Accordingly, it could be concluded that there were few comparative studies of criminal law in countries where religious motivation for crimes was pronounced (e.g., Kazakhstan, Pakistan, Saudi Arabia, Iran). Research often remained limited to Western or post-Soviet legal practice. Using the example of Kazakhstan, Pakistan, and the countries of the European Union, the study aimed to identify differences and common features in legal regulation, the level of involvement of religious factors in criminal policy, and the effectiveness of implemented counteraction mechanisms. This, in turn, contributed to the development of scientifically grounded recommendations for improving criminal law norms and formulating a balanced model for combating religiously motivated crimes, taking into account both international experience and the local features of legal systems and sociocultural contexts. The objectives were: to study existing criminal legislation in the field of countering religiously motivated crimes; to analyse existing criminal legal mechanisms aimed at preventing and suppressing religion-based crimes; to define the theoretical foundations of the criminotheological approach and justify its applicability in criminal law and criminological analysis.

Materials and methods

The materials of the study included legal and regulatory acts at the international, regional, and national levels governing

liability for crimes committed on the grounds of religious hatred or fanaticism. Using the method of comparative legal analysis, differences, and similarities in the criminal legislation of various countries – namely Kazakhstan, Pakistan, and the countries of the European Union – were examined. Specifically, the following were analysed: the Constitution of the Republic of Kazakhstan (1995), the Law of the Republic of Kazakhstan No. 31 "On Countering Extremism" (2005), the Law of the Republic of Kazakhstan No. 416 "On Counteracting Terrorism" (1999), the Law of the Republic of Kazakhstan No. 483-IV "On Religious Activities and Religious Associations" (2011), the Criminal Code of the Republic of Kazakhstan (2014), the Penal Code of Pakistan (1860), the European Council Framework Decision No. 2008/913/JHA "On Combating Certain Forms and Expressions of Racism and Xenophobia by Means of Criminal Law" (2008), the Universal Declaration of Human Rights (1948), and the International Covenant on Civil and Political Rights (1966). The study of these three regions allowed for the identification of specific problems and successful practices in combating religious crimes and contributed to the development of a more flexible and effective legal system that took into account both local characteristics and international trends in the protection of religious freedom and human rights. Including in the analysis criminal codes, anti-extremism laws, and anti-discrimination provisions enabled the identification of the features of criminal legal mechanisms in each of these countries. An important source of information was the report by the Observatory on Intolerance and Discrimination against Christians (2024), as well as data from Kazakhstani analytical portals (Decision of the District Court No. 2 of the Saryarka District of Astana, 2017; Kazakhstan took 67th…, 2021; Ismailov, 2025), which provided statistics on religiously motivated crimes.

The research methods included criminological analysis, which revealed the main causes and contributing factors to the commission of religiously motivated crimes, as well as features of law enforcement in different countries. Comparative analysis was used to assess differences and similarities in legal approaches to crimes motivated by religious beliefs. This made it possible to identify both effective and insufficient legal protection measures. Using content analysis and the historical-legal method, the largest religiously motivated crimes in Kazakhstan were examined: the attack in the city of Aktobe in June 2016 (Rowe, 2021), and the tragic case in Taraz in 2011 (Collins *et al.*, 2024). The evolution of criminal law provisions regulating liability for religiously motivated crimes was studied in the context of these incidents. The criminotheological approach was used to study the interaction between religious doctrines and criminal law, as well as to assess the influence of religious norms on legal mechanisms and the ability to effectively counteract crimes motivated by religious hatred. All these methods and materials made it possible to study the problem in depth and to propose recommendations for improving legal mechanisms in the countries considered.

Results

In Kazakhstan, religious diversity became an important part of the cultural heritage, helping to develop a harmonious society based on respect for the faith and traditions of each person. The main religions in Kazakhstan were Islam and Christianity, but Buddhism, Judaism, and other denominations were also represented. State policy supported interfaith dialogue and tolerance, and the country annually hosted the Congress of Leaders of World and Traditional Religions, which testified to Kazakhstan's commitment to the ideals of unity. The development of social relations largely depended on religion, which was one of the most important components of cultural and social life. However, religious beliefs could serve as a catalyst for disputes and hate-motivated crimes. Kazakhstan was characterised by a multi-ethnic and multi-faith population, with freedom of conscience and religion guaranteed at the constitutional level, which contributed to the formation of a sustainable model of interfaith harmony and religious tolerance in society – Article 22 of the Constitution of the Republic of Kazakhstan (1995). However, the growth of terrorism, radicalism, and religious extremism were examples of negative phenomena that reached a noticeable scale. Moreover, a significant percentage of both violent and non-violent crimes were committed by religious extremist groups. At the time, there were no precise publicly available data on the percentage ratio of violent and non-violent crimes committed by religious extremist groups in Kazakhstan, but according to the Kazakh analytical portal Finprom.kz (Kazakhstan took 67th…, 2021), 139 offences related to extremism and terrorism were recorded, which was 19.8% higher compared to the same period of the previous year. One of the main responsibilities of society was to recognise and overcome these phenomena, which posed a challenge to the state's criminal legal policy in general and to law enforcement agencies in particular.

Combating crimes based on religious beliefs implied the application of a set of legislative, administrative, social, and other measures by the state. Law of the Republic of Kazakhstan No. 31 (2005) established the powers of law enforcement agencies to counter and suppress terrorism, defined the responsibility of religious associations and individuals encroaching on the constitutional order and public safety. Kazakhstan's legislation also set strict requirements for the activities of religious associations, aimed at minimising the risks of abuse of freedom of conscience and religion. Detailed requirements for the activities of religious associations in Kazakhstan were laid out in Law of the Republic of Kazakhstan No. 483-IV (2011). One of the key requirements was the mandatory state registration of all religious associations. Without undergoing the relevant procedures, the activities were considered illegal, and any gatherings or missionary activities without permission could lead to administrative or criminal liability. The state also exercised control over the activities of religious organisations, checking for compliance with the law, preventing the promotion of extremist views and the incitement of religious hatred. If such violations were identified, the organisation's activity could be suspended or completely banned based on a court decision. Special attention was paid to monitoring the content of religious sermons, public speeches, as well as the distribution of religious literature and other materials.Kazakhstan had legal norms aimed at protecting citizens' rights regardless of the religious beliefs. The Constitution of the Republic of Kazakhstan (1995) guaranteed freedom of conscience and religion (Article 22), and also prohibited discrimination based on religion (Article 14). The Criminal Code of the Republic of Kazakhstan (2014) included a number of articles aimed at preventing crimes on religious grounds (Table 1).

Table 1. Key norms of the Criminal Code of the Republic of Kazakhstan, designed to prevent religiously motivated offences

Article	Provision of the article
Art. 174 – Incitement of social, national, tribal, racial, class or religious enmity.	Provides for punishment for public actions or statements that may lead to incitement of enmity or hatred on religious grounds
Art. 256 – Propaganda of terrorism or public calls to commit an act of terrorism.	It refers to actions related to propaganda of extremist religious ideas that may affect public safety
Art. 405 – Organisation and participation in the activities of prohibited organisations.	The article refers to banned religious organisations that conduct subversive or extremist activities
Art. 174, (2) – Propaganda of religious superiority.	Liability is envisaged for actions aimed at humiliating the dignity of representatives of other religions
Art. 174 (3) – Use of religious organisations to incite discord.	This may include the use of religious texts or symbols to propagate hatred

Source: compiled by the authors based on Criminal Code of the Republic of Kazakhstan (2014)

Article 174 of the Criminal Code of the Republic of Kazakhstan (2014) provided for liability for deliberate actions aimed at inciting enmity or hatred based on the listed grounds. Acts committed publicly or using mass media and telecommunication networks were punishable by a fine ranging from 2,000 to 7,000 monthly calculated indices (MCI) or imprisonment for a term of two to seven years. Article 256 of the Criminal Code of the Republic of Kazakhstan (2014) established punishment for the promotion of terrorism or public calls for terrorist acts, including the production and distribution of materials containing such content. Sanctions ranged from five to nine years of imprisonment with confiscation of property. Article 405 of the Criminal Code of the Republic of Kazakhstan (2014) provided for liability for organising or participating in the activities of public or religious associations banned by court due to extremism or terrorism. Organising such activities was punishable by a fine of up to 6,000 MCI or imprisonment of up to six years; participation was punishable by a fine of up to 2,000 MCI or imprisonment of up to two years. These norms formed the basis of criminal legal protection against crimes related to religious intolerance.

The elements of a crime (Table 2), motivated by religious beliefs, included a set of mandatory components that characterised the offence and allowed it to be classified as an act committed on religious grounds. In qualification, it was important to establish a causal link between the offender's actions and the motives. Motives associated with religious hatred increased the degree of public danger of the act and could serve as grounds for the application of more severe punishment. In Kazakhstan, crimes motivated by religious beliefs included several common types. These offences were often related to extremist and radical expressions, violations of religious legislation, and threats to public stability (Bishmanov & Orynbekov, 2022).

Table 2. The elements of a crime motivated by religious beliefs

Elements of the crime	Meaning and classification
Object	The object of the offence is public safety, public relations and rights of citizens affected by the unlawful act. • Main object: inter-confessional harmony, religious freedom, equality of citizens before the law. • Additional object: life, health, honour, dignity, or property of citizens, if the crime was accompanied by violence or threats.
The objective side	The objective side describes actions that violate the law. The main forms of actions: • Violence or threat of violence (for example, attacking representatives of another religion). • Insulting the feelings of believers (desecration of religious symbols, places of worship). • Propaganda of enmity and hatred, including via the Internet. • Participation in extremist or terrorist organisations using religious ideology as a cover.
Subject	The subject is a physical sane person who has reached the age of criminal responsibility (usually 16 years of age, in some cases 14). The particularity of the subject may be expressed in belonging to a religious organisation or fanatical devotion to an ideology.
The subjective side	The subjective side is characterised by guilt and motives of the crime: • Form of guilt: intent aimed at committing acts out of religious beliefs. • Motive: religious hatred, fanaticism, desire to impose one's beliefs on others or to humiliate representatives of another confession.

Source: compiled by the authors based on Criminal Code of the Republic of Kazakhstan (2014)

Crimes based on religious beliefs were characterised by a high degree of public danger, as such crimes not only violated individual rights but also undermined the foundations of interfaith peace and stability. Such offences included physical violence arising from religious disagreements, desecration of places of worship, promotion of religious extremism, and insult to the religious feelings of believers. One of the main causes of such crimes was the religious radicalisation of the population (Lösel *et al.*, 2020). Radical organisations, which often attracted young people, used ideology to control others. Boko Haram – a Nigerian Islamist group – used religious ideology to justify its violent actions and actively recruited youth to participate in its operations (Omenma *et al.*, 2020). As the internet became a platform for spreading extremist ideologies, especially among the younger generation, or by unofficial religious organisations promoting hate-based ideas, radicalisation usually occurred through social networks. For example, the Islamic State (ISIS) actively

recruited young people worldwide using propaganda on social media and other online platforms. ISIS attracted youth by offering a sense of belonging, purpose, and the promise of participation in building a "true" Islamic state.

Low living standards, unemployment, and social inequality contributed to religious crimes. According to the Kazakhstani analytical portal Finprom.kz (Kazakhstan took 67th…, 2021), in Q4 2024, the official unemployment rate in Kazakhstan stood at 4.6%. However, this indicator varied significantly across regions. The highest unemployment figures were recorded in Almaty (51.9 thousand unemployed) and Shymkent (data not provided), as well as in Turkestan region (40.9 thousand) and Almaty region (35.5 thousand). The lowest number of unemployed was observed in Ulytau region (4.2 thousand), North Kazakhstan region (13.1 thousand), and Abai region (14.5 thousand). Turkestan region recorded the highest poverty level – 7.9%, which was double the national average of 4.6%. In Almaty region, around 53 thousand young people lacked secondary specialised or higher education, of whom 21 thousand neither worked nor studied, indicating a high level of youth unemployment. A low social capital index in Kyzylorda, Turkestan, and Abai regions pointed to weak social cohesion and trust, which could foster radicalisation. Extremists often exploited individuals who saw no opportunities. Social vulnerability pushed people toward radical organisations that promised to improve the situation. The spread of extremist ideas was driven by the active operations of radical groups funded from abroad, as well as Kazakhstan's strategic location in Central Asia, which attracted the attention of international religious and political movements. Such external forces were a major factor in spreading ideologies of hatred.

One of the most high-profile incidents was the attack in the city of Aktobe in June 2016 (Rowe, 2021). A group of radicals inspired by extremist ideology organised a series of attacks on gun shops and a military unit. As a result of the attacks, eight people died, including civilians and military personnel. The perpetrators stated that the actions were motivated by religious beliefs directed against "infidels". Following the Aktobe incident, amendments were made to laws aimed at strengthening the fight against extremism and terrorism. Law of the Republic of Kazakhstan No. 31 (2005) and No. 416 (1999) were revised to enhance control over religious activities and radical groups. Penalties for promoting extremism and participating in illegal religious organisations were tightened (McDermott & Baizakova, 2015). In 2016, Kazakhstan established a specialised body – the National Centre for Countering Extremism and Radicalisation – which was tasked with coordinating the state's policy on combating extremism and the radicalisation of the population. This centre was created as part of efforts to enhance internal security and reinforce state policy against terrorism and religious radicalism.

Educational measures to promote interfaith understanding and moderate religious beliefs were also strengthened. Several universities in Kazakhstan, including Nazarbayev University and Al-Farabi Kazakh National University, offered educational courses covering themes of interfaith dialogue and peaceful coexistence of different religions (Kusack, 2023). These courses taught students to respect religious diversity and contributed to social stability. Such courses included "Religion and Society", "Interfaith Relations", and others. Programmes were created for the repatriation and social rehabilitation of Kazakh citizens from conflict zones, including employment and counselling. Kazakhstan developed several programmes for the repatriation of its citizens from conflict zones, particularly from Syria, Iraq, and Afghanistan. The most well-known were "Zhusan" (2019-2021) and "Rusafa" (2021-2022) (Farrell *et al.*, 2021). These programmes involved not only the return of citizens but also the subsequent social adaptation.

Another case occurred in 2011 in Taraz. A suicide bomber affiliated with a radical group carried out a series of explosions and attacks that killed seven people, including police officers (Collins *et al.*, 2024). This was Kazakhstan's first instance of a suicide attack motivated by religion. This incident prompted the need to strengthen measures against religiously motivated crimes. It became a catalyst for the development and implementation of legislative measures. Amendments were made to the Criminal Code of the Republic of Kazakhstan (2014), aimed at tightening penalties for crimes related to extremism and terrorism – for example, expanding the list of articles covering religious extremism and terrorism. In practice, these changes were intended to improve the fight against terrorist activity. Legislation gave law enforcement agencies additional tools to suppress crimes, but in reality, everything depended on how these changes were interpreted and applied. A lack of experience or qualifications in law enforcement, or abuse of power, could result in unjustified arrests or persecution of individuals unconnected to terrorist activities but held accountable for sharing certain ideas. In addition to amending the Criminal Code, new legal acts were adopted, such as Law of the Republic of Kazakhstan No. 31 (2005) and No. 483-IV (2011), aimed at strengthening control measures and preventing extremist manifestations. These laws introduced measures to combat extremism and radicalism, but the problem lay in the potential expansion of the definition of extremism, which could lead to its application to actions not always linked to violent activities. This could pose a risk of abuse by law enforcement, who might apply these norms to restrict freedom of expression, which contradicts fundamental human rights. However, it was important to emphasise the need for ongoing monitoring and adaptation of approaches, given the evolving challenges and threats associated with religious extremism.

It could be concluded that the state had intensified security measures and developed programmes to counter radicalisation as a result of these crimes. Increased oversight of religious activity, implementation of preventive initiatives, and raising youth awareness were among the most important steps. To prevent such cases in the future, Kazakhstan also actively cooperated with international organisations. Kazakhstan also actively employed preventive approaches to counter religious extremism. State agencies such as the National Security Committee and the Ministry of Information and Social Development monitored internet content and social media for extremist propaganda (Seitakhmetova *et al.*, 2024).

Special attention was paid to improving religious literacy (Tiilikainen & Mankkinen, 2020). This was achieved through educational programmes, training sessions, and lectures aimed at explaining the foundations of traditional religions and preventing manipulation of religious dogmas. Ignorance of the basics of traditional religions made individuals vulnerable to the influence of destructive movements. Pseudo-religious organisations actively spread the ideas through unofficial channels, including social media and underground meetings.

An important component was work with individuals influenced by extremist ideologies (Amit & Kafy, 2022). In rehabilitation centres, theologians and psychologists helped such individuals rethink the views, based on traditional religious values. Strengthening mutual understanding between representatives of different religious groups also played an important role in reducing conflict (Mazya *et al.*, 2024). Kazakhstan developed dialogue platforms to discuss issues of tolerance and mutual respect. Effective combat against religiously motivated crimes required coordination between various state bodies. The prosecutor's office, police, security services, and religious organisations cooperated to identify and neutralise threats. For example, the Council for Relations with Religious Associations under the Ministry of Information and Social Development played a significant role in establishing dialogue between religious groups and the state (Buribayev *et al.*, 2024). Such cooperation helped identify problem areas and resolve such problems in a timely manner.

Kazakhstan actively participated in international initiatives aimed at combating religious extremism and terrorism. As part of cooperation with the United Nations (UN), the Organisation for Security and Co-operation in Europe (OSCE), and other organisations, trainings, conferences, and experience exchanges were held. This made it possible to introduce the best global practices into national systems. Kazakhstan also actively cooperated with partners within the Shanghai Cooperation Organization (SCO) through the Regional Anti-Terrorism Structure (RATS) to exchange intelligence information and jointly counter crimes related to religious extremism.

Pakistan was one of the countries where religious beliefs and the enforcement had significant influence on the social and legal system (Yilmaz, 2019). Criminal law mechanisms for combating religiously motivated crimes in Pakistan were built on a combination of criminal legislation, Islam, and the cultural-historical context. The Pakistani legal system included a combination of British common law, Islamic law (Sharia), and its own normative acts (Ishfaq *et al.*, 2024). The main legislative document was the Penal Code of Pakistan (1860). Sharia courts, which had the authority to review the decisions of regular courts, also considered cases related to religious crimes. There were severe punishments for blasphemy, including the death penalty. Pakistan had no official statistical data on religiously motivated crimes for the specified period. However, international human rights organisations regularly reported cases of persecution of religious minorities, including Christians, Shia Muslims, and Ahmadis. These incidents included blasphemy accusations, violent attacks, and discrimination, indicating a persistent problem of religious intolerance in the country.

In European Union countries, several directives required EU Member States to introduce laws prohibiting incitement to religious hatred (European Council Framework Decision No. 2008/913/JHA, 2008). In Kazakhstan, the fight against extremism was regulated solely by national laws, as the country did not belong to supranational organisations with similar levels of regulation. In Germany, programmes such as "EXIT" aimed to help people leave extremist organisations (Daugherty, 2019). France had radicalisation prevention centres that worked with youth influenced by extremist ideologies (Sas *et al.*, 2020). In Kazakhstan, deradicalisation was mainly carried out through religious enlightenment centres. These centres helped individuals involved in radical or extremist movements understand the consequences of the actions and return to traditional values. The centres held lectures, seminars, and educational courses aimed at promoting respect for legal and moral standards of society.

In the EU, technologies and databases were actively used to monitor extremist activity on the internet. For example, the European Police Agency (EUROPOL) coordinated Member States' efforts to track hate crimes, including religiously motivated ones (Vieth-Ditlmann, 2025). Platforms for removing extremist content in cooperation with IT companies (e.g., Facebook, Google) were in place. In Kazakhstan, such systems were being developed, but the scale and integration with international initiatives remained limited. Specialised agencies operated in the country, monitoring extremist and radical content on the internet. This included analysis of websites, social networks, messengers, and other digital platforms. Automated systems and software tools were used to detect potential threats. Despite efforts, integration with international initiatives and expanding the scale of monitoring systems were still in development, due to the need to ensure human rights and maintain a balance between security and freedom of expression.

In the EU, significant attention was paid to educational programmes promoting respect for various religious traditions (Suyatno *et al.*, 2020). Examples included Erasmus+, "Living Together", and the EU Strategy on combating antisemitism and Islamophobia. These were linked to the importance of integration, prevention of discrimination, and promotion of shared European values such as respect for human rights, tolerance, and diversity. In Kazakhstan, educational initiatives were also developing, but were not as systematic or internationally oriented. In Europe, there was a marked rise in religiously motivated crimes, especially against Christians. According to the Observatory on Intolerance and Discrimination against Christians (2024), 2,444 anti-Christian crimes were recorded in 2023 across 35 European countries, including 232 personal attacks. This represented a 44% increase compared to the previous year. The situation was particularly alarming in France (about 1,000 cases), the United Kingdom (more than 700), and Germany (an increase of 105% – from 135 to 277 cases). These differences reflected the historical and cultural legacy of each country, the level of institutional development, and the specifics of international integration. While the severity of punishment might be less consistent than in EU countries – where it was considered a serious offence, often resulting in large fines or lengthy prison terms – incitement of religious hatred remained a criminal offence punishable by law in Kazakhstan.

Such criminal legal mechanisms as regulatory measures, prevention, and punishment addressed the threat of religiously motivated crimes to public order and interfaith harmony. Liability was provided for inciting religious hatred, promoting extremism, and joining banned religious organisations. Special attention was given to preventing radicalisation through educational programmes, monitoring of internet space, rehabilitation of individuals involved in extremism. For the effective implementation of these mechanisms, it was necessary to constantly improve legislation, enhance the qualifications of law enforcement officers, and promote a culture of tolerance.

Discussion

The study of criminal legal mechanisms to counter crimes motivated by religious beliefs in Kazakhstan, Pakistan, and

Europe showed that despite differences in legal systems, all three regions faced the necessity of balancing the protection of freedom of religion with ensuring public safety. In Kazakhstan, there was a tendency to integrate international standards into the legal system, although there was a need to improve legislation for clearer regulation of religiously motivated crimes. In Pakistan, the emphasis on religious law and strict criminal measures often led to limitations on civil liberties, making fair justice more difficult. In Europe, by contrast, the prevailing approach focused on preventing extremism through prevention and integration; however, existing gaps in legislation and law enforcement practice continued to leave vulnerable population groups susceptible to radicalisation.

J. Abbink (2020) noted that religious beliefs became a motive for crimes in cases where: the ideology of a religious group included calls for violence; religious intolerance provoked discrimination or physical attacks; and manipulation of religious beliefs was used to justify terrorism or radicalism. For example, E. Johnson (2019) indicated that modern religious crimes often took the form of extremist activity directed against people of other faiths or atheists, underlining the need for enhanced legal regulation. According to the present study, in Kazakhstan, religious beliefs could become a motive for crimes in several cases, usually associated with radicalisation, religious intolerance, or the misuse of religious ideas for personal or group purposes. There were cases in Kazakhstan where individuals or groups, under the influence of extremist ideologies, committed terrorist acts or participated in the activities of banned religious organisations. The use of religion to justify violence: Crimes such as attacks on government officials or civilians were sometimes justified by ideologists (Hunko, 2023). In regions with diverse religious communities, conflicts could arise between representatives of different faiths, sometimes escalating into violent actions, including insults, attacks, or the arson of places of worship (Zaiets *et al.*, 2024). Some crimes were related to violations of citizens' rights due to the religious affiliation or views. This could manifest as bullying, physical attacks, or restrictions in social and employment rights. The promotion of ideas inciting violence or undermining national security was also considered a serious crime in Kazakhstan. Some offences involved the use of religious organisations for money laundering or the financing of terrorist activities (Vatral, 2023).

According to the conclusions of R.D. King (2019), many states included provisions in criminal legislation aimed at combating crimes based on religious hatred or hostility. For instance, articles prohibiting incitement to religious hatred, insulting religious feelings, and extremist activity. The study found that many states took legislative measures to combat crimes related to religious hatred or hostility, as such acts threatened public order, interfaith peace, and human rights. In Kazakhstan, for example, criminal legislation included measures against inciting religious hatred. One such provision was Article 174 of the Criminal Code of the Republic of Kazakhstan (2014), which provided liability for actions aimed at inciting social, racial, religious, or other enmity. In EU countries, European Council Framework Decision No. 2008/913/JHA (2008) required member states to criminalise hate speech, including religious hatred.

H. Dachak (2021) emphasised that punishments for crimes motivated by religious beliefs must be fair and proportionate. These punishments should take into account the severity of the act, public danger, and the motives behind the crime. The application of rehabilitative measures and deradicalisation programmes for those involved in criminal activity for religious motives was considered an effective strategy. The current study established that in Kazakhstan, as in other countries, punishments for crimes motivated by religious beliefs were regulated by criminal law, with the main focus placed on justice, proportionality, and preventing religious intolerance. Punishments for such offences in Kazakhstan fairly combined strict criminal liability with preventive approaches. This enabled not only the punishment of offenders but also the prevention of incitement to religious hatred, preserving peace and stability in society. T. Ellington (2024) believed that criminal penalties for crimes motivated by religious hatred needed to be tightened to enhance the preventive effect. However, Y. Ben Yair and N. Ronel (2024) believed that the focus should be on rehabilitation and educational methods rather than punitive measures.

According to the conclusions of S. Litvak *et al.* (2024), apart from repressive mechanisms, preventive measures were important: educational work among religious communities, the involvement of religious leaders in preventing radicalisation, and countering religious propaganda justifying violence. Preventive activities played a key role in preventing crimes motivated by religious beliefs. These activities were aimed at eliminating the causes and conditions that contributed to radicalisation, religious intolerance, and other manifestations of criminal behaviour. According to the study, in Kazakhstan, preventive measures to prevent crimes motivated by religious beliefs were an important component of state policy in the field of security and religious relations. These measures were aimed at combating radicalisation, extremism, and creating a harmonious interfaith environment. These measures aimed to create an environment in which interfaith harmony and respect for diversity formed the foundation of public life. This approach helped minimise the risk of radicalisation and ensured stability in the country.

As J. Fox (2021) noted, excessively strict laws on crimes motivated by religious beliefs could indeed limit freedom of speech and religion. This raised serious debates among lawyers, human rights activists, and religious communities. Laws aimed at combating religious hatred sometimes contained overly broad or vague language. Misinterpretation of terms, such as "insulting religious feelings", could be subjective and used to suppress criticism. There was a risk that laws would be used to restrict criticism of religion or secular views, which undermined democratic principles. The study found that in Kazakhstan, freedom of speech and religion was officially guaranteed by the Constitution of the Republic of Kazakhstan (1995), but in practice, laws aimed at combating extremism and crimes motivated by religious beliefs could sometimes limit these freedoms. Strict laws against religious extremism: Kazakhstan introduced a series of legislative acts to combat extremism. Law of the Republic of Kazakhstan No. 31 (2005) and other acts regulated the activities of religious organisations. Some provisions required mandatory registration of religious groups, restricted preaching without authorisation, and imposed strict rules on religious materials. Restrictions on freedom of expression: laws such as the Criminal Code of the Republic of Kazakhstan (2014) included articles related to inciting religious hatred (e.g., Article 174). These articles aimed to prevent extremism, but were sometimes applied broadly, including to criticism of authorities or religious debates.

As D. Holbrook and J. Horgan (2019) stressed, it was important to pay special attention to combating religious extremism, which often served as the ideological basis for terrorist acts and other serious crimes. International agreements and standards, such as UN recommendations on counter-terrorism linked to religious motives, played a key role (Lytvyn & Ahmadov, 2024). The current study established that Europe actively applied international standards and agreements aimed at preventing terrorist activity and radicalisation. One key document was the Universal Declaration of Human Rights (1948), which, while guaranteeing religious freedoms, strictly condemned violence and discrimination based on religion. The European Union also developed its own internal mechanisms, including directives and regulations, aimed at combating terrorism and preventing violent extremism (Makhambetsaliyev *et al.*, 2024). In particular, European Council Framework Decision No. 2008/913/JHA (2008) included measures to improve information exchange between states, combat recruitment and extremist propaganda, as well as rehabilitation measures for radicalised individuals.

Effective criminal legal mechanisms to counter crimes motivated by religious beliefs should strike a balance between protecting public safety and respecting freedom of religion. The criminotheological approach allowed for an in-depth examination of these issues and the development of more flexible and fair measures. Further research was needed into the causes and circumstances contributing to the commission of crimes on religious grounds, improvement of legislation aimed at preventing such crimes, strengthening of international cooperation in the fight against terrorism and extremism, and the development of effective programmes for the prevention of terrorism and extremism.

Conclusions

Religiously motivated crimes were complex, as such crimes involved religious, sociocultural, and ideological elements. Extremism, incitement of religious hatred, and citizens' participation in the activities of banned groups were examples of such crimes that could occur in Kazakhstan and threaten the stability of the state and society. This study examined the criminal legal response to crimes motivated by religious beliefs in the context of Kazakhstan, Pakistan, and European countries, using the criminotheological approach. The aim was to identify features of law enforcement practice, legislative problems, and to propose recommendations for improving existing mechanisms to combat religious extremism. The goal of the study was achieved, as a detailed analysis of the legal systems of different regions was carried out, existing problems were identified, and specific solutions were proposed.

During the research, an analysis was conducted of the legal systems of Kazakhstan, Pakistan, and European Union countries, with a focus on religiously motivated crimes. At the first stage of the work, the legal characteristics of such crimes in each of these regions were considered, as well as the differences in approaches to qualifying religious motives and applying relevant criminal legal norms. In the second stage of the study, attention was focused on problems related to legal regulation, the key ones being the lack of clear criteria for qualifying crimes based on religious motives, contradictions in national legislation, and differences in law enforcement.

The results obtained deepened the understanding of the problem of countering crimes motivated by religious beliefs and highlighted the importance of considering sociocultural and religious factors when developing legal mechanisms. In Kazakhstan, the criminal legal system was aimed at combating religious extremism and radicalisation. The state applied measures aimed not only at suppressing violent crimes but also at prevention and the early deterrence of the spread of religious intolerance. Legislative tools were actively used to control the activities of religious organisations, prevent youth radicalisation, and ensure compliance with the principles of religious freedom. In Pakistan, the situation was more complex due to a combination of religious, cultural, and political factors. Laws related to religious crimes, such as blasphemy laws, were widely applied in the country. These laws often led to abuse, as such laws could be used to persecute religious minorities and justify violence. The criminal legislation of the European Union focused on criminal liability for violence, discrimination, and incitement to religious hatred. Unlike Kazakhstan and Pakistan, where the primary focus was on preventing extremist threats, European countries focused on supporting inclusiveness, diversity, and respect for religious minorities, while actively applying measures against violence and religious persecution. Of particular importance was the integration of the criminotheological approach, which took into account not only legal but also religious aspects, allowing for a more comprehensive approach to addressing this issue.

Future research on this topic should focus on studying the effectiveness of sanctions applied to individuals who committed crimes on religious grounds (e.g., imprisonment, mandatory educational programmes), and exploring the possibilities of applying probation or rehabilitative measures to prevent reoffending.

Acknowledgements

None.

Funding

The study was not funded.

Conflict of interest

None.

References

[1] Abbink, J. (2020). Religion and violence in the horn of Africa: Trajectories of mimetic rivalry and escalation between 'Political Islam' and the state. *Politics Religion & Ideology*, 21(2), 194-215. doi: 10.1080/21567689.2020.1754206.

[2] Amit, S., & Kafy, A.-A. (2022). A systematic literature review on preventing violent extremism. *Journal of Adolescence*, 94(8), 1068-1080. doi: 10.1002/jad.12095.

[3] Begalinova, K., Ashilov, M., & Begalinov, A. (2020). Religious extremism in Kazakhstan: Threats of spreading and means of opposition. *Central Asia and the Caucasus*, 21(4), 124-131. doi: 10.37178/ca-c.20.4.12.

[4] Ben Yair, Y., & Ronel, N. (2024). The social response: Punishment and rehabilitation. In *Spiritual Jewish criminology: Theoretical perspective and applications for offenders rehabilitation* (pp. 67-105). Cham: Springer. doi: 10.1007/978-3-031-63172-6_6.

[5] Bishmanov, K., & Orynbekov, N. (2022). Opportunities and trends in the emergence of religious extremism and terrorism in Kazakhstan society. *Eurasian Journal of Religious Studies*, 30(2), 56-67. doi: 10.26577/ejrs.2022.v30.i2.r6.

[6] Bishmanov, K., & Orynbekov, N. (2023). Enhancing religious literacy to counter extremism and terrorism in Kazakhstan's religious context. *Eurasian Journal of Religious Studies*, 34(2), 23-33. doi: 10.26577//EJRS.2023.v34.i2.r3.

[7] Buribayev, Y., Turlykhankyzy, K., Kalkayeva, N., Shakenov, D., & Khamzina, Z. (2024). Strategic development and comprehensive guidelines for state policy in Kazakhstan's religious sphere. *International Journal of Religion*, 5(3), 40-51. doi: 10.61707/77nmvb36.

[8] Chigozie, A.J. (2025). Inter-faith dialogue and conflict resolution in Nigeria: A study of christian-muslim relations in plateau state. *IGWEBUIKE: An African Journal of Arts and Humanities*, 11(1), 86-99.

[9] Collins, N., Doumani Dupuy, P.N., & Zamanbekova, A. (2024). Democratically digging together: A study of archaeology and civil society. *Journal of Eurasian Studies*. doi: 10.1177/18793665241270821.

[10] Constitution of the Republic of Kazakhstan. (1995, August). Retrieved from https://www.akorda.kz/en/constitution-of-the-republic-of-kazakhstan-50912.

[11] Criminal Code of the Republic of Kazakhstan. (2014, July). Retrieved from https://adilet.zan.kz/eng/docs/K970000167_.

[12] Dachak, H. (2021). The principle of proportionality of crime and punishment in international documents. *International Journal of Multicultural and Multireligious Understanding*, 8(4), 684-694. doi: 10.18415/ijmmu.v8i4.2661.

[13] Daugherty, C.E. (2019). Deradicalization and disengagement: Exit programs in Norway and Sweden and addressing neo-Nazi extremism. *Journal for Deradicalization*, 21, 219-260.

[14] Decision of the District Court No. 2 of the Saryarka District of Astana. (2017, October). Retrieved from https://advokat.kz/72-samyy-pervyy-prigovor-v-kazahstane-po-174-state-uk-rk-saken-baykenov.html.

[15] Ellington, T. (2024). *Perceptions on the effects of religious programs on criminal behavior among juveniles*. Minneapolis: Walden University.

[16] European Council Framework Decision No. 2008/913/JHA "On Combating Certain Forms and Expressions of Racism and Xenophobia by Means of Criminal Law". (2008, November). Retrieved from https://eur-lex.europa.eu/eli/dec_framw/2008/913/oj/eng.

[17] Farrell, W.B., Burnashev, R., Azizi, R., & Babadjanov, B. (2021). *Processes of reintegrating Central Asian returnees from Syria and Iraq*. Washington: United States Institute of Peace.

[18] Fox, J. (2021). What is religious freedom and who has it? *Social Compass*, 68(3), 321-341. doi: 10.1177/00377686211012368.

[19] Holbrook, D., & Horgan, J. (2019). Terrorism and ideology: Cracking the nut. *Perspectives on Terrorism*, 13(6), 2-15.

[20] Hunko, L. (2023). Strategy for combating illegal armed formations: Content, components, evolution. *Democratic Governance*, 16(2), 66-78. doi: 10.23939/dg2023.02.

[21] International Covenant on Civil and Political Rights. (1966, December). Retrieved from https://www.ohchr.org/sites/default/files/ccpr.pdf.

[22] Ishfaq, N.M., Yasin, N.S., Riaz, N.M., & Riaz, N.K. (2024). Navigating legal pluralism: A comparative analysis of Islamic law and secular legal systems in Pakistan. *International Journal of Social Welfare and Family Law*, 1(2), 1-17. doi: 10.62951/ijsw.v1i2.16.

[23] Ismailov, V. (2025). *Global ranking: Kazakhstan has the third-highest unemployment rate in Eurasia*. Retrieved from https://timesca.com/ilostat-survey-kazakhstan-has-the-third-highest-unemployment-rate-in-eurasia/.

[24] Johnson, E. (2019). Apostasy, human rights and hate crime in England and Wales: A mixed methods study. *SSRN*. doi: 10.2139/ssrn.3475161.

[25] Kalmyrzaev, B.A., Bitemirov, K.T., Shalkharov, Y.S., Imanbekova, M.M., Paridinova, A.E., Moldaliev, M.M., & Salayev, N.S. (2021). Problems and prospect of countering religious extremism in the Kazakhstan Republic including problems of bioterrorism in religional extremism. *Journal of Legal, Ethical and Regulatory Issues*, 24(4).

[26] Kazakhstan took 67th place out of 163 in the rating of the most peaceful countries. (2021). Retrieved from https://finprom.kz/ru/article/v-rejtinge-samyh-mirolyubivyh-stran-kazahstan-zanyal-67-e-mesto-iz-163.

[27] King, R.D. (2019). Hate crimes: Perspectives on offending and the law. In M.D. Krohn, N. Hendrix, G.P. Hall & A.J. Lizotte (Eds.), *Handbook on crime and deviance* (pp. 437-458). Cham: Springer. doi: 10.1007/978-3-030-20779-3_22.

[28] Kusack, W. (2023). In search of a welcoming environment for religions in the "New Kazakhstan". *Review of Faith & International Affairs*, 22(1), 87-96. doi: 10.1080/15570274.2023.2261709.

[29] Law of the Republic of Kazakhstan No. 31 "On Countering to Extremism". (2005, February). Retrieved from https://adilet.zan.kz/eng/docs/Z050000031_.

[30] Law of the Republic of Kazakhstan No. 416 "On Counteracting Terrorism". (1999, July). Retrieved from https://adilet.zan.kz/eng/docs/Z990000416_.

[31] Law of the Republic of Kazakhstan No. 483-IV "On Religious Activities and Religious Associations". (2011, October). Retrieved from https://adilet.zan.kz/eng/docs/Z1100000483.

[32] Litvak, S., Kivivuori, J., & Kaakinen, M. (2024). Preventing religion-based hate crime victimization among youth: A systematic review of personal, collective, and policy responses. *Trauma, Violence & Abuse*, 25(5), 3696-3712. doi: 10.1177/15248380241257198.

[33] Lösel, F., Bender, D., Jugl, I., & King, S. (2020). Resilience against political and religious extremism, radicalization, and related violence: A systematic review of studies on protective factors. In D. Weisburd, E.U. Savona, B. Hasisi & F. Calderoni (Eds.), *Understanding recruitment to organized crime and terrorism* (pp. 55-84). Cham: Springer. doi: 10.1007/978-3-030-36639-1_3.

[34] Lytvyn, V., & Ahmadov, V. (2024). Problematic aspects of at the scene police work with victims of terrorist acts on the territory of Ukraine. *Law Journal of the National Academy of Internal Affairs*, 14(2), 52-60. doi: 10.56215/naia-chasopis/2.2024.52.

[35] Makhambetsaliyev, D.B., Sagynbekova, G.M., Abdykadyr, U.B., Alimova, E.A., & Smanova, A.B. (2024). Constitutional law-making in the U.S. Supreme Court. *Public Integrity*, 26(4), 473-484. doi: 10.1080/10999922.2023.2282261.

[36] Mazya, T.M., Ridho, K., & Irfani, A. (2024). Religious and cultural diversity in Indonesia: Dynamics of acceptance and conflict in a multidimensional perspective. *International Journal of Current Science Research and Review*, 7(7), 4932-4945. doi: 10.47191/ijcsrr/v7-i7-32.

[37] McDermott, R.N., & Baizakova, Z. (2015). *Reassessing the barriers to Islamic radicalization in Kazakhstan*. Carlisle Barracks: Strategic Studies Institute.

[38] Observatory on Intolerance and Discrimination against Christians. (2024). *OIDAC Europe report 2024*. Retrieved from https://www.intoleranceagainstchristians.eu/publications/oidac-report-2024.

[39] Omenma, J.T., Hendricks, C., & Ajaebili, N.C. (2020). al-Shabaab and Boko Haram: Recruitment strategies. *Peace and Conflict Studies*, 27(1), article number 2. doi: 10.46743/1082-7307/2020.1460.

[40] Penal Code of Pakistan. (1860, October). Retrieved from https://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html.

[41] Rowe, T.J. (2021). Training the 'Great Steppe Army': Preparing Kazakhstan's ground forces to meet contemporary threats. *Journal of Slavic Military Studies*, 34(3), 331-356. doi: 10.1080/13518046.2021.1992705.

[42] Sas, M., Ponnet, K., Reniers, G., & Hardyns, W. (2020). The role of education in the prevention of radicalization and violent extremism in developing countries. *Sustainability*, 12(6), article number 2320. doi: 10.3390/su12062320.

[43] Seitakhmetova, N., Aliyarov, E., Zhandossova, S., Tolen, Z., & Nurov, M. (2024). Counteracting religious extremism in youth environments: World experience and Kazakhstan. *Journal of Social Studies Education Research*, 15(3), 257-288.

[44] Sharipova, D., & Beissembayev, S. (2021). Causes of violent extremism in Central Asia: The case of Kazakhstan. *Studies in Conflict and Terrorism*, 46(9), 1702-1724. doi: 10.1080/1057610x.2021.1872163.

[45] Suyatno, S., Hayati, F.N., & Susatya, E. (2020). Strengthening of religious character education based on school culture in the Indonesian secondary school. *European Educational Researcher*, 3(3), 87-100. doi: 10.31757/euer.331.

[46] Tiilikainen, M., & Mankkinen, T. (2020). Prevention of violent radicalization and extremism in Finland: The role of religious literacy. In T. Sakaranaho, T. Aarrevaara & J. Konttori (Eds.), *The challenges of religious literacy: The case of Finland* (pp. 67-78). Cham: Springer. doi: 10.1007/978-3-030-47576-5_6.

[47] Tungatova, U., & Kurmanaliyeva, A. (2023). Prevention of religious extremism in Kazakhstan. *Journal of Educational and Social Research*, 13(2), 82-89. doi: 10.36941/jesr-2023-0033.

[48] Universal Declaration of Human Rights. (1948, December). Retrieved from https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf.

[49] Vatral, A. (2023). Legal regulation of combating organised crime in Ukraine: Current state and areas of improvement. *Scientific Journal of the National Academy of Internal Affairs*, 28(3), 17-27. doi: 10.56215/naia-herald/3.2023.17.

[50] Vidino, L., & Marone, F. (2022). *Jihadist attacks in the West: 2014-2022*. Retrieved from https://extremism.gwu.edu/sites/g/files/zaxdzs5746/files/Jihadist-Attacks-in-the-West_Vidino-Marone_September-2022.pdf.

[51] Vieth-Ditlmann, K. (2025). Policing 'online radicalization': The framing of Europol's Internet referral unit. In B. Wagner, M.C. Kettemann, K. Vieth-Ditlmann & S. Montgomery (Eds.), *Research handbook on human rights and digital technology* (pp. 262-287). Cheltenham: Edward Elgar Publishing. doi: 10.4337/9781035308514.00022.

[52] Yilmaz, I. (2019). Nation building, Islamic law and unofficial legal pluralism: The cases of Turkey and Pakistan. In N. Oberauer, Y. Prief & U. Qubaja (Eds.), *Legal pluralism in Muslim contexts* (pp. 109-138). Leeds: Brill. doi: 10.1163/9789004398269_007.

[53] Zaiets, K., Muravska, Y., Slipchenko, T., Kaniuka, V., & Melnyk, I. (2024). The etymology of the concept "military conflict" as a determinant of political orientation. *Law, Policy and Security*, 2(2), 39-51. doi: 10.62566/lps/2.2024.39.

Кримінально-правові механізми протидії злочинам, мотивованим релігійними переконаннями: кримінотеологічний підхід

Жанна Садиканова
Кандидат юридичних наук, доцент
Східно-Казахстанський університет імені Сарсена Аманжолова
070020, вул. Гвардійської дивізії, 34, м. Усть-Каменогорськ, Республіка Казахстан
https://orcid.org/0000-0003-2613-3349

Індіра Смайлова
Кандидат юридичних наук, доцент
Східно-Казахстанський університет імені Сарсена Аманжолова
070020, вул. Гвардійської дивізії, 34, м. Усть-Каменогорськ, Республіка Казахстан
https://orcid.org/0009-000678133315

Айнур Рамазанова
Кандидат юридичних наук, доцент
Східно-Казахстанський університет імені Сарсена Аманжолова
070020, вул. Гвардійської дивізії, 34, м. Усть-Каменогорськ, Республіка Казахстан
https://orcid.org/0009-0009-3573-469X

Куаниш Койшибайули
Кандидат юридичних наук, старший викладач
Університет Q
050000, вул. Байзакова, 125/185, м. Алмати, Республіка Казахстан
https://orcid.org/0009-0002-9839-4230

Нурлан Апахаєв
Кандидат юридичних наук, доцент
Алматинський коледж економіки, права та педагогіки
041609, вул. Райимбек Батир, 80А, с. Бесагаш, Республіка Казахстан
https://orcid.org/0000-0001-7795-2518

Анотація. Метою даного дослідження був комплексний аналіз кримінально-правових механізмів протидії злочинам, мотивованим релігійними переконаннями, з використанням кримінотеологічного підходу для виявлення сучасних тенденцій правозастосовної практики, проблем та прогалин чинного законодавства. У ході дослідження було проаналізовано кримінально-правові механізми протидії злочинам, мотивованим релігійними переконаннями, на прикладі Казахстану, Пакистану та країн Європи. Було встановлено, що в Казахстані спостерігається тенденція до адаптації європейських стандартів з урахуванням національної специфіки та впливу регіональних факторів, тоді як у Пакистані кримінальне переслідування найчастіше супроводжується релігійно-політичним впливом, що ускладнює об'єктивну правову оцінку діянь. Було узагальнено, що ефективність кримінально-правової протидії цим злочинам великою мірою залежить рівня правової культури, ступеня світськості держави й наявності міждисциплінарного підходу. Зроблено висновок, що ефективна протидія злочинам, мотивованим релігійними переконаннями, потребує комплексного підходу, що поєднує кримінально-правові, теологічні та соціально-профілактичні заходи. На прикладі Казахстану, Пакистану та країн Європи встановлено, що найбільшу стійкість у боротьбі з подібними злочинами демонструють ті держави, де дотримується балансу між захистом прав людини, світським характером правопорядку та можливістю державно-релігійного діалогу. У той же час надмірна карність (як у випадку з Пакистаном) або надмірна лібералізація (у деяких європейських країнах) можуть як посилювати радикальні настрої, так і ускладнювати кримінальне переслідування винних осіб. Казахстан, перебуваючи між двома моделями, демонструє прагнення вироблення власної стратегії, що спирається на міжнародний досвід, але потребує більш чітких теоретико-правових засад

Ключові слова: віросповідання; соціальна напруженість; захист прав людини; екстремізм; тероризм; дискримінація

UDC 347.78:338.48
DOI: 10.32518/sals2.2025.95

Соціально-правові студії. 2025. Т. 8, № 2
Social & Legal Studios. 2025. Vol. 8, No. 2

Legal basis and prospects of international cooperation between Kazakhstan and China in the field of protection the rights of tourists

Ming-Zhe Su
Doctoral Student
Al-Farabi Kazakh National University
050040, 71 Al-Farabi Ave., Almaty, Republic of Kazakhstan
https://orcid.org/0009-0000-8131-7461

He-Yong Wang
Master of Science, Associate Researcher
Harbin Institute of Technology
150001, 92 Xida Str., Harbin, People's Republic of China
https://orcid.org/0000-0002-4092-2136

Yesbol Omirzhanov
PhD in Law, Professor
Al-Farabi Kazakh National University
050040, 71 Al-Farabi Ave., Almaty, Republic of Kazakhstan
https://orcid.org/0000-0003-2530-6658

Hong-Wei Wang
PhD in Law, Professor
Harbin Institute of Technology
150001, 92 Xida Str., Harbin, People's Republic of China
https://orcid.org/0000-0003-3044-1774

Indira Saktaganova*
PhD in Law, Professor
L.N. Gumilyov Eurasian National University
010008, 2 Satpayev Str., Astana, Republic of Kazakhstan
https://orcid.org/0000-0001-7218-197X

Abstract. The purpose of the study was to analyse the legal and regulatory framework and assess the possibilities for developing international cooperation between Kazakhstan and China to protect the rights of tourists. The study used a comparative analysis of legal acts, an analysis of intergovernmental agreements regulating the tourism sector, as well as a content analysis of reports of government agencies and industry associations. The paper examined the main mechanisms of legal regulation of tourist rights protection in Kazakhstan and China. The study analysed the effectiveness of existing institutional mechanisms of cooperation, in particular the functioning of the Kazakhstan-China Tourism Forum and joint border coordination groups operating under bilateral agreements. The study identified key problems, including insufficient coordination between national consumer protection authorities, the lack of a unified system for administrative review of tourist complaints, and difficulties with judicial settlement of disputes, which causes significant financial and time costs for tourists. It was found that a significant number of conflict situations are resolved through the mechanisms of self-regulation of the tourism business and out-of-court dispute resolution, in particular with the participation of industry associations and insurance companies. Prospects for cooperation were analysed, including the possibility of creating a single electronic database of tourist complaints between Kazakhstan and China, harmonising

Suggested Citation

Article's History: Received: 17.02.2025 Revised: 23.05.2025 Accepted: 25.06.2025

Su, M.-Zh., Wang, H.-Y., Omirzhanov, Ye., Wang, H.-W., & Saktaganova, I. (2025). Legal basis and prospects of international cooperation between Kazakhstan and China in the field of protection the rights of tourists. *Social & Legal Studios*, 8(2), 95-107. doi: 10.32518/sals2.2025.95.

*Corresponding author

Copyright © The Author(s). This is an open access Article distributed under the terms of the Creative Commons Attribution License 4.0 (https://creativecommons.org/licenses/by/4.0/)

travel insurance standards, and expanding alternative dispute resolution mechanisms, including international arbitration. Effective legal regulation of tourism activities is an important factor in the development of cross-border tourism and ensuring its sustainability, and the introduction of coordinated mechanisms for protecting the rights of tourists will help increase confidence in the tourism market and strengthen bilateral relations between Kazakhstan and China

Keywords: legislation; regulations; liability; agreements; safety; cross-border travel

Introduction

The topic of the legal framework and prospects for international cooperation between Kazakhstan and China is particularly relevant in the context of growing tourist flows and the globalisation of the tourism market. The intensification of tourism exchanges between the two countries necessitates the development of effective legal mechanisms that ensure both the safety of travellers and the protection of their rights and freedoms. This issue reflects a broader trend of increasing interdependence in international tourism and highlights the need for coordinated legal solutions to cross-border challenges. However, the current cooperation between Kazakhstan and China in the tourism sector still faces several problems, including insufficient harmonisation of legal standards, bureaucratic difficulties in visa processes, and a lack of clearly defined procedures for protecting tourists' rights in the event of violations.

In the study by A. Mussabayeva *et al.* (2024) and Q. Shi *et al.* (2024) examines the issue of harmonisation of legal norms in the field of tourism between countries with different legal traditions. The authors note that Kazakhstan and China use different approaches to regulating tourism activities: Kazakhstan is guided by international standards and the European model of tourism law, while China uses a more centralised approach with strict state regulations. This makes it difficult to develop unified mechanisms for protecting the rights of tourists within the framework of bilateral cooperation. According to a study by Z. Chen (2020), one of the main challenges in the field of international tourism law is to ensure effective protection of tourists' rights in the event of breach of contract or force majeure. The author emphasises that it is necessary to improve the mechanisms of judicial and pre-trial settlement of tourism disputes, in particular by establishing a joint arbitration centre or a specialised mediation service.

G. Makenova *et al.* (2020) emphasise that an important challenge is the issue of the responsibility of tour operators for the quality of services provided. In many countries, including China and Kazakhstan, there are no clear legal mechanisms regulating the liability of tour operators in the event of poor-quality services or changes in the terms of the tourism product. This creates situations where tourists face violations of their rights, but do not have effective legal tools to protect their interests.

As noted by A. Kalkabayev (2024) notes that digitalisation and the use of artificial intelligence technologies to monitor the observance of tourist rights play a significant role in the protection of tourist rights. The introduction of digital complaint registration mechanisms and online compensation systems helps to increase the effectiveness of human rights mechanisms. Similarly, B. Shilibekova *et al.* (2024) emphasise that digitalisation is transforming tourism by reshaping its organisation and technological infrastructure.

Research by Y. Chen *et al.* (2022) indicates that interstate cooperation in the field of tourism largely depends on political factors. The authors emphasise that Kazakhstan and China have different models of state regulation of tourism, which can create difficulties in developing common approaches to protecting the rights of tourists. At the same time, the political will of both countries to strengthen tourism ties opens up opportunities for adapting their legal systems to international standards. Based on a study by A. Sultanova and G. Ilyassova (2022), an important aspect of international tourism law is to ensure effective protection of tourists' rights in the event of breach of contractual obligations or force majeure. The authors emphasise the need to create transparent legal mechanisms that allow tourists to seek compensation or damages without complicated legal procedures. In particular, it is important to develop standards for establishing liability for violations of tourists' rights by both tour operators and public authorities.

The problem of the analysed studies is that, despite the comprehensive coverage of certain aspects of legal regulation of international tourism cooperation between Kazakhstan and China, most scientific works focus on general issues of harmonisation of legislation, liability of tour operators and digitalisation of tourism, without paying sufficient attention to a number of critical topics. In particular, the legal features of the implementation of mechanisms for cross-border protection of tourists' rights in case of violation of their rights in the territory of another state, the role of consular offices in resolving conflict situations, and the lack of analysis of judicial and administrative practice in tourism disputes between citizens of Kazakhstan and China remain outside the field of research. In addition, certain aspects of the political and legal interaction between the parties in the field of tourism security have not received adequate coverage, in particular in the context of interaction between border and migration services. The study partially fills these gaps by focusing on a comprehensive analysis of the legal framework for bilateral cooperation, mechanisms for protecting the rights of tourists in the border, visa and post-conflict contexts, as well as on assessing the institutional potential for further deepening the legal dialogue between Kazakhstan and China in the field of tourism.

The purpose of this paper was to analyse the legal framework for Kazakhstan-China cooperation in protecting tourist rights and to identify key challenges and development prospects. To achieve this goal, the author will study the legislative framework of the two countries, assess the effectiveness of international agreements in the field of tourism, analyse the key issues arising in the field of protection of tourist rights, and propose possible ways to improve the legal mechanism of cooperation between Kazakhstan and China.

Materials and methods

This study applied a comprehensive approach to analysing the legal framework and prospects for international cooperation between Kazakhstan and China in the field of tourist protection. At the first stage, a comparative legal analysis was applied to collect and systematise data on existing

bilateral agreements, memoranda, and regulations governing the protection of tourist rights between Kazakhstan and China. Particular attention was paid to the legal mechanisms laid down in such Agreement on China-Kazakhstan Border Ports and Their Management System (2023) and analysis of the communiqué of agreements as the Memorandum of Understanding on Deepening Cooperation on the China-EU Trans-Caspian Transport Lines with the Government of Kazakhstan (2023). In addition, the study analysed the participation of Kazakhstan and China in international organisations such as the United Nations World Tourism Organisation and the Shanghai Cooperation Organisation (2024a; 2024b), which provide a common legal framework for tourism regulation.

In the second stage, an institutional analysis was conducted to assess the differences in the approaches of Kazakhstan and China to the protection of tourist rights within their different legal systems. This analysis focused on jurisdictional issues and problems of harmonisation of legal standards. The role of state authorities in law enforcement and dispute resolution mechanisms was analysed. The effectiveness of out-of-court mechanisms, including arbitration and consumer protection institutions. The report by the Astana International Financial Centre (2024) provided insights into the functioning of international arbitration in Kazakhstan, with emphasis on accessibility for foreign and domestic parties in tourism-related disputes. The annual report of the Beijing Arbitration Commission (2025) highlighted procedural innovations in resolving transnational consumer conflicts, particularly in the tourism and hospitality sectors. Legislative materials compiled by the Institute of Legislation and Legal Information of Kazakhstan (Law of the Republic of Kazakhstan No. 126, 2000) were instrumental in mapping the national legal framework for out-of-court dispute resolution, while the strategic program of the Ministry of Tourism and Sports of the Republic of Kazakhstan (2024a) identified institutional priorities and ongoing reforms in consumer rights protection within the tourism industry.

The third step used political and economic analysis to examine how factors such as geopolitical tensions and trade relations affect the development of legal frameworks for tourism cooperation. A comparative institutional analysis was conducted to assess government initiatives, joint commissions, and private sector participation, including the role of travel agencies, insurance companies, and industry associations in protecting the rights of tourists (Yu, 2023; Ministry of Tourism and Sports of the Republic of Kazakhstan, 2024a). The study also examined promising legal strategies, such as the introduction of a single electronic database for tourist complaints.

Results and Discussion

Legal foundations of bilateral cooperation in the protection of tourists' rights. Kazakhstan and China have developed a comprehensive contractual and legal framework governing bilateral cooperation in the field of tourism. Over the past ten years (2015-2025), several key documents have been signed aimed at expanding tourist flows, eliminating administrative barriers, and creating mechanisms for the legal protection of tourists. Among them: the Agreement between the Government of the People's Republic of China and the Government of the Republic of Kazakhstan on Mutual Visa Exemption (2023), which simplified cross-border mobility for citizens of both countries, the Joint Declaration on New Stage of Comprehensive Strategic Partnership Between the People's Republic of China and the Republic of Kazakhstan (2015), which emphasises the importance of people-to-people exchanges and the development of tourism, Memorandum of Understanding on Deepening Cooperation on the China-EU Trans-Caspian Transport Lines with the Government of Kazakhstan (2023).

In Kazakhstan, the main legal document is the Law of the Republic of Kazakhstan No. 211-II "On Tourism Activities in the Republic of Kazakhstan" (2001), which establishes the rights and obligations of suppliers and consumers of tourism services, and also outlines the mechanisms of state regulation. In China, tourism is regulated by the Tourism Law of the People's Republic of China (2017), which also ensures the rights of tourists, defines clear terms of contracts, and regulates the behaviour of travel agencies. In addition, both countries have separate legal acts regulating the status of foreigners: the Law of the Republic of Kazakhstan No. 2337 "On the Legal Status of Foreigners" (1995) defines the legal framework for the stay, rights and obligations of foreign citizens, including tourists, while the Exit and Entry Administration Law of the People's Republic of China (2019) regulates the visa regime, administrative procedures and conditions of stay of foreigners.

The long-term strategic partnership between Kazakhstan and China, enshrined in the Joint Declaration on New Stage of Comprehensive Strategic Partnership Between the People's Republic of China and the Republic of Kazakhstan (2015), created the preconditions for deepening cooperation in the tourism sector. The document contains general provisions on economic integration, including the development of tourism infrastructure, stimulating investment in the hotel business, expanding transport accessibility, and simplifying border crossing procedures. Further consolidation of the strategic partnership in the context of tourism took place in 2019, when the presidents of Kazakhstan and China reached an agreement to expand tourism cooperation within the framework of a long-term strategic partnership at the Second Forum for International Cooperation "One Belt, One Road" (Ministry of Foreign Affairs the People's Republic of China, 2019). Within the framework of this meeting, the parties confirmed their intention to increase the number of tourist exchanges, develop infrastructure for joint tourism projects, and simplify border crossing conditions. As part of the implementation of the agreements, the "Year of Tourism of Kazakhstan in China" was officially opened in Beijing the same year, which included a number of joint events, including tourism exhibitions, cultural festivals, and business meetings between representatives of the tourism business of the two countries. In addition, an intergovernmental agreement was signed to harmonise policies in the tourism sector, in particular, in the areas of simplifying the issuance of group tourist visas and establishing direct flights between the main tourist centres of Kazakhstan and China.

The intergovernmental agreement on the mutual abolition of visa requirements signed in 2023 provides for the right of citizens of both countries to make short-term trips without the need to obtain a visa (Ministry of Foreign Affairs the People's Republic of China, 2023). It entered into force on November 10, 2023 and allows Kazakh and Chinese citizens to stay in the territory of another state for up to 30 days without additional permits. This document is key in reducing bureaucratic restrictions for tourists and helps

to increase the number of mutual visits. Its implementation has led to a significant increase in tourist flows between the two countries. According to the Border Guard Service of Kazakhstan and Kazinform, the number of Chinese tourists who visited Kazakhstan increased from 18,000 in 2022 to 367,000 in 2023, a 20-fold increase. In 2024, this upward trend continued, with the number of Chinese tourists visiting Kazakhstan increasing by another 50% (Zhanibekov, 2024). Data from the Ministry of Sports and Tourism of Kazakhstan show that between January and June 2024, 69,918 Chinese tourists visited Kazakhstan, making them the second-largest group of foreign visitors during this period (Ministry of Tourism and Sports of the Republic of Kazakhstan, 2024a) (Table 1). Conversely, the number of Kazakhstani tourists travelling to China has also increased significantly. From 2023 to 2024, the number of trips by Kazakh citizens to China increased to 217,000, reflecting the mutual benefits of the visa-free agreement (State Council of the People's Republic of China, 2024). This statistic emphasises the significant impact of the visa-free agreement on enhancing tourism exchanges between China and Kazakhstan.

Table 1. Number of foreign tourists in China and Kazakhstan

Year	Foreign tourists in Kazakhstan	Chinese tourists in Kazakhstan	Foreign tourists in China	Kazakh tourists in China
2023	9.2 million	367 thousand	35.4 million	No data available
2024	11.5 million	655 thousand	64.8 million	No data available

Source: National Immigration Administration (2025), Kazakhstan welcomes 11.5 million tourists in 2024 (2024), D. Omirgazy (2024), S. Sakenova (2025)

However, the agreement does not contain any mechanisms for resolving disputes over violations of tourists' rights, which remains a problematic aspect in the event of consumer conflicts. The absence of provisions on the procedure for filing and reviewing complaints, determining the responsible authority, and compensation procedures creates legal uncertainty for citizens of both countries. In case of violation of tourists' rights, such as refusal to provide paid services, inadequate quality of tourist services or fraud, the lack of direct dispute resolution mechanisms under the agreement forces victims to turn to national legal systems, which is complicated by jurisdictional limitations and differences in legislative approaches between Kazakhstan and China.

In 2024, Kazakhstan declared the Year of Tourism in China, which was an important milestone in strengthening tourism ties between the two countries. The official opening took place on March 28-29 in Beijing with the participation of high-ranking officials and representatives of the tourism industry of both countries. Over the course of the year, more than 30 joint projects were implemented, including cultural events, tourism forums, and exhibitions aimed at popularising Kazakhstan's tourism potential among Chinese citizens. The successful celebration of the Year of Tourism laid a solid foundation for the further development of cooperation in the tourism sector between China and Kazakhstan. Tourism cooperation between Kazakhstan and China is a component of broader economic cooperation within the framework of the One Belt, One Road initiative (McBride *et al.*, 2023). Considerable attention is paid to simplifying legal procedures for tourists, which contributes to an increase in tourist flows. In 2023, an Agreement between the Government of the People's Republic of China and the Government of the Republic of Kazakhstan on Mutual Visa Exemption was signed to simplify the visa regime between the two countries, which contributed to an 11-fold increase in the flow of tourists (Zijun, 2024). In addition, both countries are working to harmonise the regulatory framework in the tourism sector, including ensuring the rights of tourists and harmonising service quality standards.

Kazakhstan and China actively cooperate in the field of tourism within the framework of international organisations such as the World Tourism Organisation and the Shanghai Cooperation Organisation. As members of the World Tourism Organisation, they actively cooperate in the field of tourism, adhering to international standards and principles of sustainable development. The World Tourism Organisation, as a specialised agency of the United Nations, is responsible for promoting responsible, sustainable and inclusive tourism. Both countries participate in World Tourism Organisation activities and initiatives aimed at improving the quality of tourism services, protecting the rights of tourists and developing sustainable tourism. They are obliged to comply with the Global Code of Ethics for Tourism (2002), which establishes principles of ethical behaviour for all participants in tourism activities. Kazakhstan and China's participation in the World Tourism Organisation promotes the exchange of experience and best practices in the field of tourism, as well as strengthening bilateral relations between the countries. Working together within the organisation allows them to coordinate efforts to ensure the safety of tourists, improve the quality of services and promote cultural exchange.

Cooperation between Kazakhstan and China within the framework of the Shanghai Cooperation Organisation (2024a) covers a wide range of areas. The countries regularly participate in the Shanghai Cooperation Organisation summits at the highest level. In July 2024, the presidents of both countries met in Astana during the 24th Shanghai Cooperation Organisation summit to discuss regional security and cooperation. Kazakhstan and China are actively developing cultural exchange by organising joint events, festivals, and educational programs, which promotes mutual understanding between the peoples and strengthens friendly relations. Cooperation within the Shanghai Cooperation Organisation is multifaceted and contributes to strengthening stability, economic development and cultural exchange in the region. In 2023, the Shanghai Cooperation Organisation (2024b) member states, including Kazakhstan and China, signed the Shanghai Cooperation Organisation Tourism Cooperation

Program for 2024-2025, which provided for joint measures to develop tourism and protect the rights of tourists.

The legislative approaches of Kazakhstan and China to protecting the rights of tourists demonstrate significant differences, rooted in their distinct legal systems and national priorities. Kazakhstan, as a country adhering to the continental (civil law) system, bases its legal regulation of tourism on codified acts, in particular the Law of the Republic of Kazakhstan No. 211-II "On Tourism Activities in the Republic of Kazakhstan" (2001). This law clearly defines the rights and obligations of tourism actors and includes, for example, Article 17, which outlines the duties of tourism operators, and Article 20, which defines the procedure for resolving disputes with tourists, including the application of administrative penalties for breaches of contract.

In contrast, China follows a mixed legal system with strong administrative-legal characteristics, where the main regulatory emphasis is placed on subordinate normative acts, regulations, and administrative instructions issued by the State Council and relevant ministries. One of the core documents is the Tourism Law of the People's Republic of China (2017), where Article 69 stipulates the procedure for handling complaints by tourists, and Article 77 defines the supervisory powers of tourism authorities. However, unlike Kazakhstan's law, China's law does not define tourism entrepreneurship in a unified framework, and key terminology such as "tourism product," "tourism operator," or "tourist service contract" may differ in scope and legal weight.

These discrepancies result in non-harmonised legal interpretations of core concepts. For example, while Kazakhstan's law requires licensing for tour operators under Article 10 of the Law of the Republic of Kazakhstan No. 211-II "On Tourism Activities in the Republic of Kazakhstan" (2001), China allows operation upon registration, without a licensing procedure of the same legal effect. This difference may create legal uncertainty for joint Kazakh-Chinese tourism enterprises or cause complications when tourists seek legal protection across borders.

Law of the Republic of Kazakhstan No. 211-II (2001) provides a clear mechanism for compensating tourist losses in case of service failure, while the Tourism Law of the People's Republic of China (2017) (Art. 80) allows for administrative fines against companies but gives tourists fewer direct channels for reimbursement, relying instead on internal complaint resolution by companies. Such asymmetry may negatively impact cross-border tourism flows due to perceived legal insecurity, especially from the side of tourists coming from countries with stronger consumer protection mechanisms.

Thus, the lack of harmonisation in tourism legislation, both in conceptual and procedural dimensions, may hinder the formation of a unified tourist space between Kazakhstan and China. Differences in complaint resolution procedures, inconsistent obligations for tour operators, and divergent enforcement mechanisms contribute to uncertainty and could reduce the attractiveness of cross-border travel for tourists and investors alike.

The harmonisation of tourist protection standards between Kazakhstan and China faces a number of legal challenges due to significant differences in their legal systems and enforcement mechanisms. Firstly, Kazakhstan is governed by continental law, which provides for clearly codified rules, while China applies a complex system of legislative and administrative regulations that change frequently and have regional characteristics. This complicates the harmonisation of regulations, as each party is guided by its own approaches to legal regulation of the tourism sector.

Second, differences in the methods of quality control of tourism services lead to differences in the level of consumer protection. Kazakhstan has a unified state system of supervision over the tourism market, which includes mechanisms for certification and control of operators. At the same time, China's tourism industry is regulated by numerous departmental regulations that set differentiated requirements depending on the region and type of service. The absence of uniform standards makes it difficult to mutually recognise safety guarantees and service standards, which can pose risks to tourists.

Another problem is jurisdiction and enforcement in cross-border disputes. In the event of a violation of a tourist's rights in another country, the question arises as to the competent court, applicable law, and the mechanism for enforcing court decisions. Differences in consumer dispute resolution procedures and limited access to judicial mechanisms in China for foreigners create difficulties for Kazakhstani citizens trying to assert their rights. The absence of bilateral agreements that would clearly regulate the mechanisms for resolving legal conflicts in the tourism sector increases legal uncertainty and complicates access to effective protection for tourists. Currently, there are no joint institutions or special procedures that would facilitate the prompt resolution of complaints and provide equal guarantees for tourists from both countries. This creates risks for the further development of tourist flows and requires the development of new mechanisms for international cooperation in the legal regulation of tourism activities.

Scholars emphasise the importance of bilateral agreements in ensuring legal protection of tourists. The research of U. Khalid *et al.* (2022) indicates that formalised agreements between states create a legal basis for cooperation, especially in resolving cross-border disputes and establishing common standards of consumer protection. In particular, M. Baimuratov *et al.* (2024) note that such agreements contribute to the harmonisation of legal norms, which avoids conflicts between national laws and provides tourists with an equal level of legal protection regardless of the country of residence.

Multilateral cooperation plays an important role in shaping the legal framework for tourist protection. Studies by W.-C. Chao (2021) and H. Go and M. Kang (2023) show that participation in organisations such as the United Nations World Tourism Organisation or the Shanghai Cooperation Organisation helps to align national policies with global best practices. Kazakhstan and China are members of these organisations and have ratified key international conventions on tourist rights. However, as noted in this study, the commitment to international norms is not always reflected in national legal systems. While China is actively promoting mechanisms for regulating tourism within the framework of the One Belt, One Road initiative, Kazakhstan has limited institutional capacity to effectively implement international obligations.

J. Zhu *et al.* (2021) note that Chinese tourism diplomacy is closely linked to the development of outbound tourism and government regulation. China uses tourism as an economic tool based on a legal system with socialist principles that focuses on state control and administrative regulation. A. Aday *et al.* (2024) emphasise that the tourism industry

in Kazakhstan is showing rapid growth, but structural problems accompany its development. Despite the increase in total revenue and the number of tourists, tourism enterprises remain small in scale and insufficiently competitive. The main challenges of the industry are related to the market structure and institutional capacity to enforce regulations, which affects the effectiveness of bilateral agreements in the tourism sector. This thesis is confirmed in this study, which indicates that differences create legal uncertainty for tourists, especially in the case of cross-border disputes. The lack of unified mechanisms for resolving them remains a serious obstacle to effective legal cooperation.

Another challenge in the field of legal protection of tourists is the issue of jurisdiction in cross-border disputes. In the study by G.M. Vaccaro-Incisa (2021) and R. Zhamiyeva *et al.* (2022) emphasise that in order to effectively resolve such situations, it is necessary to have clear provisions on the choice of court and applicable law. As noted in this study, the Chinese legal system provides for a significant role of domestic courts in the consideration of such cases, which may complicate access to justice for foreign nationals. Kazakhstan, for its part, is actively developing alternative dispute resolution mechanisms, including mediation, which can be an effective tool in the field of tourism rights. However, the absence of generally accepted standards complicates the harmonisation of legal protection mechanisms, which confirms the need to further improve bilateral and multilateral cooperation in this area.

Institutional mechanisms and law enforcement practices. In the area of legal protection of tourists between Kazakhstan and China, national executive authorities play a central role. The Ministry of Tourism and Sports of the Republic of Kazakhstan regulates the tourism industry and monitors the implementation of legislation in the field of tourism services (Turysbek *et al.*, 2025). The Ministry of Culture and Tourism of the People's Republic of China is responsible for regulating tourism policy, issuing licences and coordinating the activities of travel companies in China. The Consumer Protection Agency of Kazakhstan and the State Administration for Market Regulation of the People's Republic of China monitor the observance of tourists' rights as consumers, including complaints and supervision of the quality of tourist services (Mukasheva & Ybyray, 2023).

Legal issues of tourism cooperation are regulated by ministries and agencies on the basis of signed cooperation documents (Beisbekova *et al.*, 2019). The Kazakhstan-China Tourism Forum is a platform for discussing problematic aspects of tourist transport, insurance, and the development of tourism infrastructure; it operates on the basis of a Memorandum of Understanding on Deepening Cooperation on the China-EU Trans-Caspian Transport Lines with the Government of Kazakhstan (2023). Joint border coordination groups monitor tourist flows and promptly resolve issues related to border crossings. They operate within the framework of the Agreement on China-Kazakhstan Border Ports and Their Management System (2023).

Despite the existence of intergovernmental mechanisms, the effectiveness of joint commissions and working groups between China and Kazakhstan remains uneven. There are a number of problems in the implementation of joint projects and coordination of actions in the tourism sector that limit the effectiveness of cooperation. One of the main obstacles is the bureaucratic complexity of decision-making at the intergovernmental level, particularly in relation to the approval of bilateral agreements, harmonisation of tourism standards, and coordination between responsible agencies. These processes often involve multiple ministries, such as foreign affairs, internal affairs, tourism development agencies, and border control services, each of which operates under its own procedural rules and priorities. As a result, decisions on key issues – such as simplifying visa regimes, recognising licences for tourism services, or allocating funding for cross-border infrastructure – are subject to prolonged negotiations, interdepartmental inconsistencies, and repeated revisions. This multi-layered bureaucratic structure reduces institutional responsiveness and makes it difficult to quickly adapt to market dynamics or emerging challenges in the tourism industry.

Insufficient coordination between the national consumer protection authorities in China and Kazakhstan creates significant difficulties for tourists who encounter problems during their travels. The absence of agreed procedures and a single mechanism of interaction between the Consumer Protection Agency of Kazakhstan and the State Administration for Market Regulation of China makes it difficult to resolve complaints in cross-border disputes. In cases where tourists encounter breaches of contractual obligations, fraudulent schemes or poor quality services, they are forced to apply directly to local authorities in the host country, which significantly complicates the process of protecting their rights. Due to the lack of agreed procedures, administrative conflict resolution is often ineffective. This forces victims to apply to judicial or arbitration institutions, which significantly increases financial and time costs. Despite the mechanisms for judicial protection of tourists provided for by the laws of Kazakhstan and China, there are significant difficulties in accessing justice (Table 2).

Table 2. Comparison of the rights of tourists in the legislation of Kazakhstan and China

Category	Kazakhstan	China
Refunds for services not provided	The tourist is entitled to a full refund if the service was not provided through the fault of the tour operator	It is decided on the basis of a contract with a travel company. The Law guarantees a refund in case of fraud or breach of contract
Responsibility of tour operators for the quality of services	The tour operator is financially liable for the improper provision of services. In case of violations, a fine or licence revocation may be imposed	The tour operator is liable only within the scope of the contract, unless malice is proven. The Tourism Law of the China obliges tour operators to compensate for the losses of tourists in case of proven fault

Table 2, Continued

Category	Kazakhstan	China
Compensation for non-pecuniary damage	The law allows claiming compensation for non-pecuniary damage in case of proven violations	The legislation does not provide for specific provisions on non-pecuniary damage in the tourism sector
Entitlement to accident insurance benefits	Mandatory travel insurance is provided	Insurance is not mandatory but recommended

Source: Law of the Republic of Kazakhstan No. 274-IV (2010), Law of the People's Republic of China No. 7 (2013), Law of the Republic of Kazakhstan No. 34-VII (2021), Consumer Protection Laws and Regulations China 2024-2025 (2024)

The absence of intergovernmental agreements on simplified filing of claims by foreign nationals complicates the process of initiating court proceedings. The consular services of Kazakhstan in China and the China in Kazakhstan have limited legal assistance functions (Decree of the..., 2016; Consular Legalisation/Apostillisation, 2024), which significantly limits the possibilities of legal support for cases. First and foremost, consulates can provide tourists with information support, advice on legislation and consumer rights in the host country, and help in the process of finding local lawyers or attorneys to resolve legal issues. However, consular services do not have the right to represent citizens in judicial or administrative bodies, which greatly complicates access to legal assistance in the event of serious legal conflicts.

At the same time, consular services can provide assistance in cases involving violations of the rights of Kazakh citizens, in particular in cases of arrest or detention, as well as in cases where access to medical services or repatriation is required. However, for more complex legal issues, such as tourism disputes, consulates can only provide advice and facilitate the engagement of local lawyers, as their role is limited by diplomatic norms.

Due to the limitations of traditional dispute resolution mechanisms, alternative methods, such as international arbitration centres, are becoming increasingly important, providing a faster and more efficient process for resolving disputes between tourists and operators. One such mechanism is the International Arbitration Centre in Beijing, which offers an expedited procedure for handling cases. However, the effectiveness of arbitration largely depends on whether there are arbitration clauses in contracts between tourists and tour operators. In the absence of such provisions, the possibility of recourse to arbitration may be limited.

In Kazakhstan, a similar function is performed by the Astana International Arbitration Centre, which operates under English common law and focuses on resolving cross-border disputes, including in the tourism sector. Despite the growing use of such mechanisms, there are important legal challenges concerning the mutual recognition and enforcement of arbitration awards. While both Kazakhstan and China are parties to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, practical application may be hindered by differences in national legislation, judicial discretion, and procedural obstacles.

Although both countries are signatories to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), practical enforcement remains inconsistent. In China, courts retain broad discretion to refuse to recognise foreign arbitral awards on grounds of public policy, insufficient notice to the parties, or procedural irregularities. Although such refusals are relatively rare, they create legal uncertainty, particularly in international tourism disputes, where standards of service and consumer protection vary widely. Furthermore, the lack of a bilateral agreement specifically regulating the mutual recognition and enforcement of arbitral awards between Kazakhstan and China further exacerbates this legal fragmentation. Without agreed procedural rules or mutual enforcement protocols, arbitration risks being reduced to a theoretical mechanism with limited practical impact, especially for individuals such as tourists who may not have the legal knowledge or resources to navigate complex transnational enforcement procedures.

The situation is further complicated by the regulatory framework and legal status of online mediation platforms. In China, the China Consumer Protection Platform, established by the State Administration for Market Regulation, is designed to improve administrative efficiency and accessibility. However, the platform's decisions do not have the legal status of enforceable court or arbitration decisions and largely rely on voluntary compliance by businesses. In Kazakhstan, similar digital consumer protection platforms exist under the Ministry of Trade and Integration, but they also lack clear enforcement mechanisms in cases involving foreign entities or service providers operating abroad.

These discrepancies highlight the broader problem of insufficient harmonisation of the legal treatment of alternative dispute resolution mechanisms. Unlike in the European Union, where directives and regulations create a common legal space for consumer arbitration and mediation, legal interaction between Kazakhstan and China remains largely uncoordinated. The lack of uniform procedural standards, mutual recognition provisions and transparent monitoring of alternative dispute resolution outcomes significantly reduces the ability of tourists to rely on such mechanisms as effective tools for legal redress.

Despite the potential of international arbitration centres and digital mediation platforms as modern tools for protecting tourists' rights, their effectiveness is limited by structural and legal differences between the two countries. To improve the situation, it would be necessary to develop bilateral treaties or memoranda of understanding that define the conditions for the recognition of arbitral awards, define standards for online dispute resolution and establish joint supervisory bodies to ensure procedural fairness and legal compatibility.

The role of travel agencies, insurance companies and industry associations in protecting tourists is a key element in the regulation of cross-border tourism between Kazakhstan and China. A significant number of conflict situations are resolved outside the judicial system through self-regulation and out-of-court dispute resolution mechanisms. The

associations of tourism operators in both countries act as intermediaries in the consideration of tourist claims, facilitating the rapid achievement of compromise solutions. In China, tourist disputes are resolved through the China International Economic and Trade Arbitration Commission, which provides online conflict resolution, which significantly speeds up the complaint process. In Kazakhstan, a similar function is performed by specialised arbitration bodies, including the Astana International Arbitration Centre. Insurance companies play an important role, offering policies that cover not only medical expenses but also legal services in the event of legal claims. In Kazakhstan, this practice is enshrined in the Law of the Republic of Kazakhstan No. 126 "On Insurance Activities" (2000), which regulates the terms of insurance coverage for tourists. Chinese insurance companies, such as Ping an Insurance and China Life Insurance, also include legal protection in their insurance products for foreign tourists.

In addition, Kazakhstan and China are actively working to improve the legal environment for tourists. A significant step was the opening of the Astana International Financial Centre (2024) office in China, which simplifies access to dispute resolution mechanisms for Chinese tourists in Kazakhstan. The possibility of creating a unified electronic database of tourist complaints is also being discussed, which will help to increase transparency and efficiency of claims processing.

The development of tourism cooperation between China and Kazakhstan is taking place in a challenging geopolitical and economic environment. Both countries recognise the strategic importance of tourism as a driver of economic growth and regional integration, as evidenced by the initiatives under the One Belt, One Road (McBride *et al.*, 2023) and the Kazakhstan 2050 Strategy (Address by the President…, 2012). However, despite the expansion of bilateral agreements and investments in infrastructure, legal mechanisms for protecting the rights of tourists remain underdeveloped. Geopolitical tensions and specifics of trade relations directly affect the effectiveness of legal regulation in this area, creating both opportunities and challenges for further cooperation.

Despite strong economic and political ties, tourism cooperation between Kazakhstan and China is hindered by unresolved issues related to border control, visa procedures, and the lack of unified legal protection for tourists. Economic asymmetries influence regulatory decisions, often prioritising China's interests and creating imbalances in the protection of travellers' rights. Although trade-driven travel is growing, legal safeguards such as consumer protection, compensation mechanisms, and dispute resolution remain underdeveloped (Shtal *et al.*, 2023; 2024). The absence of bilateral agreements and harmonised legal frameworks forces tourists to rely on national systems, which limits access to justice in cross-border situations.

According to studies by C. Haibo *et al.* (2020) and Y. Jin *et al.* (2022) , the Ministry of Culture and Tourism of China has broad regulatory powers that allow it to effectively monitor compliance with tourism legislation. In Kazakhstan, as noted by L. Lipkova (2020) and A. Tleuberdinova *et al.* (2022), the Ministry of Tourism operates in a fragmented institutional system that limits its ability to effectively protect consumer rights. Although both countries have established joint working groups, their effectiveness remains low due to bureaucratic obstacles and the lack of coordinated enforcement mechanisms.

An important area for improving tourism legislation is the development of alternative dispute resolution mechanisms. As noted by researchers A. Shaimenova *et al.* (2020) and S.M. Rasoolimanesh *et al.* (2021), the system of arbitration and mediation in the tourism sector is underdeveloped in both Kazakhstan and China. At the same time, the practice of other countries shows that such mechanisms can significantly simplify conflict resolution and reduce the burden on the judicial system. This suggests the need for more active involvement of both public and private institutions in creating a more effective system of tourism rights protection.

Political and economic factors also influence the development of legal cooperation in the tourism sector. According to R. Vogler (2023) and J. Shepherd (2024), legal frameworks in the tourism sector are often shaped by diplomatic considerations, rather than solely by consumer protection. Although economic cooperation promotes tourism development, political sensitivities sometimes hinder the strengthening of legal protection for tourists. This is in line with the findings of this study, which argues that China's broader geopolitical strategies, including its economic expansion in Central Asia, are shaping the legal framework for cross-border tourism. Kazakhstan is forced to balance economic dependence on China with maintaining regulatory sovereignty.

Geopolitical risks further complicate legal cooperation between Kazakhstan and China. The study by S. Saha *et al.* (2022) and J. Duan *et al.* (2022) show that regional instability, including border security issues, affects bilateral tourism policy. As noted by A.S. Purnomo and M.S. Rofii (2024), problems with visa policies, surveillance and legal transparency continue to pose significant barriers for tourists, complicating the process of obtaining entry permits, increasing administrative costs and causing uncertainty about the legal status of stay.

H. Uyar (2022), B. Atasoy *et al.* (2023), and M. Vasvári *et al.* (2025) emphasise that regional instability not only reduces tourist flows but also forces governments to adapt their tourism development strategies to security challenges. This is confirmed by the study, which notes that while some countries impose restrictions on tourism during political crises, others, on the contrary, seek to maintain a stable level of tourist flows by adapting marketing strategies and offering special incentives to attract foreign tourists.

A comparative analysis of legal regulation in the tourism sector in China and Kazakhstan reveals significant institutional differences and challenges that hinder effective cooperation. China demonstrates a centralised model with powerful regulatory levers, while Kazakhstan operates under a fragmented administrative system, which complicates consumer protection. Despite the creation of joint working groups, their effectiveness is limited by bureaucratic barriers and the lack of coordinated control mechanisms.

Conclusions

A study of the legal framework and prospects for international cooperation between Kazakhstan and China in the field of tourist protection has revealed both achievements and key challenges in this area. An analysis of existing bilateral agreements and memorandums has shown that Kazakhstan and China are actively developing the legal framework for regulating tourist flows. The Memorandum of

Understanding in the field of tourism and the agreement on simplified border crossing laid the foundation for coordination in the protection of tourists, but contain a limited number of specific legal protection mechanisms. At the same time, the participation of both countries in international organisations such as the United Nations World Tourism Organisation and the Shanghai Cooperation Organisation ensures a certain level of harmonisation of standards, although national legal systems remain heterogeneous.

A comparative analysis of legal mechanisms for tourist protection has revealed significant differences between the approaches of Kazakhstan and China. The Kazakh system is based on continental law, which ensures transparency and predictability of legal regulation. China, on the other hand, has a model of socialist law with national peculiarities, which complicates the mutual adaptation of legal norms. The main problems are differences in approaches to jurisdiction, the complexity of cross-border disputes, and different levels of access to judicial and extrajudicial conflict resolution mechanisms. The institutional analysis has shown that Kazakh and Chinese government agencies regulate the tourism industry, but coordination between them remains ineffective. Despite the existence of joint commissions and working groups, the mechanisms for implementing intergovernmental agreements are complicated by differences in administrative procedures. The private sector plays a special role in protecting tourists. Travel agencies and insurance companies are actively developing policies that cover legal costs in the event of disputes, and industry associations promote out-of-court settlements. However, the absence of a unified electronic database of tourist complaints between the two countries makes it difficult to monitor problematic issues and resolve them promptly. Political and economic factors have a significant impact on the development of legal mechanisms in the tourism sector. Despite the growth of tourist flows between Kazakhstan and China, periodic political tensions, trade disputes and economic instability may create obstacles to expanding bilateral cooperation in this area.

A comparative analysis of the legal framework of Kazakhstan and China in the field of protection of tourists' rights has shown the presence of significant inconsistencies that complicate the effective implementation of joint initiatives. The legal system of Kazakhstan is based on continental law and international standards in the field of tourism, in particular in terms of consumer protection, which provides for transparent mechanisms of legal protection and access to judicial and extrajudicial dispute resolution. China, on the other hand, adheres to a model of socialist law with national specifics, where the resolution of disputes often depends on administrative intervention, and enforcement may be less predictable. This creates problems in the recognition and enforcement of arbitration or court decisions made in another country, and also complicates the coordination of procedures for filing complaints and obtaining compensation. The difference in approaches to jurisdiction, consumer protection, as well as the level of digitalisation of procedures (in particular, the lack of an integrated database of tourist complaints) leads to low efficiency of interstate response tools. Thus, despite the existence of bilateral agreements and the participation of both countries in international organisations, the lack of regulatory harmonisation remains a key barrier to the development of a common legal system for the protection of tourists' rights.

Prospects for further research may focus on analysing the effectiveness of joint initiatives of Kazakhstan and China in the field of tourism legislation. An important area is the study of the practical implementation of international legal norms in the context of tourism and the impact of global economic and political changes on the tourism market of the two countries. In addition, it is promising to analyse models for resolving cross-border disputes in the tourism sector on the example of other international partnerships.

Acknowledgements

None.

Funding

The study was not funded.

Conflict of interest

None.

References

[1] Aday, A., Mazbayev, O., Tleubayeva, A., Amangeldi, A., & Han, F. (2024). The Kazakhstan tourism market structure analysis and optimisation path selection. *Journal of Geography and Environmental Management*, 72(1), 144-154. doi: 10.26577/JGEM.2024.v72.i1.011.

[2] Address by the President of the Republic of Kazakhstan, Leader of the Nation, N. Nazarbayev "Strategy Kazakhstan-2050": New Political Course of фthe Established State". (2012, October). Retrieved from https://www.akorda.kz/en/addresses/addresses_of_president/address-by-the-president-of-the-republic-of-kazakhstan-leader-of-the-nation-nnazarbayev-strategy-kazakhstan-2050-new-political-course-of-the-established-state.

[3] Agreement between the Government of the People's Republic of China and the Government of the Republic of Kazakhstan on Mutual Visa Exemption. (2023, November). Retrieved from https://surl.li/oeixvr.

[4] Agreement on China-Kazakhstan Border Ports and their Management System. (2023, May). https://www.mfa.gov.cn/wjb_673085/zzjg_673183/bjhysws_674671/bhgjty/kaglty/202303/P020230320563226064589.pdf.

[5] Astana International Financial Centre. (2024). *The AIFC Court and International Arbitration Centre (IAC) launched "AIFC Court & IAC Beijing" at new world-class premises in Beijing, China*. Retrieved from https://aifc.kz/news/the-aifc-court-and-international-arbitration-centre-iac-launched-aifc-court-iac-beijing-at-new-world-class-premises-in-beijing-china/.

[6] Atasoy, B., Şeyhanlioğlu, H.Ö., & Zengin, B. (2023). Crises and tourism: An early assessment on the Russia-Ukraine war. *Anais Brasileiros de Estudos Turísticos*, 13. doi: 110.5281/zenodo.10325794.

[7] Baimuratov, M., Kofman, B., Bobrovnik, D., & Yefremova, N. (2024). Research on the impact of international agreements and standards on national legal systems and legal order. *Revista Amazonia Investiga*, 13(74), 90-102. doi: 110.34069/AI/2024.74.02.8.

[8] Beijing Arbitration Commission. (2025). *Newly revamped and upgraded arbitration platform*. Retrieved from https://www.bjac.org.cn/news/view?id=5081.
[9] Beisbekova, G., Konussova, V., Ismagulov, K., Saktaganova, I., & Mukasheva, A. (2019). Problems of concretisation of legal norms in Kazakhstan. *Journal of Advanced Research in Law and Economics*, 10(1), 52-57. doi: 110.14505//jarle.v10.1(39).07.
[10] Chao, W.-C. (2021). The political economy of China's rising role in the Shanghai Cooperation Organisation (SCO): Leading with balance. *Chinese Economy*, 55(4), 293-302. doi: 110.1080/10971475.2021.1972548.
[11] Chen, Y., Zhang, D., & Ji, Q. (2022). Impacts of regional cooperation agreements on international tourism: Evidence from a quasi-natural experiment. *International Review of Economics & Finance*, 82, 663-676. doi: 110.1016/j.iref.2022.08.006.
[12] Chen, Z. (2020). Jurisdiction and choice of law in foreign-related tourist-consumer disputes in China under the One Belt One Road initiative – based on case analysis in the Chinese judiciary. In D. Wei, J.P. Nehf & C.L. Marques (Eds.), *Innovation and the transformation of consumer law* (pp. 191-226). Singapore: Springer. doi: 110.1007/978-981-15-8948-5_14.
[13] Consular Legalisation/Apostillisation. (2024). Retrieved from http://cs.mfa.gov.cn/wgrlh/lsrz/lsrzjjs/.
[14] Consumer Protection Laws and Regulations China 2024-2025. (2024). Retrieved from https://iclg.com/practice-areas/consumer-protection-laws-and-regulations/china.
[15] Decree of the President of the Republic of Kazakhstan No. 240 "On Approval of the Consular Charter of the Republic of Kazakhstan". (2016, April). Retrieved from https://adilet.zan.kz/eng/docs/U1600000240.
[16] Duan, J., Xie, C., & Morrison, A.M. (2022). Tourism crises and impacts on destinations: A systematic review of the tourism and hospitality literature. *Journal of Hospitality & Tourism Research*, 46(4), 667-695. doi: 110.1177/1096348021994194.
[17] Exit and Entry Administration Law of the People's Republic of China. (2019, June). Retrieved from https://www.nia.gov.cn/n741440/n741547/c1013311/content.html.
[18] Global Code of Ethics for Tourism. (2002, December). Retrieved from https://digitallibrary.un.org/record/455432?ln=en&v=pdf.
[19] Go, H., & Kang, M. (2023). Metaverse tourism for sustainable tourism development: Tourism Agenda 2030. *Tourism Review*, 78(2), 381-394. doi: 110.1108/TR-02-2022-0102.
[20] Haibo, C., Ayamba, E.C., Udimal, T.B., Agyemang, A.O., & Ruth, A. (2020). Tourism and sustainable development in China: A review. *Environmental Science and Pollution Research*, 27, 39077-39093. doi: 110.1007/s11356-020-10016-7.
[21] Jin, Y., Xi, H., Wang, X., Ren, X., & Yuan, L. (2022). Evaluation of the integration policy in China: Does the integration of culture and tourism promote tourism development? *Annals of Tourism Research*, 97, article number 103491. doi: 110.1016/j.annals.2022.103491.
[22] Joint Declaration on New Stage of Comprehensive Strategic Partnership Between the People's Republic of China and the Republic of Kazakhstan. (2015, August). Retrieved from https://www.fmprc.gov.cn/eng./zy/gb/202405/t20240531_11367302.html.
[23] Kalkabayev, A. (2024). The role of public and private structures in the formation of the organisational model of the management system in the tourism industry. *Public Administration and Civil Service*, 90(3), 47-61. doi: 110.52123/1994-2370-2024-1252.
[24] Kazakhstan welcomes 11.5 million tourists in 2024. (2024). Retrieved from https://caspianpost.com/kazakhstan/kazakhstan-welcomes-11-5-million-tourists-in-2024.
[25] Khalid, U., Okafor, L.E., & Burzynska, K. (2022). Do regional trade agreements enhance international tourism flows? Evidence from a cross-country analysis. *Journal of Travel Research*, 61(6), 1391-1408. doi: 110.1177/00472875211028321.
[26] Law of the People's Republic of China No. 7 "On the Protection of Consumer Rights and Interests". (2013, October). Retrieved from https://lawinfochina.com/display.aspx?id=15518&lib=law.
[27] Law of the Republic of Kazakhstan No. 126 "On Insurance Activities". (2000, December). Retrieved from https://adilet.zan.kz/eng/docs/Z000000126_.
[28] Law of the Republic of Kazakhstan No. 211-II "On Tourism Activities in the Republic of Kazakhstan". (2001, June). Retrieved from https://online.zakon.kz/document/?doc_id=1023618&pos=4;-106#pos=4;-106.
[29] Law of the Republic of Kazakhstan No. 2337 "On the Legal Status of Foreigners". (1995, June). Retrieved from https://adilet.zan.kz/rus/docs/U950002337_.
[30] Law of the Republic of Kazakhstan No. 274-IV "On Protection of Consumer Rights". (2010, May). Retrieved from https://adilet.zan.kz/eng/docs/Z100000274_.
[31] Law of the Republic of Kazakhstan No. 34-VII "On Introducing Amendments and Additions to Some Legislative Acts of the Republic of Kazakhstan on the Issues of Tourism Activity". (2021, April). Retrieved from https://online.zakon.kz/Document/?doc_id=36134761&pos=1;-16#pos=1;-16.
[32] Lemishko, O., & Blyzniuk, V. (2024). Investment appeal and legislative constraints of green tourism in Ukraine. *Law. Human. Environment*, 15(3), 48-67. doi: 110.31548/law/3.2024.48.
[33] Lipkova, L., Madiyarova, A., & Blembayeva, A. (2020). Importance of state regulation of the tourism industry in the republic of Kazakhstan. *E3S Web of Conferences*, 159, article number 04007. doi: 110.1051/e3sconf/202015904007.
[34] Makenova, G., Tuleubayeva, M., Issayeva, A., & Daurenbekova, A. (2020). Analysis of the development of international tourism and its impact to tourism market: Evidence of Kazakhstan. *Journal of Environmental Management and Tourism*, 11(8), 2053-2067.
[35] McBride, J., Berman, N., & Chatzky, A. (2023). *China's Massive Belt and Road Initiative*. Retrieved from https://www.cfr.org/backgrounder/chinas-massive-belt-and-road-initiative.
[36] Memorandum of Understanding on Deepening Cooperation on the China-EU Trans-Caspian Transport Lines with the Government of Kazakhstan. (2023, October). Retrieved from https://www.fmprc.gov.cn/eng/xw/zyxw/202405/t20240530_11332353.html.
[37] Ministry of Foreign Affairs the People's Republic of China. (2019). *List of deliverables of the second belt and road forum for international cooperation*. Retrieved from https://www.fmprc.gov.cn/eng./zy/gb/202405/t20240531_11367382.html.

[38] Ministry of Foreign Affairs the People's Republic of China. (2023). *List of practical cooperation deliverables of the third belt and road forum for international cooperation*. Retrieved from https://www.fmprc.gov.cn/eng/xw/zyxw/202405/t20240530_11332353.html.
[39] Ministry of Tourism and Sports of the Republic of Kazakhstan. (2024a). *The results of the Year of Tourism of Kazakhstan in China are summed up: The flow of visitors from the PRC increased by almost 50%*. Retrieved from https://www.gov.kz/memleket/entities/tsm/press/news/details/891333?lang=ru.
[40] Ministry of Tourism and Sports of the Republic of Kazakhstan. (2024b). *The year of Kazakhstan tourism in China officially starts tomorrow*. Retrieved from https://www.gov.kz/memleket/entities/tsm/press/news/details/735616?lang=kk.
[41] Mukasheva, A., & Ybyray, N. (2023). Legal regulation of tourism: Experience and prospects. *Bulletin of L.N. Gumilyov Eurasian National University. Law Series*, 142(1), 35-48. doi: 110.32523/2616-6844-2023-142-1-35-48.
[42] Mussabayeva, A., Mutaliyeva, L., Abdramanova, G., Akhtayeva, B., Zhadigerov, B., Tercan, T., Uandykova, M., Mikhaylov, A., & Ivanyuk, V. (2024). Regulation mechanisms of smart tourism development in Kazakhstan. *Journal of Infrastructure Policy and Development*, 8(13), article number 8834. doi: 110.24294/jipd8834.
[43] National Immigration Administration. (2025). *610 million exit-entry trips recorded in 2024, marking a 43.9% YoY increase*. Retrieved from https://en.nia.gov.cn/n147413/c179666/content.html.
[44] New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. (1958, June). Retrieved from https://www.newyorkconvention.org/english.
[45] Omirgazy, D. (2024). *Kazakh tourism: Data shows 50% increase in visitors from China*. Retrieved from https://astanatimes.com/2024/11/kazakh-tourism-data-shows-50-increase-in-visitors-from-china/.
[46] Purnomo, A.S., & Rofii, M.S. (2024). Global landscape on current immigration visa policy studies: A bibliometric analysis. In *Proceedings of the 2nd Lawang Sewu international symposium on humanities and social sciences 2023* (pp. 15-35). London: Atlantis Press. doi: 110.2991/978-2-38476-267-5_3.
[47] Rasoolimanesh, S.M., Wang, M., Roldan, J.L., & Kunasekaran, P. (2021). Are we in right path for mediation analysis? Reviewing the literature and proposing robust guidelines. *Journal of Hospitality and Tourism Management*, 48, 395-405. doi: 110.1016/j.jhtm.2021.07.013.
[48] Saha, S., Yap, G., & Kim, Y.R. (2022). Moderation effects of political instability and tourism on economic growth. *Tourism Analysis*, 27(2), 173-185. doi: 110.3727/108354221X16187814403092.
[49] Sakenova, S. (2025). *Tourist numbers from China to Kazakhstan surge 78% in 2024*. Retrieved from https://astanatimes.com/2025/02/tourist-numbers-from-china-to-kazakhstan-surge-78-in-2024/.
[50] Shaimenova, A., Ilyassova, G., Klyuyeva, Y., & Khashimova, A. (2020). Development of the institution of arbitration in Kazakhstan: Problems of theory and practice. *Journal of Advanced Research in Law and Economics*, 11(1), 169-186. doi: 110.14505//jarle.v11.1(47).21.
[51] Shanghai Cooperation Organisation. (2024a). *SCO secretary general holds press briefing regarding Astana Summit*. Retrieved from https://eng.sectsco.org/20240710/1446562.html.
[52] Shanghai Cooperation Organisation. (2024b). *Meeting of SCO countries' tourism administrations heads*. Retrieved from https://eng.sectsco.org/20240529/1368222.html.
[53] Shepherd, J. (2024). Tourism in Oppressed Destinations: Political responsibility and the prospect of oppression offsetting. *Annals of Tourism Research*, 108, article number 103810. doi: 110.1016/j.annals.2024.103810.
[54] Shi, Q., Liang, Z., Yang, Q., Dooranov, A., & Liang, L. (2024). Sustainable development and global tourism governance in China and other countries: A review of research. *Journal of Environmental Law & Policy*, 4(2), 118-148. doi: 110.33002/jelp040205.
[55] Shilibekova, B., Plokhikh, R., & Dávid, L.D. (2024). On the path to tourism digitalisation: The digital ecosystem by the example of Kazakhstan. *Geojournal of Tourism and Geosites*, 57(4), 2060-2070. doi: 110.30892/gtg.574spl20-1373.
[56] Shtal, T., Davydova, O., Sysoieva, S., Logvinkov, S., & Zhukov, V. (2024). Innovative risk management in the hotel and restaurant business: Scientific and practical aspect. *Scientific Bulletin of Mukachevo State University. Series Economics*, 11(2), 116-125. doi: 110.52566/msu-econ2.2024.116
[57] Shtal, T., Ptashchenko, O., Rodionov, S., & Kurtsev, O. (2023). Implementation of modern marketing tools in entrepreneurial activity. *Economics of Development*, 22(4), 53-63. doi: 110.57111/econ/4.2023.53.
[58] State Council of the People's Republic of China. (2024). *China, Central Asia reap remarkable benefits from win-win cooperation*. Retrieved from https://english.www.gov.cn/news/202405/21/content_WS664bfcf3c6d0868f4e8e74c5.html.
[59] Sultanova, A., & Ilyassova, G. (2022). The consumer protection approach in Kazakhstan: Obstacles and prospects for introduction of European legislative practices. *European Journal of Comparative Law and Governance*, 10(1), 117-146. doi: 110.1163/22134514-bja10046.
[60] Tleuberdinova, A., Salauatova, D., & Pratt, S. (2022). Assessing tourism destination competitiveness: The case of Kazakhstan. *Journal of Policy Research in Tourism, Leisure and Events*, 16(2), 265-283. doi: 110.1080/19407963.2022.2027954.
[61] Tourism Law of the People's Republic of China. (2017, June). Retrieved from https://surl.li/dpvouo.
[62] Turysbek, A., Issayeva, A., & Abubakirova, G. (2025). Legal foundations for the development of tourism in Kazakhstan in national and international dimensions. *Bulletin of L.N. Gumilyov Eurasian National University. Law Series*, 150(1), 61-76. doi: 10.32523/2616-6844-2025-150-1-61-76.
[63] Uyar, H. (2022). The future of post-pandemic tourism and hospitality industry: A comprehensive assessment. In A. Hassan, A. Sharma, J. Kennell & P. Mohanty (Eds.), *Tourism and hospitality in Asia: Crisis, resilience and recovery* (pp. 299-308). Singapore: Springer. doi: 110.1007/978-981-19-5763-5_19.
[64] Vaccaro-Incisa, G.M. (2021). *China's treaty policy and practice in international investment law and arbitration*. Leiden: Brill. doi: 110.1163/9789004443938.

[65] Vasvári, M., Gergely, L., & Dávid, L.D. (2025). Tourism as a catalyst for resilience: Insights from a literature review on crisis adaptation and regional development. *Ecocycles*, 11(1), 31-45. doi: 110.19040/ecocycles.v11i1.479.

[66] Vogler, R. (2023). Legality of political and ethical consumerism in tourism. *Tourism: An International Interdisciplinary Journal*, 71(2), 349-366. doi: 110.37741/t.71.2.8.

[67] Yu, M. (2023). *2023 guide to enforce Kazakhstani judgments in China-CTD 101 series*. Retrieved from https://www.chinajusticeobserver.com/a/2023-guide-to-enforce-kazakhstani-judgments-in-china.

[68] Zhamiyeva, R., Sultanbekova, G., Balgimbekova, G., Mussin, K., Abzalbekova, M., & Kozhanov, M. (2022). Problems of the effectiveness of the implementation of international agreements in the field of waste management: The study of the experience of Kazakhstan in the context of the applicability of European legal practices. *International Environmental Agreements: Politics, Law and Economics*, 22, 177-199. doi: 110.1007/s10784-021-09549-0.

[69] Zhanibekov, Ye. (2024). E*xpansion of visa-free opportunities: What is the strength of the Kazakh passport?* Retrieved from https://en.inform.kz/news/expansion-of-visa-free-opportunities-what-is-the-strength-of-the-kazakh-passport-a655a7/.

[70] Zhu, J., Siriphon, A., Airey, D., & Mei-lan, J. (2021). Chinese tourism diplomacy: A Chinese-style modernity review. *Anatolia*, 33(4), 550-563. doi: 110.1080/13032917.2021.1978515.

[71] Zhylko, O., & Mamotenko, D. (2023). Insurance in modern international tourism business. *Management and Business*, 1(2), 258-268.

[72] Zijun, D. (2024). *Chinese tourists 'of utmost importance' to Kazakhstan, more collaboration in energy, industry, agriculture underway: Kazakh Deputy FM*. Retrieved from https://www.globaltimes.cn/page/202403/1309106.shtml.

Правові основи та перспективи міжнародного співробітництва між Казахстаном і Китаєм у сфері захисту прав туристів

Мін-Чже Су
Докторант
Казахський національний університет імені аль-Фарабі
050040, просп. Аль-Фарабі, 71, м. Алмати, Республіка Казахстан
https://orcid.org/0009-0000-8131-7461
Хе-Йонг Ванг
Магістр, асоційований дослідник
Харбінський технологічний інститут
150001, вул. Ксіда, 92, м. Харбін, Китайська Народна Республіка
https://orcid.org/0000-0002-4092-2136
Єсбол Оміржанов
Кандидат юридичних наук, професор
Казахський національний університет імені аль-Фарабі
050040, просп. Аль-Фарабі, 71, м. Алмати, Республіка Казахстан
https://orcid.org/0000-0003-2530-6658
Хонг-Вей Ванг
Кандидат юридичних наук, професор
Харбінський технологічний інститут
150001, вул. Ксіда, 92, м. Харбін, Китайська Народна Республіка
https://orcid.org/0000-0003-3044-1774
Індіра Сактаганова
Кандидат юридичних наук, професор
Євразійський національний університет імені Л.Н. Гумільова
010008, вул. Сатпаєва, 2, м. Астана, Республіка Казахстан
https://orcid.org/0000-0001-7218-197X

Анотація. Метою дослідження був аналіз нормативно-правової бази та оцінка можливостей розвитку міжнародного співробітництва між Казахстаном і Китаєм у сфері захисту прав туристів. У дослідженні використано порівняльний аналіз нормативно-правових актів, аналіз міжурядових угод, що регулюють туристичну сферу, а також контент-аналіз звітів державних органів і галузевих асоціацій. Розглянуто основні механізми правового регулювання захисту прав туристів у Казахстані та Китаї. Проаналізовано ефективність існуючих інституційних механізмів співпраці, зокрема функціонування Казахстансько-китайського туристичного форуму та спільних прикордонних координаційних груп, що діють в рамках двосторонніх угод. Дослідження виявило ключові проблеми, серед яких недостатня координація між національними органами захисту прав споживачів, відсутність єдиної системи адміністративного розгляду скарг туристів, а також труднощі з судовим врегулюванням спорів, що спричиняє значні фінансові та часові витрати для туристів. Виявлено, що значна кількість конфліктних ситуацій вирішується через механізми саморегулювання туристичного бізнесу та позасудового врегулювання спорів, зокрема за участі галузевих асоціацій та страхових компаній. Були проаналізовані перспективи співпраці, включаючи можливість створення єдиної електронної бази даних скарг туристів між Казахстаном і Китаєм, гармонізацію стандартів туристичного страхування, розширення альтернативних механізмів вирішення спорів, включаючи міжнародний арбітраж. Ефективне правове регулювання туристичної діяльності є важливим фактором розвитку транскордонного туризму та забезпечення його стійкості, а впровадження узгоджених механізмів захисту прав туристів сприятиме підвищенню довіри на туристичному ринку і зміцненню двосторонніх відносин між Казахстаном і Китаєм

Ключові слова: законодавство; нормативно-правові акти; відповідальність; угоди; безпека; транскордонні подорожі

UDC 340.1
DOI: 10.32518/sals2.2025.108

Соціально-правові студії. 2025. Т. 8, № 2
Social & Legal Studios. 2025. Vol. 8, No. 2

Socio-legal phenomenon of judicial reasoning in the context of the implementation of a functional state

Roman Vandzhurak
Doctor of Philosophy in Law, Doctoral Student
National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine
https://orcid.org/0000-0002-8474-2276

Nataliia Kushakova-Kostytska*
Doctor of Law, Professor, Leading Researcher
Institute of Lawmaking and Scientific and Legal Expertise of the National Academy of Sciences of Ukraine
01024, 3 Pylyp Orlyk Str., Kyiv, Ukraine
https://orcid.org/0000-0002-1116-4751

Olga Balynska
Doctor of Law, Professor
Lviv State University of Internal Affairs
79000, 26 Horodotska Str., Lviv, Ukraine
https://orcid.org/0000-0002-0168-143X

Oleg Pankevych
PhD in Law, Associate Professor
Lviv State University of Internal Affairs
79000, 26 Horodotska Str., Lviv, Ukraine
https://orcid.org/0000-0002-6636-1330

Iryna Nastasak
PhD in Law, Associate Professor
Ivan Franko National University of Lviv
79000, 1 Universytetska Str., Lviv, Ukraine
https://orcid.org/0000-0002-3963-1788

Abstract. The relevance of judicial discretion in the context of implementing state functions is determined by several key factors. This phenomenon enables the exercise of justice in a flexible manner, taking into account the specific circumstances of each case and the changing socio economic conditions, thereby ensuring a balance between the branches of power. It enhances the effectiveness of judicial protection of human rights, prevents a purely formal approach to the application of the law, and fosters public trust in the judiciary. This study aimed to explore judicial discretion as a socio-legal phenomenon, concerning the nature of state authority and the demands of contemporary legal regulation of social relations. To achieve this, a number of methodological approaches have been adopted. The hermeneutic method has been used to demonstrate how discretion is conceptually embedded in the socio-cultural context in which it arises and functions at various stages of state development. Through the socio-dynamic approach, internal and external contradictions of discretion have been identified, showing its role as an organic component of a given socio-cultural environment and its close link to the evolutionary dynamics of that environment. The use of deductive-logical analysis has demonstrated the interdependence between the functional potential of the state and the discretionary powers of judges. Among the principal findings of the study is the recognition of judicial discretion as an effective means of shaping

Suggested Citation

Article's History: Received: 10.03.2025 Revised: 20.05.2025 Accepted: 25.06.2025

Vandzhurak, R., Kushakova-Kostytska, N., Balynska, O., Pankevych, O., & Nastasak, I. (2025). Socio-legal phenomenon of judicial reasoning in the context of the implementation of a functional state. *Social & Legal Studios*, 8(2), 108-117. doi: 10.32518/sals2.2025.108.

*Corresponding author

Copyright © The Author(s). This is an open access Article distributed under the terms of the Creative Commons Attribution License 4.0 (https://creativecommons.org/licenses/by/4.0/)

public opinion and legal consciousness within society. This highlights the socio-legal dimension of the phenomenon and its potential to foster a proactive civil society and influence the development of state legal policy. Emphasis is placed on the reciprocal relationship between the discretionary powers of judges and public opinion. Judicial discretion is both a consequence of and a contributor to public perception and collective legal consciousness. As such, it can shape and shift societal attitudes, influence the level of public trust in state institutions, promote legal culture, and ultimately contribute to shaping domestic policy in the spheres of law enforcement and the protection of rights. The study holds practical significance as it outlines a theoretical framework – a kind of roadmap – for those exercising the discretionary powers of the state, as well as for all individuals affected by the implementation of discretion in decision-making by representatives of public authorities

Keywords: judicial conviction; civil society; discretion; public authorities; judicial powers; discretion; state functions

Introduction

Judicial discretion cannot exist in isolation, and although its boundaries may not always be clearly defined – an issue that has sparked considerable debate – it nonetheless operates within a legally established framework and is legitimised by law. Discretionary powers, therefore, form part of the state's administrative mechanism, serving a specific function and constituting one of the forms through which the state operates. Through its designated institutions, the state regulates social relations and, in particular, ensures the protection of the rights and interests of its citizens. In addition to these direct functions, there are levers of influence that may not be formally declared – indeed, may even be denied – by the state, yet they hold significant weight in society and cannot be overlooked when judicial discretion is exercised. Issues relating to the content, form, methods, and techniques of law enforcement have long been the subject of academic discussion. In the context of ever-changing social relations, it is exceedingly difficult to ensure effective implementation of the law through legislation alone. Judicial discretion, in this regard, serves as a crucial mechanism for maintaining the balance between the rule of law and the evolving needs of society.

The issue lies in the existence of opposing perspectives on the nature of discretion. One view holds that discretion is a compensatory form of legal implementation, as the law cannot account for every possible scenario it seeks to regulate, and an individualised approach requires discretionary powers. In the Ukrainian scholarly tradition, discretion is often perceived as a legal mechanism that compensates for the shortcomings or incompleteness of the law – particularly within the judiciary. However, a potential concern lies in the excessively broad scope of discretionary power, which may turn the application of law into unrestrained subjectivism, procedural voluntarism, or even arbitrariness. Thus, while discretion is deemed necessary, it must be clearly limited, well-reasoned, and subject to oversight, so as not to become a form of legalised arbitrariness.

Sources that preceded this study and explored the issues of discretionary authority, judicial discretion, and the risks of subjectivism and abuse in legal practice can be provisionally grouped according to the approaches they adopt. R.V. Vandzhurak (2025) demonstrated how the absence of a logical structure in reasoning can lead to subjectivism and procedural arbitrariness. N. Shelever (2024) identified the risk of a judge's "personal sense of justice" becoming a standard, potentially resulting in legal subjectivism. A. Yevtushenko (2025) described discretion as a factor contributing to corruption risks, noting that excessive, unchecked discretion provides fertile ground for abuse and arbitrariness.

G.S. de Queirós Campos and A. Bedê (2023) analysed the critical stance towards judicial discretion, emphasising the need to limit discretion in order to uphold the integrity of the law and avoid subjectivism in judicial decisions. In N. Cowdery's (2022) study, the use of discretion at various stages of the criminal process is examined, with particular attention given to the need for rules that prevent unwarranted subjectivism and ensure fairness. J. Brown (2025), a lecturer at the University of Aberdeen, noted that sentencing guidelines do not impose rigid constraints on the individual delivering the sentence, acknowledging the appropriate degree of discretion that should rightly be afforded to a judge. In his study, Brown concludes that guidelines provide a framework for judicial discretion but do not eliminate it.

A broader perspective on the issue is offered in the research of R. Henham (2022), who explored how social values influence judicial discretion in sentencing. Author highlighted the risks of subjectivism and stressed the need to strike a balance between flexibility and predictability. This broader approach to the discussion is seen as a possible path towards addressing the identified problem. One possible direction for further inquiry is the examination of judicial discretion in the context of the implementation of state functions. Given the clear gap in research concerning the operation of the state and contemporary approaches to the legal regulation of this mechanism, this study aimed to critically evaluate and reconsider the institution of judicial discretion as a phenomenon of socio-legal reality within the framework of the state's functional implementation. It also seeks to demonstrate the interdependence and mutual alignment of judicial discretion and state functions within the activities of public authorities.

In line with this objective, the following tasks are to be undertaken: to analyse the current state and pressing issues related to the organisation and functioning of the Ukrainian legal system in the context of the exercise of judicial discretion; to trace how the content of discretion, as exercised by state-authorised actors, is shaped by social, cultural, economic, political, and other factors; and, simultaneously, to reveal the potential of judicial discretion to influence public opinion and collective legal consciousness – and thus affect relevant aspects of the state's domestic policy in the fields of judicial and law enforcement activity.

Materials and methods

The study of such objects of scholarly inquiry as state functions and discretion must be conducted across various disciplinary domains, employing a range of methodologies integrated within an interdisciplinary approach. Accordingly, in examining the development of the institution of discretion, the hermeneutic method was employed in combination with the principle of historicism. This enabled the demonstration of a substantive interconnection between discretion and the

socio-cultural environment, shaped by and operating within specific circumstances. This aspect was situated within the broader context of state function implementation, taking into account the diverse socio-historical conditions of state formation.

Given the fundamental methodological value of the socio-dynamic approach, discretion was analysed as an organic component of a particular socio-cultural environment, with its transformations closely linked to the evolutionary dynamics of that environment. In the course of this analysis, both internal and external contradictions of discretion were identified and described, arising from the social nature of the actors involved in its application and the embeddedness of legal practice as the sphere in which discretion is exercised.

To derive and generalise the findings, deductive-logical analysis was applied. This approach demonstrated that state authorities (or their representatives), in the course of their professional activities and in realising the functional potential of the state, influence the formation of discretion among law-applying subjects. At the same time, discretion contributes to shaping the principal directions of state activity and often serves as a significant factor within the system of safeguards against the abuse of power.

The primary materials used and analysed in this study comprised scholarly research of various levels – academic articles, dissertations, monographs, and collaborative studies – that reflect active discussion of the issue of discretion in law. These works address topics such as the limits of discretion, the risks of subjectivism, and its impact on the fairness of legal enforcement. Collectively, they have provided a solid foundation for further examination of the institution of discretion within both international and national legal scholarship.

In addition, the comparative method was employed to analyse the institution of judicial discretion and to explore possibilities for its further refinement. This included a review of legislation regulating the exercise of judicial discretionary powers in the context of the state's functional implementation (Law of Ukraine No. 474-XIV, 1999; Criminal Procedure Code of Ukraine, 2012; Law of Ukraine No. 187-IX, 2019), as well as relevant case law (Decision of the Judicial Chamber for Civil Cases of the Supreme Court of Ukraine No. n0090700-04, 2004; Decision of the European Court of Human Rights in the Case No. 36650/03, 2012; Resolution of the Criminal Court of Cassation of the Supreme Court in the Case No. 634/609/15-k, 2018). Furthermore, information-analytical materials (Labiak, 2023) were utilised to explore the interaction between judicial bodies and civil society, highlighting current issues such as public access to court decisions and the expansion of opportunities for public participation in decision-making by public authorities.

Results and Discussion

A wide range of public officials vested with authoritative powers possess discretionary authority; however, this study focuses specifically on discretion (i.e. discretionary powers) as exercised by actors engaged in the law enforcement function of the judiciary. Broadly, the concept of "discretionary powers" is rooted in the notion of discretion, which has evolved in parallel with the development of the concept of the state. As the state began to take shape, the need for governance in the management of public affairs emerged. No administrative or executive body can function without the use of administrative discretion. This idea gained particular prominence with the rise of the welfare state model, which led to an expansion of state functions (Munir *et al.*, 2020). In light of this, it may be asserted that discretionary powers are not merely a management tool but a necessity arising from the state's development as an organisation striving to fulfil its functions effectively in complex socio-economic conditions. In particular, the evolution of the welfare state has necessitated an expansion of state functions, significantly enhancing the role and importance of discretionary powers (Prysyazhnyuk, 2024).

Judges' discretionary powers are primarily associated with the exercise of the state's law enforcement function. Judicial discretion in the application of the law has accompanied the entire history of justice since ancient times and has evolved in tandem with transformations in the sociopolitical realities of each historical period. A retrospective examination reveals a discernible pattern. For instance, in contrast to the judiciary of the ancient Eastern despotisms – where judicial discretion was largely directed towards punishment and submission to the ruler – Western legal traditions often exhibited a tendency towards proportionality between punishment and harm caused, the pursuit of justice restoration, and the possibility of the offender's correction and rehabilitation.

In the Middle Ages, judicial practice was guided by Christian moral values: the main criterion for discretion was the alignment of the defendant's actions with the doctrines of the Holy Scriptures and the interests of the Church. Judges, in exercising their discretion, were expected to identify the legal issue, find the appropriate norm, and justify its application to the specific case (Shevchenko, 2024). During the Renaissance and the modern period, as the influence of the Church on socio-political life gradually declined, society once again turned to the philosophical and legal ideas of Antiquity. Of particular interest were the teachings of ancient Greek thinkers concerning the natural foundations of law. During this period, radical changes were also observed in the procedural paradigm, particularly concerning the burden of proof and the gradual abandonment of the use of torture. Cesare Beccaria argued that this shift was motivated by the belief that, where the elements of a crime had been proven, torture became unnecessary – sufficient evidence of guilt eliminated the need for it. Conversely, where guilt could not be established, the individual was presumed innocent, and thus the law prohibited inflicting physical suffering on someone who was, by definition, innocent (Gadzhiev, 2014).

Beccaria consistently opposed judicial discretion, asserting that only the law could determine which actions constituted crimes and what punishments were appropriate. In his view, resolving such matters should never fall within the judge's remit. When administering criminal justice, one must be guided by the letter of the law, not its spirit, as deviation from this principle leads to judicial arbitrariness, swayed by personal weaknesses and passions. The right to interpret the law belonged exclusively to the monarch (or sovereign), while the judge's role was limited to the literal application of that law. Thus, according to Beccaria, the division of competences between monarch and judge was as follows: the monarch enacts and interprets the law, while the judge analyses the actions of individuals and determines whether they comply with the law (Hryshchuk, 2014).

The aforementioned classical humanist ideas were further developed in modern legal doctrines, laying the conceptual foundation for the universalisation and legal

enshrinement of fundamental human rights and freedoms (Rudyuk, 2019). Accordingly, since the mid-20th century, human rights and freedoms have served as core reference points in the exercise of judicial discretion and the legitimisation of procedural decisions. One of the defining features of a modern democratic society is its ongoing pursuit of openness and transparency. This, firstly, enables society to exert influence over governmental decisions and the adoption of legislation; and secondly, in judicial proceedings, it often allows judges to take public opinion into account. Such responsiveness is made possible through the exercise of judicial discretion – without the need to wait for formal legislative amendments. In this way, it may be argued that the mechanism of judicial discretion enables the judiciary to respond swiftly to evolving public demands, with the resulting decisions potentially serving as a basis for future legal reform.

An illustrative example is the Law of Ukraine No. 187-IX (2019), which amended Article 349 of the Criminal Procedure Code of Ukraine (2012) by adding Part One, stipulating that: "After the actions provided for in Article 348 of this Code have been completed, the presiding judge shall grant the prosecution and the defence the right to deliver opening statements". Long before this legislative amendment, the legal community had expressed the view that, in order to ensure equality of arms before the court, it would be appropriate to allow the defence, prior to the examination of evidence and following the reading of the indictment by the prosecutor, the opportunity to respond to the charges and present counterarguments. Courts often granted this possibility, evidently exercising their discretionary powers, as such a right was not provided for at the normative level until this practice eventually became the basis for legislative change (Zeykan, 2016).

In view of these circumstances, it may be asserted that judicial discretion has been an indispensable component of law enforcement throughout its history, serving as perhaps the only effective means of compensating for the "regulatory deficit" of legal norms. Despite the inherent element of voluntarism it entails – *de facto,* potentially unrestricted – judicial discretion has consistently functioned as a unique tool through which the state performs its functions. In practice, a judge may be guided not only by the law itself but also by broader societal values, mediated through personal worldviews, including considerations such as state security and the stability of public order (Kravchuk, 2015).

At the same time, the concept of judicial discretion remains highly contested, ambiguous, and even controversial, with no clearly defined boundaries or established criteria for its application. An analysis of both national and international legislation reveals that, unlike in several other countries, Ukrainian law lacks a clear legal definition of "discretionary powers". This gap prompted the Supreme Court to provide clarification on the matter. In particular, in its Resolution of the Criminal Court of Cassation of the Supreme Court in Case No. 634/609/15-к (2018), the panel of judges of the Second Judicial Chamber of the Cassation Criminal Court of the Supreme Court stated that: "The concept of judicial discretion in criminal proceedings encompasses the court's authority (rights and obligations), granted by the state, to choose between alternatives, each of which is lawful. It also involves the intellectual and volitional exercise of judicial power to resolve disputed legal issues – where permitted by law – based on the aims and principles of law, the general rules of judicial procedure, the specific circumstances of the case, the characteristics of the offender, and considerations of fairness and the proportionality of the punishment selected".

Thus, although the concept of "discretionary powers" of a law-enforcement actor is not formally defined at the legislative level, judicial practice in Ukraine has developed a position on the matter. Discretionary powers are understood to refer to a situation in which, within limits set by law, a public authority may choose at its own discretion from among several legally permissible options. This interpretation aligns with the view of L.B. Solum (2024), who distinguishes between two dimensions of discretionary powers: *de facto* discretionary powers and *de jure* discretionary powers. The latter refers to situations where legal norms explicitly grant discretion to a specific official or institution. The scholar notes that even when a decision is theoretically governed by a rule or standard, in practice it may still be discretionary – particularly when violations of that rule are not realistically subject to correction. For instance, it may be argued that, in theory, the US Supreme Court is bound by the text of the Constitution. However, in practice, the Court possesses *de facto* discretionary power, as its rulings on constitutional matters are final. In this sense, the Court may effectively hold *de facto* discretionary authority to determine constitutional law, even if it lacks *de jure* authorisation to do so.

It should be noted that, under Ukrainian law, the grounds for judicial discretion in sentencing include: criminal-law sanctions, whether relatively determined (where sentencing ranges are established) or alternative (where multiple types of punishment are provided); legal principles; authorising norms, which use formulations such as "may" or "is entitled to" when referring to judicial powers; legal terms and concepts that are polysemous or lack precise legislative definition, such as "the personality of the offender" or "genuine remorse"; evaluative concepts, the meaning of which is determined not by legislation but by the legal consciousness of the adjudicator. These arise, for example, when considering mitigating and aggravating circumstances (Articles 66 and 67 of the Criminal Code of Ukraine (2001)), determining "other circumstances of the case", or assessing the possibility of correcting the convicted person without enforcing the punishment – relevant in the application of Article 75 of the Code; individualisation of punishment, i.e. the specification of the type and extent of coercive measures imposed by the court, depending on the nature of the offence and the characteristics of the offender.

Judicial discretionary powers are also recognised by the European Court of Human Rights, which, in its rulings – including in the case of Dovzhenko v. Ukraine (2012) – emphasised "the necessity of determining the lawfulness, scope, means, and limits of the use of discretion by judicial authorities, based on the compatibility of such judicial powers with the principle of the rule of law. This is ensured, in particular, by appropriate reasoning provided in the court's procedural documents" (Resolution of the Criminal Court of Cassation of the Supreme Court in the Case No. 634/609/15-кб 2018).

It is important to emphasise that judicial discretion may not be applied in all circumstances, but only when both options are lawful and when the legal provision is vague, ambiguous, or lacks formal legislative definition or clarity. As noted by A. Barak (1989) in his seminal work, judicial discretion is invoked in situations where "the legal path leads to a crossroads, and the judge must, in the absence of a clear and

precise standard for guidance, decide which road to take". However, this should not be interpreted as granting absolute freedom in judicial decision-making. As Barak argued: "A judge does not have the discretion to choose an option that is unlawful, even if the decision is not challenged, and even if the ruling – if issued by the Supreme Court – remains binding and authoritative for others".

When analysing judicial discretion within the paradigm of its optimisation and the prevention of excessive subjectivity, it is necessary to consider that a judge's understanding of this concept may shift depending on their worldview or personal convictions. For example, from an ontologicaldeontological perspective, the key condition for optimising discretionary judicial approaches lies in aligning the deontological content of judicial decisions with the ontological realities of both the natural and social context. On the one hand, such optimisation can help eliminate manifestations of judicial subjectivism by appealing to objective principles and standards. On the other hand, the application of abstract and generalised deontological content of legal norms to specific cases often requires creative interpretation, thereby enhancing the law-making potential of judicial discretion. At the same time, procedural decisions should aim to achieve an optimal balance between public, individual, and state interests, with a view to fostering the conditions necessary for the continued social, economic, and cultural development of society.

An analysis of the epistemological foundations of judicial proceedings reveals that the current trend in jurisprudence toward relativising approaches to interpreting truth does not justify the doctrine of a "shift from truth to post-truth" in the exercise of judicial discretion. Such a shift would render the very notion of procedural proof meaningless. Moreover, unlike the philosophical interpretation of the nature of phenomena – where ambiguity is understandable, since such phenomena cannot be perceived directly as "factual truth" – procedural truth lies in the substantiated and clear determination of the presence or absence of specific circumstances in a case. The effectiveness of establishing the truth within the framework of judicial discretion largely depends on harmonising empirical and theoretical methods. The evaluation of evidence, which forms the empirical basis of discretion, requires the use of theoretically generalised and systematised approaches for its rationalisation. Conversely, theoretical and analytical conclusions must be grounded in reliable empirical data.

Regarding the axiological dimension of the issue, it is important to note that true (reliable) information about the content and circumstances of a case under investigation – while a necessary condition for the administration of justice – constitutes only the subject matter of judicial discretion and is not always sufficient for delivering a fair and rational procedural decision. This is because there is no direct correlation between deontological concepts of what ought to be and the actual state of affairs. In most cases, such concepts are shaped by and function within a specific system of values. Therefore, the axiological aspect of judicial discretion must closely correlate with its epistemological basis, grounded in fundamental values such as freedom, dignity, justice, and equality.

When analysing judicial discretion from the perspective of aligning the normative and legal foundations of its implementation with logical principles of reasoning, it becomes evident that such alignment significantly broadens the capacity to objectivise the criteria for evaluating evidence in terms of its admissibility, relevance, reliability, and sufficiency. Furthermore, it enables the construction of a generalised logical model, which in turn allows for the systematisation of the judicial decision-making process and the verification of decisions against the goal of maximising their alignment with the core objectives of justice in the specific legal relationship under consideration. Under these conditions, judicial reasoning is substantiated not only by subjective internal conviction but also by a justification of that conviction through its correspondence with the objectively logical foundations of rationality (Vandzhurak, 2025).

Given the practical application of judicial discretion, it should be noted that it is arguably the only effective tool in legal practice for protecting the rights and interests of individuals in situations where there is a power imbalance between the defence and the prosecution. In some cases, courts, guided primarily by such principles as dignity, freedom, equality, and justice, may issue unpopular decisions that diverge from the prevailing political direction of the state at a given moment, thereby siding with citizens in their confrontation with public authorities. Clearly, such protection could not be achieved if legal practitioners were bound entirely by rigid procedural frameworks, without a degree of discretionary latitude.

Nevertheless, as the legal theorist H. Kelsen (1949) observed, despite the potential of judicial discretion to stand in opposition to state authority, the functions of the state may still be equated with the main directions of its activity and, ultimately, with the activity of the state itself. For the effective fulfilment of state objectives, appropriate state bodies are established as integral components of the state apparatus – a system of public institutions whose activities are aimed at performing and implementing state functions. Some of these institutions are vested with authoritative powers (including discretionary ones), through which the goals and functions of the state are carried out.

As the system of state functions is highly complex – and a single function may fall under various classifications and criteria – there is a prevailing view in academic circles that state functions should be categorised according to the forms of activity based on the principle of the separation of powers, namely legislative, executive, and judicial (Doronin, 2020). Accordingly, state functions may be divided into legislative (law-making), executive (administrative), and lawenforcement functions (including judicial functions).

According to Yu. Kolomoets (2017), the law-enforcement function of the state is a key component of its internal functions and entails the guaranteed protection of citizens' rights and freedoms through the establishment of an effective legal order, the upholding of the rule of law, and the safeguarding of sovereignty, territorial integrity, national security, and state borders. It is generally accepted that the law-enforcement function of the state is carried out through both lawmaking and law-enforcement activities (Dudchenko, 2019). Therefore, in light of the above considerations, judicial discretion may be viewed as a form of exercising law-enforcement activity within the framework of the state's law-enforcement function. However, judicial discretion as a form of legal enforcement is not confined solely to that function; it also interacts with other forms of state activity. For instance, by introducing legislative amendments that define new rules for the evaluation of evidence, the state shapes the

legal framework governing the activities of law-enforcement actors – developments which inevitably influence discretionary procedures as well. Alternatively, through mechanisms of oversight and supervision, the state – by establishing specific regulatory bodies – may influence the direction of discretionary reasoning (Miroshnychenko, 2020). Particular attention should also be given to the state's social function, as certain state programmes aimed at protecting human rights and interests in the social sphere may generate a public demand for justice. This, in turn, may influence the discretion exercised by law enforcement actors, particularly when they are aware of the potential societal impact and public resonance of their decisions (Dzhuraeva, 2005).

The examples provided concerning the state's law-enforcement function suggest that, although the state does not explicitly claim control over the exercise of judicial discretion, it nevertheless establishes the broader context within which such decisions are made – through legislative, supervisory, social, and other mechanisms. On the one hand, the state implements its public functions by regulating the discretion of legal actors through legislation, oversight, evaluation systems, professional training, and education. On the other hand, discretionary powers themselves serve as a tool for realising state functions, expressed through the assessment of facts and circumstances, the selection and interpretation of legal norms, the application of sanctions, and the choice of procedures. In this regard, discretionary powers constitute a crucial component in the implementation of state functions, providing flexibility and adaptability in law enforcement while simultaneously serving as a safeguard against the abuse of authority (Savchyn, 2016).

A clear illustration of this can be seen in how oversight and supervision – through the prosecution of certain judges – may influence the discretion exercised by others when considering similar cases (Dzhuraeva, 2005). Conversely, the inadequacy of a particular legal provision that ambiguously regulates specific legal relations and thereby requires judges to exercise discretion may prompt legislative reform to address the issue (Zeykan, 2016). It is important to note, however, that such examples also reveal potential threats to the effective exercise of discretionary powers. Excessive scrutiny of a specific category of cases – particularly when judges are held accountable for decisions made in such cases – may undermine the capacity of the judiciary to exercise discretion independently. If judges observe that their colleagues are being sanctioned for rulings in a particular type of case – especially where such rulings diverge from prevailing public sentiment – this may lead them to render judgments not based on their own legal reasoning and conviction, but rather in line with the established practices of judicial oversight bodies. This could result in a chilling effect, where discretion is no longer exercised as an instrument of justice but is instead constrained by fear of reprisal, ultimately compromising judicial independence.

At the same time, in addition to the aforementioned functions of the state aimed at shaping and implementing particular policies, there also exist functions that are not explicitly declared by the state but through which it may influence the exercise of discretionary powers by law enforcement actors. In a socio-legal context, this refers primarily to such forms of influence on discretion as the shaping of public opinion through state-controlled media. While formally these may not be recognised as functions of the state, their deliberate use can effectively serve to implement specific governmental policies – particularly in contemporary conditions where society increasingly demands transparency and openness from public authorities. Evidently, under such circumstances, judicial decisions may be adjusted in response to prevailing public sentiment (Vandzhurak, 2024). It may be observed that the law enforcement system is capable of actions that may significantly diverge from official governmental positions or even statutory requirements, yet still enjoy public approval.

A clear example of this was the Decision of the Judicial Chamber for Civil Cases of the Supreme Court of Ukraine No. n0090700-04 (2004), issued in response to a complaint against the decision, actions, and inaction of the Central Electoral Commission concerning the outcome of the run-off presidential election in Ukraine. The ruling was handed down against the backdrop of mass protests by Ukrainian citizens regarding the results of the second round of the 2004 presidential election. This decision is regarded as unprecedented in Ukrainian procedural history, as at the time, the Law of Ukraine No. 474-XIV "On Elections of the President of Ukraine" (1999) did not provide a legal mechanism for declaring an election invalid through judicial proceedings. Nevertheless, the Supreme Court of Ukraine delivered its judgment based on the principle of the rule of law, going beyond the scope of electoral legislation and grounding its decision primarily in the Constitution of Ukraine. As a result, the political crisis was resolved through legal means. Although the judgment itself does not explicitly mention public dissatisfaction or mass protests, both the manner in which the case was handled and its outcome indicate that the Court recognised the urgency of the issue and took into account the prevailing public sentiment and opinion at the time.

Public opinion remains a constant influence on public legal consciousness. Even under dictatorships – where it was disregarded in judicial decisions – it still influenced how those decisions were framed. In today's complex and dynamic world, there is an increasing need for the governance of societal processes, which in turn elevates the importance of manipulating public opinion in accordance with political interests. In the era of the information society, public opinion has become more accessible due to the Internet, enabling its rapid dissemination and easier reception (Kushakova-Kostytska, 2019). Through the media, opinion can be deliberately shaped to benefit those in power or those who control information resources. Although the state often proclaims its intention to counter such manipulation, it, too, possesses the capacity to influence public opinion.

P. Bourdieu argued that opinion polling functions as a tool of political action, as it creates the illusion of consensus and thereby legitimises certain policies (Sokol, 2023). Modern media – particularly television and the internet – structure events by determining what is considered important, and in doing so shape people's thoughts and behaviour (Vandzhurak, 2024). Similarly, B. Cohen noted that the media do not tell people what to think, but rather what to think about (Mishchenko, 2022). This applies equally to legal practitioners, who, like all citizens, are subject to the influence of public opinion.

The authorities are obliged to guarantee the protection of rights and freedoms, primarily through the courts, whose fundamental role is to resolve public disputes. However, the judiciary faces a dilemma: to maintain legitimacy, it must

earn the trust of the public, which is the source of its authority and effectiveness (Commentary on the Code…, 2016). At the same time, this pursuit of trust may lead to a tendency to align with public expectations rather than adhere strictly to evidence and legal norms (Vandzhurak, 2024). Public opinion does not always reflect the genuine needs of society; it can be shaped by vested interests through media influence. For instance, selective coverage of court proceedings can foster bias against a defendant, influencing both public sentiment and legal institutions. Moreover, social media platforms and online petitions are increasingly used to exert pressure on courts or other bodies in an attempt to prevent the adoption of unpopular decisions. At the same time, the state as an institution may exert influence over the media and even openly advocate for the existence of public broadcasting. Thus, it can be argued that the state, whether overtly or covertly, is capable of shaping public opinion and thereby influencing the discretion of legal practitioners.

When analysing the specific nature and influencing factors of discretionary powers in the modern context, it is important to highlight the phenomenon of propaganda as a distinct feature of socio-political life. Propaganda is a complex and evolving phenomenon, constantly transforming in form and method through the development of information technologies, which complicates the task of distinguishing truth from carefully constructed propagandist narratives.

However, propaganda is not necessarily hostile, as is commonly assumed. It can also serve as a vehicle for promoting domestic narratives – such as "society demands real convictions" (Labiak, 2023) – which may implicitly pressure judges to expedite proceedings and dissuade them from issuing acquittals, under the assumption that society is not inclined to accept such outcomes. Yet, such pressure to deliver guilty verdicts risks transforming the judicial process – within a state that declares the rule of law as a constitutional principle – into a form of repression. Nevertheless, propaganda also has a positive dimension: it can serve as a tool for disseminating truthful information, promoting healthy lifestyles, encouraging engagement with sport and culture, and popularising scientific achievements.

Legal practitioners, who are authorised to apply the law based on their internal conviction, are themselves citizens and participants in the same societal processes. As such, their integration into these processes inevitably finds expression in their decisions. Consequently, legal practitioners – and their rulings – become potential targets of propagandistic influence. There is always a risk that a legal actor, having been subtly influenced by propaganda narratives and trusting the information disseminated in this way, might form an internal conviction aligned with such narratives and, accordingly, be inclined to resolve a case in the direction shaped by propaganda.

When examining the concepts of a judge's internal conviction and the functions of the state, several contentious issues arise that warrant particular attention. For instance, the definition, form and content of state functions, as well as their classification, remain ambiguous. Academic literature offers dozens of interpretations of the functions of the state – some of which differ so radically that the question arises as to whether it is even feasible to unify them under a single definition (Marushchak, 2019).

The issue of judicial discretion remains particularly contentious, as academic and professional circles continue to debate its legitimacy as a legal instrument. One group of scholars advocates for the necessity of discretion, arguing that the law cannot account for every possible life situation and that resolving certain cases requires the exercise of judgement (Popovsky, 2014; Fasii, 2023). Conversely, others maintain that such a tool often leads to unchecked subjectivism and even arbitrariness (Shevchenko, 2024).

It is evident that the positive aspect of judicial discretion lies, among other things, in its capacity to offer more effective protection of human rights in cases involving legislative gaps or conflicts. In this regard, a judge's discretionary powers are directly linked to the exercise of the state's law enforcement function, which occupies a central role in democratic societies where citizens' rights and legitimate interests are regarded as paramount. According to O. Sokolenko (2012), the law enforcement function of the state constitutes a complex, integral, and priority area of state policy aimed at ensuring the principles of the rule of law and the primacy of human rights. V. Kharchenko (2019), meanwhile, defines this function as the system of social relations that emerge and evolve in the course of the state's activity – primarily through its institutions – focused on securing the rights, freedoms, and interests of individuals and citizens. By contrast, O. Bezpalova (2017) considers the law enforcement function to be an independent, multifaceted area of state activity in its own right.

Since the law enforcement function of the state is exercised through both law-making and law-applying activities, the latter would be impossible without legal actors vested with discretionary powers. These powers are an essential component of legal enforcement and arguably the only means of compensating for the "regulatory deficit" of statutory legal norms. It is therefore entirely consistent with the view expressed by H. Hart (2013) that there are situations in which judges must make rather than merely find the law – that is, they must act at their own discretion.

W. Farnsworth (2013) emphasised the need to reconsider the widely held belief that public policy can always be interpreted through legislation. If a particular issue has not been addressed by the legislature, he argues, it should be reflected in judicial decisions and consistent actions by state institutions. At the same time, M. Savchyn (2016) highlights the contradictions in the approach whereby courts, acting in the name of the state but in the interests of society at large, effectively legitimise the state's authoritative will through mechanisms established by the state itself via the legal system. According to researcher, judicial rulings must ensure that the executive branch does not exceed the powers granted to it.

The above suggests the existence of a certain bipolarity: on the one hand, discretion cannot function outside the framework of the state apparatus, and the state itself cannot be fully realised without it; on the other, discretion serves as a system of checks and balances against potential abuses of power. It is important to emphasise that in the context of Ukraine's recent realities, there exists a broad spectrum of ways in which the functions of the state and judicial discretion may be exercised, along with a complex interplay between them. As long as legal enforcement activity simultaneously represents both the implementation of state functions and a mechanism to restrain their excessive use, the issue of judicial discretion remains central to academic discourse (Nalyvaiko & Klyuchkovich, 2023).

Thus, by carrying out its activities through a range of functions – particularly legal enforcement and the protection of rights – and by employing the state apparatus in their implementation, the state has the capacity to influence judicial reasoning, including by instilling elements of official state rhetoric. At the same time, judicial discretion can, in turn, recalibrate that rhetoric, acting as a counterbalance against the abuse of authority or the unconstitutionality of a legal act. In doing so, it helps uphold the rule of law and ensures the protection of violated, unrecognised, or contested rights and legitimate interests.

Conclusions

In considering judicial discretion as the central focus of this study, it should be noted that this phenomenon – like the national legal system as a whole – is subject to continuous and dynamic change. In Ukraine, these changes are driven both by internal systemic needs (such as the reform of the judiciary and law enforcement system) and by external challenges (including martial law, active efforts towards European integration, globalisation, and others). Therefore, it is reasonable to assert that the institution of discretion exercised by legal actors faces a range of issues linked to the organisation and functioning of the legal system. These include inadequate coherence among legislative norms, a formalistic approach to their application, limited institutional capacity, and the presence of corruption risks.

The essence of discretion exercised by authorised legal actors is heavily influenced by a variety of social, economic, political, cultural, moral-ethical, and psychological factors. It is also important to emphasise that discretion functions simultaneously as both a result of and a contributing factor to public opinion and collective legal consciousness. The decisions of judges, prosecutors, and representatives of other law enforcement bodies, services, and institutions shape civil society's understanding of the fundamental principles of modern coexistence – justice, equality, the rule of law, state efficiency, and governmental accountability to its citizens.

The discretion exercised by legal actors can shape and shift public sentiment, influence the level of public trust in state institutions, and enhance legal culture. As a result, it contributes to the formation of domestic policy in the field of law enforcement and rights protection. This highlights judicial discretion as a socio-legal phenomenon, the exercise of which must be accompanied by a high level of professionalism and responsibility, adherence to ethical and moral standards, and, crucially, an awareness of the broader social significance of one's actions. The proposed research has scope for further development, as the issues addressed may also be explored through other interdisciplinary perspectives – examining the phenomenon of discretion among legal actors through the lenses of psychology, cultural studies, semiotics, and related fields.

Acknowledgements

None.

Funding

The study was not funded.

Conflict of interest

None.

References

[1] Barak, A. (1989). *Judicial discretion*. New Haven: Yale University Press. doi: 10.2307/j.ctt211qxt8.

[2] Bezpalova, O. (2017). Methodological principles of the administrative-legal mechanism of implementing the law enforcement function of the state. In *Development and modernisation of the legal systems of Eastern Europe: experience of Poland and prospects of Ukraine* (pp. 57-59). Lublin: Baltija Publishing.

[3] Brown, G. (2025). Guidelines, judicial discretion and the modern sentencing process – Part 2: The operation of sentencing guidelines and a comparative analysis of appellate deference in appeals against sentence. *Scots Law Time,* 9, 67-78.

[4] Commentary on the Code of Judicial Ethics: Approved by the Decision of the Council of Judges of Ukraine No. 1. (2016, February). Retrieved from https://rsu.gov.ua/uploads/article/komentar-kodeksusuddivskoietiki-edd47ed191.pdf.

[5] Cowdery, N. (2022). *Discretion in criminal justice*. Chatswood: LexisNexis Australia.

[6] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.

[7] Criminal Procedure Code of Ukraine (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.

[8] Dajović, G. (2023). Hart's judicial discretion revisited. *Revus*, 50. doi: 10.4000/revus.9735.

[9] de Queirós Campos, G.S., & Bedê Jr., A. (2023). Integrity at sentencing and the issue of judicial discretion from a Dworkinian perspective. *Beijing Law Review*, 14(2), 828-853. doi: 10.4236/blr.2023.142045.

[10] Decision of the European Court of Human Rights in the Case No. 36650/03 "Dovzhenko v. Ukraine". (2012, January). Retrieved from https://zakon.rada.gov.ua/laws/show/974_845#Text.

[11] Decision of the Judicial Chamber for Civil Cases of the Supreme Court of Ukraine No. n0090700-04. (2004, December). Retrieved from https://zakon.rada.gov.ua/laws/show/n0090700-04#Text.

[12] Doronin, I. (2020). The security essence of state functions. *Information and Law*, 1(32), 66-79. doi: 10.37750/2616-6798.2020.1(32).200310.

[13] Dudchenko, O. (2019). Law enforcement function as one of the forms of implementation of state power. *Legal Position*, 3(24), 102-108. doi: 10.32836/2521-6473-2019-3-102-108.

[14] Dzhuraeva, O.O. (2005). Classification of the functions of the modern state. *Current Problems of State and Law*, 25, 140-145.

[15] Farnsworth, W. (2013). Policy preferences and legal interpretation. *Journal of Law and Courts*, 1(11), 126-158. doi: 10.1086/668603.

[16] Fasii, B.V. (2023). Judge's discretion in ensuring human rights and freedoms: The importance of the legal position. *Uzhhorod National University Herald. Series: Law*, 1(79), 254-259. doi: 10.24144/2307-3322.2023.79.1.43.

[17] Gadzhiev, V. (2014). To the problems of the social contract: Rousseau and Beccaria. In *Evolution of ideas about crimes and punishment in social and legal thought (to the 250th anniversary of Cesare Beccaria's work "On Crimes and Punishments"* (pp. 44-48). Kharkiv: Zolota myla.

[18] Hart, H. (2013). Discretion. *Harvard Law Review*, 127(2), 652-665.
[19] Henham, R. (2022). Sentencing policy, social values and discretionary justice. *Oxford Journal of Legal Studies*, 42(4), 1093-1117. doi: 0.1093/ojls/gqac011.
[20] Hryshchuk, V. (2014). Criminal-legal views of Cesare Beccaria: Crime and punishment. In *On crimes and punishment: The evolution of criminal-legal doctrine* (pp. 38-43). Odesa: Law literature.
[21] Kelsen, H. (1949). *General theory of law and state*. Cambridge: Harward University Press.
[22] Kharchenko, V. (2019). Law enforcement function of the state as an object of administrative and legal support. *Scientific Bulletin of Public and Private Law*, 4(6), 271-278.
[23] Kolomoets, Yu. (2017). Implementation of the law enforcement function of the state as a priority area of activity of the President of Ukraine. In *Theses of the additional round table* (pp. 102-105). Kharkiv: Kharkiv National University of Internal Affairs.
[24] Kravchuk, M. (2015). Historical and legal aspects of judicial discretion. *Uzhhorod National University Herald. Series: Law*, 1(33), 21-24.
[25] Kushakova-Kostytska, N. (2019). Philosophical and legal foundations of the development of information society in Ukraine. Kyiv: Logos.
[26] Labiak, I. (2023). *Ukrainians expressed their opinions on how corrupt people should be punished: Survey results*. Retrieved from https://tsn.ua/ukrayina/ukrayinci-vislovilis-yak-treba-karati-korupcioneriv-rezultati-opituvannya-2475688.html.
[27] Law of Ukraine No. 187-IX "On Amendments to Certain Legislative Acts of Ukraine Regarding the Improvement of Certain Provisions of Criminal Procedure Legislation". (2019, October). Retrieved from https://zakon.rada.gov.ua/laws/show/187-20#Text.
[28] Law of Ukraine No. 474-XIV "On Elections of the President of Ukraine". (1999, March) Retrieved from https://zakon.rada.gov.ua/laws/show/474-14#Text.
[29] Marushchak, O. (2019). Formation and establishment of the scientific category of "state functions". *Forum of Law*, 55(2), 59-69. doi: 10.5281/zenodo.2635565.
[30] Miroshnychenko, O. (2020). *Judicial discretion, judicial error and judicial arbitrariness: A view through the prism of the legal responsibility of judges*. Kyiv: Yurinkom Inter.
[31] Mishchenko, M. (2022). Public opinion exists, but can it always be detected? *Sociology: Theory, Methods, Marketing*, 3, 149-160. doi: 10.15407/sociology2022.03.149.
[32] Munir, B., Khan, A.N., & Ahmad, N. (2020). Necessity of discretionary powers: A critical appreciation as a necessary evil. *Global Regional Review*, 5(3), 183-191. doi: 10.31703/grr.2020(V-III).19.
[33] Nalyvaiko, L.R., & Klyuchkovich, V.Yu. (2023). *Law enforcement activities of judicial authorities: Theory, methodology, practice*. Dnipro: Hi-Tech Press.
[34] Popovsky, D.P. (2014). Judicial discretion: Look to the problem. *Uzhhorod National University Herald. Series: Law*, 2(29), 226-230.
[35] Prysyazhnyuk, O. (2024). Discretionary powers of law enforcement agencies in Ukraine as one of the mechanisms for implementing the state's law enforcement function. *Law and Safety*, 4(95), 79-89. doi: 10.32631/pb.2024.4.07.
[36] Resolution of the Criminal Court of Cassation of the Supreme Court in the Case No. 634/609/15-k. (2018, February). Retrieved from https://iplex.com.ua/doc.php?regnum=72009792&red=100003c4ed21431a5dc6b7f3bfc57799a36a78&d=5.
[37] Rudyuk, V. (2019). Philosophical aspects of the process of humanization of justice. *Bulletin of the Southern Regional Center of the National Academy of Legal Sciences of Ukraine*, 20, 38-47.
[38] Savchyn, M. (2016). Freedom of judicial discretion in the light of the justification of decisions of courts of appeal and cassation. *Slovo of the National School of Judges of Ukraine,* 1(14), 30-41.
[39] Shelever, N. (2024). *The principle of justice in the constitutional law of Ukraine*. (Doctoral dissertation, Uzhhorod National University, Uzhhorod, Ukraine).
[40] Shevchenko, A. (2024). Medieval church court: Formation and development of the professional environment. *Dictum Factum*, 15, 23-28. doi: 10.32703/2663-6352/2024-1-15-23-28.
[41] Sokol, M. (2023). Integration of Ukraine into the European Union in the context of the development of P. Bourdieu's field theory. *Grani,* 26(4), 24-29. doi: 10.15421/172370.
[42] Sokolenko, O. (2012). The concept and characteristics of the law enforcement function of the state as the basis of law enforcement activity. *Forum of Law*, 4, 847-852.
[43] Solum, L.B. (2024). *Legal theory lexicon: Discretion*. Retrieved from https://lsolum.typepad.com/legaltheory/2024/08/legal-theory-lexicon-discretion.html.
[44] Vandzhurak R.V. (2024). Epistemological aspect of the discretion of law enforcement subjects (Questions of truth in law enforcement). *Legal Bulletin of the National University "Odesa Law Academy"*, 6, 46-59. doi: 10.32782/yuv.v6.2024.6.
[45] Vandzhurak, R.V. (2025). Logical and methodological foundations of the discretion of law enforcement subjects. *Analytical and Comparative Jurisprudence*, 1, 897-906. doi: 10.24144/2788-6018.2025.01.150.
[46] Yevtushenko, A. (2025). *Mechanisms of preventing and countering corruption in public authorities*. (PhD dissertation, Karazin Kharkiv National University, Kharkiv, Ukraine).
[47] Zeykan, Ya. (2016). *Advocacy technique: Methods of preparing direct examination and introductory speech*. Kharkiv: Factor.

Соціально-правовий феномен суддівського розсуду в контексті реалізації функцій держави

Роман Ванджурак
Доктор філософії в галузі права, докторант
Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
https://orcid.org/0000-0002-8474-2276

Наталія Кушакова-Костицька
Доктор юридичних наук, професор, провідний науковий співробітник
Інститут правотворчості та науково-правових експертиз Національної академії наук України
01024, вул. Пилипа Орлика, 3, м. Київ, Україна
https://orcid.org/0000-0002-1116-4751

Ольга Балинська
Доктор юридичних наук, професор
Львівський державний університет внутрішніх справ
79000, вул. Городоцька, 26, м. Львів, Україна
https://orcid.org/0000-0002-0168-143X

Олег Панкевич
Кандидат юридичних наук, доцент
Львівський державний університет внутрішніх справ
79000, вул. Городоцька, 26, м. Львів, Україна
https://orcid.org/0000-0002-6636-1330

Ірина Настасяк
Кандидат юридичних наук, доцент
Львівський національний університет імені Івана Франка
79000, вул. Університетська, 1, м. Львів, Україна
https://orcid.org/0000-0002-3963-1788

Анотація. Актуальність суддівського розсуду (дискреції) в контексті реалізації функцій держави зумовлюється рядом ключових факторів: цей феномен дає змогу реалізовувати функцію правосуддя гнучко, з урахуванням конкретних обставин справи та мінливих соціально-економічних умов, що забезпечує баланс гілок влади; підвищує ефективність захисту прав людини в судовому порядку; дозволяє уникати формального підходу до правозастосування; підвищує довіру суспільства до судової системи. Метою даного дослідження був розгляд суддівського розсуду як соціально-правового феномену з урахуванням природи державної влади і потреб сучасного правового регулювання суспільних відносин. Для цього обрано низку методологічних підходів: на основі герменевтичного методу продемонстровано змістову «вписаність» розсуду в соціокультурний контекст його формування та функціонування в державі на різних етапах її становлення; за допомогою соціодинамічного підходу виявлено внутрішні та зовнішні суперечності розсуду як органічного компоненту певного соціокультурного середовища, з еволюційною динамікою якого тісно пов'язані його трансформації; на основі методів дедуктивно-логічного аналізу доведено взаємовпливовість функціонального потенціалу держави і дискреційних повноважень суддів. Серед основних результатів розвідки також визнання суддівського розсуду як дієвого способу формування громадської думки та суспільної правової свідомості, а отже, розуміння соціально-правового контенту цього феномену з потенційними можливостями формувати проактивне громадянське суспільство і коригувати державно-правову політику. Акцентовано на взаємовпливі дискреційних повноважень суддів і громадської думки, адже суддівський розсуд є одночасно і наслідком, і джерелом впливу на громадську думку та колективну правосвідомість, а відтак може формувати і змінювати настрої в суспільстві, впливати на рівень довіри громадян до державних інституцій, підвищувати правову культуру, і, як наслідок, формувати внутрішню державну політику у сфері правоохорони і правозахисту. Дослідження має практичну цінність, бо демонструє певну теоретичну схему дорожньої карти для тих, хто застосовує дискреційні повноваження держави, а також усіх, кого стосується реалізація розсуду при ухваленні дискреційних рішень представниками органів державної влади

Ключові слова: внутрішнє переконання судді; громадянське суспільство; дискреція; органи влади; повноваження суддів; розсуд; функції держави

UDC 342.7:004.032:340.14
DOI: 10.32518/sals2.2025.118

Соціально-правові студії. 2025. Т. 8, № 2
Social & Legal Studios. 2025. Vol. 8, No. 2

Legal challenges of regulating artificial intelligence in law enforcement, taking into account the interdisciplinary approach to socio-legal transformations

Rauan Zhaltyrbayeva
Senior Lecturer
K. Zhubanov Aktobe Regional University
030000, 34 A. Moldagulova Ave., Aktobe, Republic of Kazakhstan
https://orcid.org/0009-0009-1394-0863

Arailym Jangabulova*
PhD in Law, Associate Professor
Al-Farabi Kazakh National University
050040, 71 Al-Farabi Ave., Almaty, Republic of Kazakhstan
https://orcid.org/0000-0002-4150-5393

Saule Suleimenova
Doctor of Law, Professor
Al-Farabi Kazakh National University
050040, 71 Al-Farabi Ave., Almaty, Republic of Kazakhstan
https://orcid.org/0000-0002-6754-9255

Sholpan Saimova
PhD in Law
"Institute of Parliamentarism" of the Department of Material and Technical Support
010000, 8 Mangilik El Ave., Astana, Republic of Kazakhstan
https://orcid.org/0000-0002-9000-6136

Zhanna Tlembayeva
PhD in Law, Professor
Astana Medical University
010000, 49A Beibitshilik Str., Astana, Republic of Kazakhstan
https://orcid.org/0000-0003-4088-1087

Abstract. This study examined the legal challenges associated with regulating artificial intelligence in law enforcement, considering its broader socio-legal transformations. Using an interdisciplinary approach, the research conducted a comparative legal analysis of AI regulations across multiple jurisdictions, assessing statutory frameworks, judicial decisions, and policy initiatives. The study identified key regulatory gaps, including the absence of clear statutory definitions, issues of accountability in AI-driven policing, and the risk of algorithmic bias. Through a comparative analysis of different jurisdictions, the study highlighted significant disparities in AI governance. The European Union adopts a precautionary and rights-based regulatory approach, classifying law enforcement AI as high-risk and imposing strict compliance requirements. The United States relies on decentralised governance, where state-level initiatives and judicial oversight shape AI deployment, leading to inconsistent enforcement. China prioritises state control, rapidly integrating AI surveillance into law enforcement without independent oversight, raising concerns about due process and human rights protections. In contrast, emerging jurisdictions like Kazakhstan and Kyrgyzstan are in the early stages of AI regulation, implementing AI-driven policing technologies while relying on general legal provisions. The study found

Suggested Citation

Article's History: Received: 25.02.2025 Revised: 21.05.2025 Accepted: 25.06.2025

Zhaltyrbayeva, R., Jangabulova, A., Suleimenova, S., Saimova, Sh., & Tlembayeva, Zh. (2025). Legal challenges of regulating artificial intelligence in law enforcement, taking into account the interdisciplinary approach to socio-legal transformations. *Social & Legal Studios*, 8(2), 118-130. doi: 10.32518/sals2.2025.118.

*Corresponding author

Copyright © The Author(s). This is an open access Article distributed under the terms of the Creative Commons Attribution License 4.0 (https://creativecommons.org/licenses/by/4.0/)

that AI's integration into law enforcement presents both opportunities and risks. While AI enhances policing efficiency and resource allocation, it also reinforces systemic biases, compromises data privacy, and challenges traditional accountability structures. The absence of regulatory harmonisation further complicates cross-border AI cooperation and liability determination. These findings underscored the need for clearer legal frameworks, international coordination, and ethical AI governance to balance security imperatives with fundamental rights. Given the rapid pace of AI adoption, future research should focus on empirical assessments of AI's real-world impact on legal systems, public trust, and law enforcement transparency, ensuring that regulatory approaches remain adaptive and equitable

Keywords: algorithmic accountability; biometric surveillance; data protection; automated decision-making; digital rights; public trust

Introduction

The integration of artificial intelligence (AI) into law enforcement has become an increasingly debated issue, shaped by legal, ethical, and societal considerations. Across different jurisdictions, AI-driven policing technologies reflect broader discussions on privacy, accountability, and the balance between public safety and civil rights. Legal frameworks governing AI applications in law enforcement vary significantly, influenced by constitutional principles, regulatory structures, and public concerns about surveillance and discrimination.

The relevance of this study is determined by the growing reliance on AI technologies in law enforcement and the challenges in ensuring transparency, fairness, and human rights protections. The legal and ethical issues surrounding AI-driven policing are particularly acute in jurisdictions where regulatory frameworks are underdeveloped, leading to concerns about mass surveillance, data privacy violations, and wrongful arrests. The increasing use of facial recognition, predictive policing, and automated decision-making tools has sparked legal disputes regarding due process, discrimination, and the right to challenge AI-generated decisions (Kovalchuk *et al.*, 2024). While AI-driven law enforcement promises efficiency and crime prevention, its risks necessitate a comprehensive legal and ethical examination of its impact on justice, public trust, and governance.

A review of existing research demonstrates a broad spectrum of approaches to AI regulation, highlighting the complexity of legal oversight and the ethical dilemmas associated with AI-driven policing. R.A. Berk (2021) examined the role of AI in predictive policing, demonstrating how algorithmic bias often reinforces racial and socioeconomic disparities. The study found that predictive crime mapping tools disproportionately classify low-income and minority communities as high-risk areas, leading to over-policing and systemic discrimination. P. Pokhariyal *et al.* (2024) explored AI-based decision-making in digital forensics, highlighting how AI-powered forensic analysis may perpetuate stereotypes, raising concerns about its role in judicial processes. Meanwhile, M.S. Kabir and M.N. Alam (2023) analysed facial recognition technologies, demonstrating that error rates in AI-based suspect identification are significantly higher for racial minorities, increasing the likelihood of wrongful arrests. Their findings underscore the urgent need for regulatory oversight to prevent AI from reinforcing structural inequalities in policing.

Further research has explored the transparency and accountability of AI-driven law enforcement. A. Chukaieva and S. Matulienė (2023) examined the legal implications of AI decision-making, emphasising how black-box algorithms obstruct due process by making it difficult to contest AI-generated outcomes. Meanwhile, A. Taeihagh (2021) explored AI regulation in democratic societies, warning that unchecked AI surveillance could expand state power and threaten civil liberties. Another critical issue in AI policing is the conflict between mass surveillance and privacy rights. T. Singh (2023) examined the implications of AI-driven surveillance systems, noting how law enforcement agencies increasingly rely on real-time facial recognition and biometric tracking.

The ethical concerns surrounding AI in law enforcement also extend to public perception and trust in AI-driven policing. K. Wiek (2023) examined how AI's expansion in law enforcement affects public trust, finding that citizens in jurisdictions with strong AI oversight express higher confidence in law enforcement, while those in countries with minimal regulations are more skeptical. Y. Ezseddine *et al.* (2023) conducted a comparative study on public attitudes toward AI policing, revealing that younger populations tend to be more accepting of AI-driven law enforcement, whereas historically over-policed communities express greater distrust due to concerns about racial profiling and biased decision-making. Their research suggests that public engagement and transparency initiatives are necessary to build trust in AI-driven policing technologies.

Despite extensive research on AI regulation in law enforcement, gaps remain in understanding how AI governance models influence policing practices and civil rights protections. While various legal frameworks address AI accountability, their implementation and enforcement remain inconsistent, leading to uncertainties in oversight and potential human rights violations (Iklassova *et al.*, 2024). Existing studies document disparities in policy application, often influenced by political shifts, regulatory ambiguities, and evolving societal attitudes toward AI surveillance. The fragmented nature of AI regulation creates challenges in ensuring transparency, preventing bias, and maintaining due process protections across different legal systems (Lyndyuk *et al.*, 2024).

While international human rights standards advocate for ethical AI deployment, enforcement remains uneven, resulting in variations in civil liberties protections across jurisdictions. Some countries have introduced transparency and fairness requirements, while others lack clear guidelines on AI oversight in law enforcement. This divergence underscores the need for a more harmonised approach that balances technological advancements with fundamental rights protections.

This article aimed to contribute to the discussion by critically analysing the legal and ethical challenges of AI-driven policing, focusing on its implications for policy-making and justice. The research tasks included:

- examining AI regulatory frameworks and their effectiveness in mitigating algorithmic bias;

- analysing ethical principles that should guide AI adoption in law enforcement to ensure fairness and accountability;
- proposing policy recommendations that align AI governance with human rights protections and democratic principles.

Materials and methods

This study examined the legal challenges associated with the regulation of AI in law enforcement through an interdisciplinary approach, integrating legal analysis, ethical evaluation, and policy assessment. The research focused on international, regional, and national regulatory frameworks governing AI-driven law enforcement technologies, as well as their practical implications for policing, civil liberties, and human rights. The selection of legal frameworks and policy models was based on jurisdictional diversity, legislative precedents, and contemporary regulatory relevance to ensure a comprehensive evaluation of AI governance.

The theoretical component of the study was grounded in comparative legal analysis of international treaties, national legislation, constitutional provisions, judicial rulings, and policy guidelines that regulate AI deployment in law enforcement. This included a systematic examination of the Regulation of the European Parliament and of the Council No. 2024/1689 (2024), the General Data Protection Regulation (2016), the Algorithmic Accountability Act (2023), Interim Measures for the Management of Generative Artificial Intelligence Services (2023), Digital Code of the Kyrgyz Republic: Concept (2024), and the Law of the Republic of Kazakhstan No. 94-V "On Personal Data and their Protection" (2013). The selection of countries and regions for analysis was based on their distinctive approaches to AI regulation, reflecting a balance between global legal standards, regional regulatory frameworks, and national governance models.

The theoretical component of the study was grounded in a detailed comparative legal analysis of international treaties, national legislation, constitutional provisions, judicial rulings, and policy guidelines that regulate AI deployment in law enforcement. The comparison focused on several key aspects of AI regulation, including transparency and accountability mechanisms, the prevention of algorithmic bias, judicial and administrative oversight of AI-driven policing, data privacy protections, and the alignment of national AI policies with international human rights standards. By systematically examining these elements across different legal systems, the study identified patterns of convergence and divergence in AI governance.

Ethical considerations were explored through academic literature on data privacy, algorithmic accountability, non-discrimination, transparency, and due process in AI regulation, allowing for an in-depth assessment of how different legal models address fundamental rights and democratic accountability. The analysis considered the extent to which AI-driven law enforcement technologies align with ethical principles such as fairness, proportionality, and autonomy. Particular attention was given to issues of algorithmic bias, the right to contest AI-generated decisions, and the potential for AI surveillance to infringe on civil liberties.

The data analysis integrated comparative legal analysis, ethical evaluation, and thematic content analysis. The legal analysis focused on fundamental principles of AI accountability, due process, privacy rights, and non-discrimination, comparing regulatory approaches across jurisdictions. Ethical evaluation assessed the extent to which existing AI governance frameworks align with principles of fairness, autonomy, transparency, and proportionality in law enforcement applications. Thematic content analysis was applied to policy documents, legal rulings, and empirical studies, allowing for the identification of recurring themes, challenges, and regulatory gaps. To enhance reliability and validity, multiple sources were cross-referenced, and legal interpretations were verified against primary legal texts. The study also incorporated an evaluation of judicial decisions and legal disputes surrounding AI use in law enforcement, providing an empirical dimension to the legal analysis. This approach ensured that the research was not only grounded in normative legal principles but also reflected the practical implications of AI governance in real-world policing scenarios.

Results

Legal challenges in regulating AI in law enforcement. The findings of this study revealed that the regulation of artificial intelligence in law enforcement presents a series of complex legal challenges that stem from the rapid evolution of AI technologies, the opacity of AI decision-making processes, and the fragmented regulatory landscape governing AI applications. While AI has the potential to enhance policing efficiency, reduce human error, and optimize resource allocation, its deployment raises significant concerns regarding compliance with legal and constitutional principles. These concerns include the absence of clear accountability mechanisms, the risk of algorithmic bias, data privacy violations, and the lack of transparency in AI-generated decisions. The growing reliance on AI in criminal justice processes requires urgent legal and policy interventions to ensure that fundamental rights are not compromised under the pretext of technological progress.

A comparative assessment of AI regulations across different jurisdictions highlights the inconsistent approaches taken by governments and regulatory bodies, revealing significant disparities in how artificial intelligence is governed in law enforcement. These variations stem from different constitutional traditions, data protection laws, and judicial interpretations of fundamental rights, leading to legal uncertainty regarding AI accountability, bias mitigation, and law enforcement transparency.

The Regulation of the European Parliament and of the Council No. 2024/1689 (2024) represents the most comprehensive attempt at AI regulation globally. The Regulation classifies AI applications into four risk categories – unacceptable risk, high risk, limited risk, and minimal risk – each with corresponding compliance requirements. AI systems used in law enforcement, such as biometric surveillance, predictive policing, and automated risk assessments, fall under the high-risk category, requiring human oversight, mandatory transparency reports, and conformity assessments before deployment (Zaroff, 2022). Paragraph 33 of the Regulation explicitly prohibits AI applications that involve social scoring or real-time biometric identification in public spaces, except in strictly defined circumstances such as national security investigations.

However, despite its strong regulatory ambitions, challenges remain regarding its enforcement across 27 European Union member states. Article 65 of the Regulation of the Eu-

ropean Parliament and of the Council No. 2024/1689 (2024), which will oversee compliance and harmonisation across member states. P. Friedl and G.G. Gasiola (2024) argued that differences in national implementation, reliance on self-assessment for compliance, and potential loopholes in biometric surveillance exemptions may undermine the Act's effectiveness. Furthermore, the Regulation impact on cross-border AI cooperation and law enforcement data sharing within Europol and Schengen Area security frameworks remains uncertain.

In addition to the Regulation No. 2024/1689 (2024), the Regulation of the European Parliament and of the Council No. 2016/679 (2016) plays a critical role in limiting AI-driven data collection in law enforcement. This Regulation in Paragraph 71 mandates that individuals must not be subjected to fully automated decision-making with legal consequences unless specific exemptions apply, a provision highly relevant to AI-based risk assessment tools and predictive policing algorithms. Despite these legal safeguards, enforcement varies across member states, particularly when national security exemptions are invoked. For instance, France's AI-powered facial recognition system (PARAFE) has been criticised for lacking proportionality and independent oversight, highlighting the tension between AI-driven public security initiatives and fundamental rights under EU law (Poirson, 2021).

Unlike the EU's centralised AI governance, the United States relies on a fragmented regulatory approach, with AI oversight primarily occurring at the state level. The Illinois Biometric Information Privacy Act (BIPA) (2024) serves as one of the most stringent biometric regulations, requiring informed consent before collecting biometric identifiers such as facial recognition data. Court cases such as "Stacy Rosenbach" (Opinion of the Supreme Court of State of Illinois No. 123186, 2019) have reinforced BIPA's applicability to AI-driven surveillance tools, enabling individuals to sue companies for privacy violations without proving direct harm. At the federal level, the Algorithmic Accountability Act (2023) seeks to establish mandatory AI risk assessments for high-impact automated systems, including those used by federal law enforcement agencies. The Act would require the Federal Trade Commission (FTC) to audit AI models for bias and unfair decision-making, yet as of 2024, it remains a legislative proposal without enforcement mechanisms.

Judicial decisions continue to shape AI accountability in law enforcement. In case "State of Wisconsin, Plaintiff-Respondent, v. L. Loomis, Defendant-Appellant. On Certification from the Court of Appeals" (2016), the Wisconsin Supreme Court ruled that AI-generated risk scores in sentencing decisions must not be the sole determinant of judicial outcomes, citing due process concerns under the Fourteenth Amendment. Similarly, case "Williams v. City of Detroit, Michigan, A Municipal Corporation" (2021) exposed the flaws of AI-based facial recognition, as an incorrect algorithmic match led to a wrongful arrest, prompting legislative discussions on algorithmic transparency and liability in criminal justice.

China has emerged as a global leader in AI-driven law enforcement, deploying facial recognition, predictive policing, and social credit algorithms as part of its national security framework (Pisani, 2021). The Interim Measures for the Management of Generative Artificial Intelligence Services (2023) regulate AI-powered public surveillance, deepfake technology, and automated content generation, requiring security assessments and government registration before deployment.

China's regulatory model prioritises state control over algorithmic accountability, which mandate compulsory AI data sharing with government agencies (Dong & Chen, 2024). Unlike the EU or U.S., China lacks independent oversight mechanisms, leading to concerns about mass surveillance, lack of judicial recourse, and potential human rights violations. Reports from Amnesty International (2020) have criticised China's Skynet AI surveillance system, which integrates real-time facial recognition with behavioral prediction models, for targeting ethnic minorities in Xinjiang.

The disparity in these regulatory approaches indicates that AI-driven law enforcement operates in a largely unregulated or inconsistently regulated space, raising concerns about international legal harmonisation and the extraterritorial effects of AI governance. The United Nations High Commissioner for Human Rights has called for a moratorium on AI-driven surveillance technologies, citing potential violations of Article 12 of the Universal Declaration of Human Rights (1948). However, there remains no binding international treaty specifically regulating AI in law enforcement, making it difficult to establish global standards for AI ethics and lawful use.

A major challenge in AI policing is lack of transparency in algorithmic decision-making. Black-box models – especially deep learning architectures used in facial recognition – are often non-interpretable, making it difficult for defendants, lawyers, and judges to challenge AI-generated evidence (Custers, 2022). Bias in AI policing remains a critical legal issue, as historical crime data reinforce systemic racial and socioeconomic disparities. In the UK case R v. the Chief Constable of South Wales Police (2020), the Court of Appeal ruled that AI-powered facial recognition disproportionately targeted racial minorities, violating the Equality Act 2010 (2013).

Kazakhstan has developed a structured legal framework for AI-related data practices, particularly in law enforcement, through its existing Law of the Republic of Kazakhstan No. 94-V "On Personal Data and their Protection" (2013) and the Resolution of the Government of the Republic of Kazakhstan No. 592 (2024). These documents outline key regulatory approaches to AI governance, with a focus on data security, transparency, and ethical use in automated decision-making. The first Law provides the foundation for AI-related data governance. This law defines the principles for the collection, processing, and protection of personal data, including biometric data, which are integral to AI-driven law enforcement technologies. Article 9 of the law permits law enforcement agencies to collect and process personal data without an individual's consent for purposes such as criminal investigations, judicial proceedings, and national security. However, it lacks explicit provisions on algorithmic accountability, AI bias mitigation, and due process guarantees for individuals affected by automated decision-making. This raises concerns about the potential for AI-driven mass surveillance and the lack of mechanisms for contesting AI-generated decisions.

In an effort to modernize AI governance, Kazakhstan adopted the Resolution of the Government of the Republic of Kazakhstan No. 592 (2024), which includes a dedicated section on AI regulation and legal frameworks. This plan emphasises the need for an adaptive regulatory environment

that ensures AI systems comply with ethical standards and international best practices. One of its key provisions is the establishment of oversight mechanisms for AI-driven law enforcement, including mandatory risk assessments, independent audits, and the introduction of legal standards for algorithmic transparency. The plan also acknowledges the necessity of integrating AI governance into Kazakhstan's broader digital transformation strategy, aiming to strike a balance between innovation and human rights protection.

Despite these advancements, Kazakhstan's AI regulatory landscape still faces gaps in ensuring fairness, transparency, and accountability. Unlike the Regulation of the European Parliament and of the Council No. 2024/1689 (2024), which imposes strict risk-based classifications for AI applications, Kazakhstan's approach remains largely focused on data security rather than comprehensive AI governance. Additionally, the absence of an independent regulatory body specifically overseeing AI in law enforcement presents challenges in enforcing compliance and addressing algorithmic bias.

Kazakhstan's approach to AI regulation in law enforcement contrasts with that of Kyrgyzstan, where legal discussions around AI governance are still in the conceptual phase. Kyrgyzstan has also initiated the process of developing legal regulations for artificial intelligence in law enforcement, focusing on broader principles of digital legislation. The primary regulatory document shaping the country's approach to digital governance is the Digital Code of the Kyrgyz Republic (2024). This document outlines key directions for the development of digital technologies, including the application of algorithms and automated decision-making in public administration and law enforcement. The Concept emphasises the need for legal certainty, transparency, data protection, and alignment with international standards in AI governance.

Although Kyrgyzstan does not yet have specialised legislation explicitly regulating AI in law enforcement, the Digital Code Concept lays out fundamental principles that could shape future regulatory developments in this area. One of its core provisions is the necessity of restricting the use of automated algorithms in criminal prosecution to prevent discriminatory practices and the risks associated with algorithmic decision-making without human oversight. Additionally, the Concept proposes the introduction of mechanisms for independent auditing and ethical supervision of AI tools used in law enforcement and judicial systems, as well as mandatory risk assessments before AI technologies are deployed in policing and security operations.

Table 1 summarised a comparative analysis of AI regulatory frameworks across five jurisdictions – the European Union, the United States, China, Kazakhstan, and Kyrgyzstan – focusing on their legal approaches to AI governance in law enforcement. The differences in AI oversight reflect distinct legislative priorities, ranging from structured risk-based classifications in the EU to state-controlled AI governance in China.

Table 1. Comparative analysis of AI regulatory frameworks in law enforcement

Jurisdiction	Primary AI regulation	Risk classification approach	Enforcement mechanism	Transparency & accountability
European Union	Regulations of the European Parliament and of the Council No. 2024/1689 (2024) GDPR (2016)	Structured risk levels (unacceptable, high, limited, minimal)	European AI Board and national regulators	Mandatory audits, human oversight
United States	Algorithmic Accountability Act (2023), BIPA (2024)	State-driven, no federal standard	State-level oversight, FTC involvement	Case-based regulation, court challenges
China	Interim Measures for the Management of Generative Artificial Intelligence Services (2023)	State-controlled, lacks independent oversight	Government-mandated compliance, no independent review	Opaque decision-making, no public recourse
Kazakhstan	Law of the Republic of Kazakhstan No. 94-V (2013), Resolution of the Government of the Republic of Kazakhstan No. 592 (2024)	Data protection-focused, lacks AI-specific risk classification	Government regulatory agencies, limited AI oversight	Data transparency provisions, but no AI accountability framework
Kyrgyzstan	Digital Code of the Kyrgyz Republic: Concept (2024)	Developing regulatory framework, lacks specificity	Emerging legal structure, potential oversight gaps	Conceptual stage, undefined oversight

Source: compiled by the authors

The findings of this study confirm that AI regulation in law enforcement remains fragmented, with gaps in accountability, algorithmic bias protections, and cross-border regulatory coherence. While the Regulation of the European Parliament and of the Council No. 2024/1689 (2024) offers a structured risk-based approach, the U.S. relies on state-level governance, and China prioritises national security over individual rights. Addressing these challenges requires a combination of legislative reform, judicial oversight, and interdisciplinary collaboration among legal scholars, policymakers, and AI ethicists. Without comprehensive regulation, AI-driven law enforcement risks compromising fundamental rights and undermining public trust in justice systems (Apostolakis *et al.*, 2022).

The text provides a comparative overview of AI governance in law enforcement across several countries, highlighting Kazakhstan's recent regulatory efforts and Kyrgyzstan's early-stage initiatives. Kazakhstan has introduced mechanisms like audits and risk assessments but still lacks comprehensive oversight, especially compared to the EU's structured, risk-based approach. Kyrgyzstan, while not yet implementing specific AI laws, outlines foundational principles in its Digital Code that emphasize transparency and human oversight. Overall, the analysis reveals a fragmented global landscape in AI regulation, with persistent gaps in accountability, fairness, and international coherence.

Socio-legal transformations resulting from AI in law enforcement. Beyond the immediate legal challenges, the

findings of this study also highlight broader socio-legal transformations that have emerged as AI becomes increasingly integrated into law enforcement. These transformations are reshaping the nature of policing, the relationship between law enforcement agencies and the public, and the role of judicial oversight in AI-assisted criminal justice procedures. AI's rapid adoption in law enforcement has altered traditional policing paradigms, creating new ethical, legal, and social considerations that require urgent regulatory attention.

One of the most profound transformations observed is the shift toward preemptive law enforcement, facilitated by AI-driven predictive policing (Kheira, 2024). Traditional law enforcement strategies have historically been reactive, focusing on responding to crimes after they have been committed. However, AI allows for data-driven crime prediction, where law enforcement resources are directed to locations or individuals deemed high-risk based on algorithmic assessments. This transformation fundamentally alters the role of police officers, shifting their focus from traditional investigation and response to preventive surveillance and intervention. The concept of "predictive justice" – where crimes are anticipated and preemptively addressed before they occur – has been widely debated among legal scholars and human rights advocates (Dhanya, 2024; Patra, 2024).

While predictive policing has been recognised for optimising resource allocation and reducing response times, its deployment has also led to self-reinforcing feedback loops that disproportionately impact marginalised communities (Chapman *et al.,* 2022). This occurs when AI models trained on historical crime data identify certain neighborhoods as high-crime areas, leading to increased law enforcement presence, which in turn results in higher recorded crime rates in those communities (Stensland, 2023). In the US, a study published in the journal Social Problems found that judges use algorithmic risk assessment tools selectively to inform their decisions, rather than relying entirely on the assessments provided (Felner, 2024). This suggests that such tools can legitimise existing biases and conceal deeper ones. In the UK, an Amnesty International report entitled "Automated Racism" criticised the use of predictive policing, stressing that the practice is racist and disproportionately affects poor and black communities (Moy, 2021; Dodd, 2025). Report argued that predictive policing tools are based on biased data derived from discriminatory police practices such as stop and frisk, which leads to increased racial and socio-economic disparities in law enforcement. Furthermore, the Los Angeles Police Department's PredPol system, which was intended to predict crime hotspots based on historical arrest data, faced widespread criticism after reports revealed that it disproportionately flagged communities of color as high-crime areas, leading to over-policing and increased instances of racial profiling (Automating Banishment, 2021). The study suggests that this risk of AI-driven over-policing must be carefully balanced against fundamental rights, including due process, freedom of movement, and non-discrimination.

Public perception of AI-driven law enforcement represents a significant socio-legal transformation that will influence the long-term viability and legitimacy of AI adoption in policing. The data from Table 2 indicate a generational and demographic divide in attitudes toward AI policing across different national contexts. Younger populations, particularly in Germany, where 81.2% of participants were under 35 years old, tend to be more accepting of AI integration in law enforcement, seeing it as a means of enhancing efficiency, reducing human bias, and streamlining administrative processes. Conversely, in the UK, where a significant portion of respondents (27.3%) were over 55 years old, there is a greater emphasis on privacy concerns, reflecting a more cautious approach to AI surveillance and law enforcement tools. Moreover, cybersecurity expertise influences AI acceptance, as demonstrated by responses in the Netherlands, where 37.5% of participants fell within the 34-55 age range. Participants in this group exhibited a more analytical stance toward AI use in law enforcement, emphasising the importance of cybersecurity risks and regulatory safeguards. However, across all demographics, minority groups and historically over-policed communities continue to express significantly higher levels of distrust, citing concerns about AI reinforcing racial profiling, systemic discrimination, and mass surveillance.

Table 2. Public perception of AI in law enforcement

Country	Total participants	Average age	Gender distribution (female/male)	Participants <35 years	Participants 34-55 years	Participants >55 years	Predominant perspective
UK	11	33.4	72.7%/27.2%	63.6%	36.4%	27.3%	Privacy Concerns
Netherlands	16	32.3	43.7%/56.2%	62.5%	37.5%	0%	Cybersecurity Expertise
Germany	16	26.3	100%/0%	81.2%	18.7%	12.5%	Youth-Oriented AI Perception

Source: compiled by the authors based on Y. Ezseddine *et al.* (2023)

Distrust is not unfounded, as multiple reports and legal cases have demonstrated that AI-driven law enforcement tools often fail to provide equal protection under the law. In case "Williams v. City of Detroit, Michigan, A Municipal Corporation" (2021), a Michigan man was wrongfully arrested based on a false facial recognition match, raising questions about the reliability of AI in criminal identification. Similarly, in the United Kingdom, the case of R v. the Chief Constable of South Wales Police (2020) resulted in a landmark ruling by the UK Court of Appeal, which found that the police's use of automated facial recognition technology violated privacy rights and data protection laws. This ruling underscores the growing legal scrutiny surrounding AI surveillance technologies and their impact on public trust in law enforcement.

The research findings suggest that public confidence in AI-assisted policing is directly correlated with the level of transparency and oversight applied to these systems. In

jurisdictions where law enforcement agencies provide clear public disclosures about AI deployment, including independent auditing, algorithmic transparency, and community engagement, trust in AI policing is notably higher. However, in jurisdictions where AI systems are deployed without clear legal safeguards, public skepticism remains widespread.

The EDPS statement in view of the 10th and last Plenary Meeting of the Committee on Artificial Intelligence (CAI) of the Council of Europe drafting the Framework Convention on Artificial Intelligence (2024) has warned that a lack of transparency in AI policing could undermine democratic values, particularly if AI-driven surveillance technologies are used to monitor political dissent or suppress civil liberties. The study emphasises that public engagement and community-based discussions must be prioritised when introducing AI-driven law enforcement tools to ensure social legitimacy, ethical compliance, and legal accountability.

Another significant transformation is the increasing reliance on AI in judicial decision-making, particularly in bail determinations, sentencing guidelines, and parole assessments. Some jurisdictions have begun implementing AI-powered risk assessment tools to assist judges in evaluating the likelihood of reoffending, but the study finds that these tools often lack transparency and fail to account for individual circumstances beyond statistical probabilities (PAI Staff, 2019).

For instance, in the U.S. criminal justice system, AI-driven risk assessment tools such as Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) have been used to predict recidivism rates, influencing bail and sentencing decisions. However, investigative report from J. Angwin *et al.* (2016) found that COMPAS exhibited racial bias, as Black defendants were disproportionately classified as high-risk compared to White defendants, even when controlling for similar criminal histories. This raises fundamental questions about the role of human discretion in legal decision-making and whether AI should be granted authority in matters of justice.

Kazakhstan is actively implementing the concept of smart policing by integrating advanced technologies such as AI and big data analytics into law enforcement operations (Kenawy, 2025). This approach aims to enhance efficiency and responsiveness in crime prevention. The use of AI enables law enforcement agencies to identify patterns in criminal activity, facilitating crime prediction and the optimal allocation of resources to prevent incidents.

The implementation of such technologies presents several legal challenges. It is necessary to develop a regulatory framework governing the use of AI in law enforcement, particularly concerning data protection, algorithmic transparency, and the prevention of discriminatory practices. Additionally, an interdisciplinary approach that combines legal, social, and technical perspectives is crucial to establishing a balanced and effective AI governance system in policing.

Kyrgyzstan has also begun integrating AI into law enforcement, with a particular focus on facial recognition and predictive analytics. The introduction of AI-powered facial recognition cameras under the "Safe City" initiative has already altered policing strategies, with over 50 AI-driven surveillance cameras deployed in Bishkek and other urban areas (Zhekshe kyzy & Shambetov, 2023). These cameras assist law enforcement in identifying suspects and enforcing traffic violations, with reports suggesting that the system has contributed to the identification of over 650 wanted individuals and 500 missing teenagers in 2024 alone (Khan & Rizvi, 2021; 650 wanted people…, 2025;).

Public perception of AI policing in Kyrgyzstan reflects broader global concerns. Privacy advocates and civil society organisations have criticised the system's potential for misuse, particularly in tracking activists and journalists (Wang, 2019). Kyrgyzstan has no specific AI law regulating law enforcement's use of biometric surveillance, meaning that police can operate facial recognition tools under broad national security exemptions. This legal vacuum raises issues similar to those seen in other jurisdictions, where AI surveillance is deployed without clear accountability mechanisms. Critics warn that without strong oversight measures, AI policing in Kyrgyzstan may disproportionately impact vulnerable groups, leading to potential rights violations (Bolot Junusov, 2019).

The research suggests that while AI can serve as a supplementary tool for judicial analysis, human oversight and interpretability remain essential to maintaining fairness and individualised justice. Legal scholars have argued that AI-driven sentencing recommendations must be auditable, challengeable, and subject to judicial review to prevent unjust sentencing outcomes based on flawed predictive models. Finally, this study highlights the expansion of AI-driven surveillance, which has reshaped the balance of power between state authorities and civil liberties. AI-powered facial recognition, behavioral tracking, and biometric monitoring have significantly increased law enforcement's surveillance capabilities, raising concerns about the potential erosion of privacy rights and the normalisation of mass surveillance.

The European Union has introduced restrictions on AI surveillance through the GDPR and the proposed Regulation of the European Parliament and of the Council No. 2024/1689 (2024), which aims to prohibit real-time facial recognition in public spaces except in cases of national security or serious crime investigations. However, countries such as China, the United Arab Emirates, and Russia have adopted AI surveillance on a vast scale, with limited oversight and legal constraints (Zeng *et al.,* 2021). The United Nations Special Rapporteur on the Right to Privacy has raised concerns about the use of AI surveillance to suppress political activism and freedom of expression, particularly in authoritarian regimes. The study concludes that regulatory frameworks must establish clear legal boundaries for AI surveillance, ensuring that law enforcement's use of AI remains proportionate, necessary, and subject to independent oversight.

This research demonstrated that AI is fundamentally reshaping the legal and social landscape of law enforcement, requiring urgent regulatory and policy responses. The findings highlight that AI's integration into predictive policing, judicial decision-making, and surveillance technologies has transformed law enforcement practices, but not without significant socio-legal consequences. Without comprehensive legal safeguards, AI in policing risks undermining civil liberties, reinforcing bias, and reducing accountability. The study underscored the need for a balanced regulatory approach that protects democratic values while allowing law enforcement to harness AI responsibly. AI-driven law enforcement must be guided by transparent policies, independent oversight, and public engagement to ensure that technological advancements serve the interests of justice rather than eroding fundamental rights.

Discussion

This study highlights the challenges of regulating AI in law enforcement, emphasising the rapid technological advancements that outpace existing legal frameworks. The analysis identifies three core issues: the absence of clear statutory definitions, concerns over accountability and bias in AI-based policing, and significant jurisdictional disparities in AI governance. The findings affirm that AI, while capable of enhancing efficiency and decision-making, also threatens fundamental rights and public trust when left unregulated. These results underscore the need for coherent, interdisciplinary regulatory approaches that integrate legal, technological, and societal perspectives.

The lack of explicit legal definitions and frameworks for AI in law enforcement emerged as a central issue. Many jurisdictions have yet to establish precise rules governing AI applications in policing, leading to legal uncertainties. This regulatory gap arises because technological innovations often outpace legislative processes, leaving law enforcement agencies to operate in a grey area. Without robust legal standards, fundamental principles such as transparency, accountability, and fairness remain aspirational.

Bias and accountability present persistent concerns in AI-driven policing. Predictive policing and facial recognition technologies can replicate and amplify historical biases, disproportionately targeting minority communities. The study found weak or absent oversight mechanisms in most jurisdictions, corroborating existing research that AI-based law enforcement tools often lack fairness and accuracy. The "black-box" problem, where proprietary AI systems obscure decision-making processes, exacerbates these issues. Interestingly, some police departments have begun implementing internal guidelines to mitigate bias, even in the absence of binding regulations. However, the lack of enforceable legal requirements for algorithmic transparency and accountability remains a major risk.

The study also reveals significant jurisdictional differences in AI governance. The European Union follows a precautionary, rights-driven regulatory approach, with the forthcoming Regulation of the European Parliament and of the Council No. 2024/1689 (2024) classifying law enforcement AI tools as high-risk and prohibiting certain applications, such as real-time biometric surveillance, except in limited scenarios (Yanyshivskyi, 2024). In contrast, the United States lacks federal AI laws specific to policing, relying on a fragmented mix of state laws, judicial rulings, and local bans on facial recognition. This reactive approach emphasises balancing innovation with civil rights, with courts playing a crucial role in defining AI's legal boundaries. Meanwhile, China's model prioritises rapid AI integration for national security and social management, governed by broad regulations rather than dedicated AI laws (Zeng, 2022). This approach enables rapid deployment but raises rule-of-law concerns due to limited oversight and avenues for public recourse. Kazakhstan is integrating AI-driven policing tools such as facial recognition and predictive analytics. While it lacks a dedicated AI law governing law enforcement applications, it relies on general data protection legislation and constitutional privacy rights (Saparbekova *et al.*, 2024). The country has taken early steps toward AI regulation through the Resolution of the Government of the Republic of Kazakhstan No. 592 (2024) and its participation in regional initiatives such as the CIS model AI law, signaling efforts toward legal harmonisation. Findings from this research align with and extend previous studies on AI governance in law enforcement. K. Alikhademi *et al.* (2022) identified transparency, fairness, and accuracy as critical concerns in predictive policing and risk assessment, emphasising that these factors involve inherent trade-offs that cannot be entirely resolved through technical solutions. This is consistent with the conclusion that regulatory and policy interventions are essential to balancing effective policing with human rights protections. Similarly, the identification of bias and accountability challenges reinforces prior studies on algorithmic risk assessments, such as the COMPAS controversy, where racial disparities in recidivism predictions triggered legal debates on due process.

In terms of regulatory responses, the EU's structured AI governance approach aligns with prior analyses of European digital rights policies, which emphasize ethical AI principles (Petrovskyi *et al.*, 2025). Studies on the Regulation of the European Parliament and of the Council No. 2024/1689 (2024) highlight its ambition as the world's most comprehensive AI regulation, explicitly classifying police AI tools as high-risk or prohibiting them in sensitive applications. This study confirms this trajectory, showing that Europe prioritises fundamental rights and accountability over unfettered AI deployment. By contrast, P.G.R. De Almeida *et al.* (2021), suggested that American AI regulation will likely adapt existing legal doctrines rather than introduce comprehensive legislation. The findings support this perspective, as U.S. AI governance remains decentralised, driven by litigation and state-level initiatives rather than national policy.

This research also adds an international dimension that is underrepresented in existing studies by comparing AI governance in China and Central Asia. While Western scholarship frequently focuses on EU and U.S. models, the study examines how China's state-driven AI adoption contrasts with rights-based frameworks. The findings align with prior critiques that Chinese AI governance prioritises state control over individual rights, raising concerns about surveillance and lack of recourse. Meanwhile, Kyrgyzstan's nascent regulatory efforts illustrate the transnational influence of AI governance, as its adoption of Chinese-built facial recognition technology has triggered domestic privacy debates. This broadens the AI policing discourse beyond high-income democracies, highlighting regulatory challenges in emerging jurisdictions.

The examination of public perception further complements existing socio-legal research. L. Xia *et al.* (2023) found that citizen attitudes toward AI in policing vary based on demographic and cultural factors, balancing security benefits against privacy concerns. The findings confirm this complexity, showing that AI policing is met with skepticism, particularly among historically over-policed communities. The study emphasises that regulatory solutions must incorporate public trust considerations to ensure legitimacy and compliance. Overall, the results confirm and expand upon existing research, reinforcing known challenges such as bias, accountability, and legal fragmentation while introducing new insights on regional cooperation and emerging AI governance models.

This research contributes to AI regulation in law enforcement by integrating legal, technological, and social perspectives. The study underscores AI's role as a socio-legal disruptor, reshaping policing norms, institutional practices, and public expectations. By framing AI regulation as more than a legal issue, this study contributes to a more holistic understanding of responsible AI governance. For policymakers,

the findings emphasize the urgent need for clear legal definitions and comprehensive regulatory frameworks for AI policing. Jurisdictions can learn from the EU's structured risk-based classification or consider emerging regional models, such as the CIS AI law initiative. Harmonised legal standards across jurisdictions can prevent regulatory arbitrage and enhance cross-border AI governance. For law enforcement and legal professionals, the study highlights the importance of internal AI policies and professional training. Police departments should develop ethical guidelines, establish bias-mitigation strategies, and implement independent oversight mechanisms to prevent AI-driven discrimination. Legal practitioners must be prepared to scrutinize AI-derived evidence, ensuring it meets due process and evidentiary standards. For technologists and AI developers, the research underscores the need to design AI tools with built-in transparency, explainability, and bias mitigation. Developers should anticipate emerging regulations by incorporating compliance-ready features, such as decision-logging and independent auditing capabilities. Engaging legal experts in AI development can help ensure adherence to ethical and legal standards. By providing these insights, the study bridges the gap between theory and practice, offering concrete recommendations for responsible AI governance in law enforcement.

The legal regulation of AI in law enforcement is at a pivotal moment. This study demonstrates that while AI offers potential benefits in crime prevention and resource optimisation, it also presents profound risks to privacy, due process, and non-discrimination. The findings emphasize that regulatory frameworks must evolve to address AI's socio-legal impact, ensuring that its integration into policing aligns with democratic values and human rights. Jurisdictional comparisons illustrate that while the EU is moving toward strict AI governance, the U.S. relies on judicial oversight, China emphasises state control, Kazakhstan and Kyrgyzstan are still defining their regulatory paths.

A forward-looking regulatory approach should balance innovation with accountability, incorporating interdisciplinary perspectives. Lawmakers must proactively establish legal safeguards, law enforcement agencies should implement responsible AI policies, and technologists should prioritize ethical AI design. Moving forward, future research should explore cross-jurisdictional regulatory harmonisation and assess the long-term impacts of AI policing on civil liberties. As AI continues to shape the legal and social landscape of law enforcement, ensuring transparent, accountable, and rights-respecting AI governance is imperative. Only through deliberate legal and policy clarity can societies harness AI's benefits while safeguarding fundamental freedoms.

Conclusions

This study explored the legal challenges of regulating artificial intelligence in law enforcement, focusing on the socio-legal transformations driven by AI adoption. The findings reveal significant gaps in existing legal frameworks, accountability issues, and jurisdictional differences in AI governance. While AI offers efficiency gains in policing, it also raises critical ethical and legal concerns related to transparency, fairness, and fundamental rights. Without clear regulations, these technologies risk undermining public trust and exacerbating systemic biases.

A key finding was the regulatory lag that prevents laws from keeping pace with AI advancements. Many jurisdictions lack statutory definitions or oversight mechanisms, leading to inconsistent governance and enforcement. This absence of legal clarity allows AI to be deployed in ways that may conflict with constitutional rights, particularly in biometric surveillance and predictive policing. Although some regions are working toward AI legislation, progress remains slow, reinforcing concerns that technology is evolving faster than regulatory adaptation.

The study also highlights risks associated with algorithmic bias and AI opacity in law enforcement. Predictive policing models and facial recognition technologies often replicate and amplify historical biases, disproportionately impacting marginalised communities. Additionally, AI systems frequently operate as black boxes, making their decision-making processes difficult to interpret or challenge. While some police agencies have implemented internal guidelines to mitigate bias, the absence of legal mandates for algorithmic transparency and oversight remains a major concern.

A comparative analysis of regulatory approaches reveals considerable variation. The Regulation of the European Parliament and of the Council No. 2024/1689 adopts a precautionary framework, classifying law enforcement AI systems as high-risk and imposing strict compliance requirements. The Act's emphasis on accountability and human oversight reflects the EU's rights-based regulatory model. In contrast, the United States relies on a decentralised approach, with state-level legislation and judicial rulings shaping AI governance. This fragmented model results in uneven oversight and a reliance on constitutional litigation rather than comprehensive federal regulation. China, meanwhile, has rapidly expanded AI-driven policing under a state-controlled framework that prioritises security over individual rights. The lack of independent oversight in China's AI governance raises concerns about unchecked surveillance and limited legal recourse. Smaller jurisdictions, such as Kazakhstan and Kyrgyzstan, are in the early stages of AI regulation, relying on general legal provisions rather than AI-specific laws. While AI-driven surveillance initiatives are emerging, governance remains uncertain. These findings contribute to the broader discussion on AI regulation by illustrating how different legal models influence AI's role in law enforcement. The lack of international harmonisation complicates cross-border cooperation, data-sharing agreements, and liability frameworks for AI-driven decisions. As AI technology evolves, a coordinated approach integrating legal, ethical, and technological perspectives is essential to ensure that AI is deployed responsibly and equitably.

Overall, this study underscored the urgent need for clear, enforceable legal frameworks to govern AI in law enforcement. Without proper oversight, AI risks being deployed in ways that infringe on rights and erode public confidence. Moving forward, legal and policy efforts must prioritize regulatory clarity, international cooperation, and ethical AI governance to ensure a balanced approach that safeguards both security and civil liberties.

Acknowledgements

None.

Funding

The study was not funded.

Conflict of interest

None.

References

[1] 650 wanted people caught with help of facial recognition security cameras in Bishkek in 2024. (2025). Retrieved from https://surl.lu/pgiikv.

[2] Algorithmic Accountability Act of 2023. (2023, September). Retrieved from https://www.congress.gov/bill/118th-congress/house-bill/5628/text.

[3] Alikhademi, K., Drobina, E., Prioleau, D., Richardson, B., Purves, D., & Gilbert, J.E. (2022). A review of predictive policing from the perspective of fairness. *Artificial Intelligence and Law*, 30. doi: 10.1007/s10506-021-09286-4.

[4] Amnesty International. (2020). *Out of control: Failing EU laws for digital surveillance export*. Retrieved from https://www.amnesty.org.ua/wp-content/uploads/2020/09/out-of-control -amnesty-international eur01 2556 2020.pdf.

[5] Angwin, J., Larson, J., Mattu, S., & Kirchner, L. (2016). *Machine bias: Risk assessments in criminal sentencing*. Retrieved from https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing.

[6] Apostolakis, K.C., Dimitriou, N., Margetis, G., Ntoa, S., Tzovaras, D., & Stephanidis, C. (2022). DARLENE – Improving situational awareness of European law enforcement agents through a combination of augmented reality and artificial intelligence solutions. *Open Research Europe*, 1, article number 87. doi: 10.12688/openreseurope.13715.2.

[7] Automating banishment: The surveillance and policing of looted land. (2021). Retrieved from https://automatingbanishment.org/.

[8] Berk, R.A. (2021). Artificial intelligence, predictive policing, and risk assessment for law enforcement. *Annual Review of Criminology*, 4, 209-237. doi: 10.1146/annurev-criminol-051520-012342.

[9] Biometric Information Privacy Act. (2024). Retrieved from https://law.justia.com/codes/illinois/chapter-740/act-740-ilcs-14/.

[10] Bolot Junusov. (2019). *"Safe City", facial recognition. Who is hindered by new technologies in Bishkek*. Retrieved from https://24.kg/vlast/135511_bezopasnyiy_gorod_raspoznavanie_lits_komu_meshayut_novyie_tehnologii_vbishkeke/.

[11] Chapman, A., Grylls, P., Ugwudike, P., Gammack, D., & Ayling, J. (2022). A Data-driven analysis of the interplay between Criminological theory and predictive policing algorithms. In *Proceedings of the 2022 ACM conference on fairness, accountability, and transparency* (pp. 36-45). Seoul: Association for Computing Machinery. doi: 10.1145/3531146.3533071.

[12] Chukaieva, A., & Matulienė, S. (2023). Possibilities of applying artificial intelligence in the work of law enforcement agencies. *Scientific Journal of the National Academy of Internal Affairs*, 28(3), 28-37. doi: 10.56215/naia-herald/3.2023.28.

[13] Custers, B. (2022). AI in criminal law: An overview of AI applications in substantive and procedural criminal law. In B. Custers & E. Fosh-Villaronga (Eds.), *Law and artificial intelligence: Regulating AI and applying AI in legal practice* (pp. 205-223). Hague: T.M.C. Asser Press. doi: 10.1007/978-94-6265-523-2_11.

[14] De Almeida, P.G.R., dos Santos, C.D., & Farias, J.S. (2021). Artificial intelligence regulation: A framework for governance. *Ethics and Information Technology*, 23, 505-525. doiЖ 10.1007/s10676-021-09593-z.

[15] Dhanya, K.S. (2024). *Artificial intelligence in justice system and its ethical and legal implications: A comporative analysis*. Kochi: National University of Advanced Legal Studies.

[16] Digital Code of the Kyrgyz Republic: Concept. (2024). Retrieved from https://internetpolicy.kg/wp-content/uploads/2023/04/%D0%9A%D0%BE%D0%BD%D1%86%D0%B5%D0%BF%D1%86%D0%B8%D1%8F-%D0%A6%D0%9A_eng-1.pdf.

[17] Dodd, V. (2025). *UK use of predictive policing is racist and should be banned, says Amnesty*. Retrieved from https://www.theguardian.com/uk-news/2025/feb/19/uk-use-of-predictive-policing-is-racist-and-should-be-banned-says-amnesty.

[18] Dong, H., & Chen, J. (2024). Meta-regulation: An ideal alternative to the primary responsibility as the regulatory model of generative AI in China. *Computer Law & Security Review*, 54, article number 106016. doi: 10.1016/j.clsr.2024.106016.

[19] EDPS statement in view of the 10th and last Plenary Meeting of the Committee on Artificial Intelligence (CAI) of the Council of Europe drafting the Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law. (2024). Retrieved from https://www.edps.europa.eu/press-publications/press-news/press-releases/2024/edps-statement-view-10th-and-last-plenary-meeting-committee-artificial-intelligence-cai-council-europe-drafting-framework-convention-artificial_en.

[20] Equality Act 2010: Guidance. (2013, February). Retrieved from https://www.gov.uk/guidance/equality-act-2010-guidance.

[21] Ezseddine, Y., Bayerl, P.S., & Gibson, H. (2023). Safety, privacy, or both: Evaluating citizens' perspectives around artificial intelligence use by police forces. *Policing and Society*, 33(7), 861-876. doi: 10.1080/10439463.2023.2211813.

[22] Felner, L. (2024). *Judges are using algorithms to justify doing what they already want/Algorithmic risk scores might be obscuring a broader issue with how the judicial system works*. Retrieved from https://www.theverge.com/2024/10/30/24281924/pretrial-risk-assessment-algorithms-research.

[23] Friedl, P., & Gasiola, G.G. (2024). *Examining the EU's Artificial Intelligence Act*. Retrieved from https://verfassungsblog.de/examining-the-eus-artificial-intelligence-act/.

[24] Iklassova, K., Aitymova, A., Kopnova, O., Shaporeva, A., Abildinova, G., Nurbekova, Z., Almagambetova, L., Gorokhov, A., & Aitymov, Z. (2024). Ontology modeling for automation of questionnaire data processing. *Eastern-European Journal of Enterprise Technologies*, 5(2-131), 36-52. doi: 10.15587/1729-4061.2024.314129.

[25] Interim Measures for the Management of Generative Artificial Intelligence Services. (2023, July). Retrieved from https://www.airuniversity.af.edu/Portals/10/CASI/documents/Translations/2023-08-07%20ITOW%20Interim%20Measures%20for%20the%20Management%20of%20Generative%20Artificial%20Intelligence%20Services.pdf.

[26] Judgment of the District Court of Michigan in Case No. 2:21-cv-10827 "Williams v. City of Detroit, Michigan, A Municipal Corporation". (2021, April). Retrieved from https://www.courtlistener.com/docket/59815822/williams-v-city-of-detroit-michigan-a-municipal-corporation/.

[27] Judgment of the UK Court of Appeal in Case No. C1/2019/2670 "R v. the Chief Constable of South Wales Police". (2020, August). Retrieved from https://www.judiciary.uk/wp-content/uploads/2020/08/R-Bridges-v-CC-South-Wales-ors-Judgment.pdf.

[28] Kabir, S., & Alam, M.N. (2023). IoT, big data and Ai applications in the law enforcement and legal system: A review. *International Research Journal of Engineering and Technology*, 10(5), 1777-1789.

[29] Kenawy, F. (2025). *Smart policing revolution: How Kazakhstan is setting a global benchmark*. Retrieved from https://sapsavvy.com/smart-policing-revolution-how-kazakhstan-is-setting-a-global-benchmark-2/.
[30] Khan, Z.A., & Rizvi, A. (2021). AI based facial recognition technology and criminal justice: Issues and challenges. *Turkish Journal of Computer and Mathematics Education*, 12(14), 3384-3392.
[31] Kheira, B. (2024). Predictive policing and enhancing security performance through artificial intelligence applications. *Turkish Academic Research Review*, 9(4), 444-454. doi: 10.30622/tarr.1464788.
[32] Kovalchuk, O., Banakh, S., Chudyk, N., & Drakokhrust, T. (2024). Machine learning models for judicial information support. *Law, Policy and Security*, 2(1), 33-45. doi: 10.62566/lps/1.2024.33.
[33] Law of the Republic of Kazakhstan No. 94-V "On Personal Data and their Protection". (2013, May). Retrieved from https://adilet.zan.kz/eng/docs/Z1300000094.
[34] Lyndyuk, A., Havrylyuk, I., Tomashevskii, Y., Khirivskyi, R., & Kohut, M. (2024). The impact of artificial intelligence on marketing communications: New business opportunities and challenges. *Economics of Developmen*t, 23(4), 60-71. doi: 10.57111/econ/4.2024.60.
[35] Moy, L.M. (2021). A taxonomy of police technology's racial inequity problems. *University of Illinois Law Review*, 2021(1), 139-193.
[36] Opinion of the Supreme Court of State of Illinois No. 123186 in Case "Stacy Rosenbach, as Mother and Next Friend of Alexander Rosenbach, Appellant, v. SIX Flags Entertainment Corporation et al., Appellees". (2019, January). Retrieved from https://law.justia.com/cases/illinois/supreme-court/2019/123186.html.
[37] Opinion of the Supreme Court of State of Wisconsin in Case No. 2015AP157-CR "State of Wisconsin, Plaintiff-Respondent, v. L. Loomis, Defendant-Appellant". (2016, July). Retrieved from https://law.justia.com/cases/wisconsin/supreme-court/2016/2015ap000157-cr.html.
[38] PAI Staff. (2019). *Report on algorithmic risk assessment tools in the U.S. criminal justice system*. Retrieved from https://partnershiponai.org/paper/report-on-machine-learning-in-risk-assessment-tools-in-the-u-s-criminal-justice-system/.
[39] Patra, J. (2024). Cyber laws and emerging use of artificial intelligence: View from sociological perspectives. *Electronic Journal of Veterinary Medicine*, 25(1), 1308-1312. doi: 10.69980/redvet.v25i1.863.
[40] Petrovskyi, A., Kyrdan, B., & Kutsyk, K. (2025). Implementation of artificial intelligence in civil proceedings: Experience of EU countries. *Scientific Journal of the National Academy of Internal Affairs*, 30(1), 45-59. doi: 10.56215/naia-herald/1.2025.45.
[41] Pisani, A. (2021). *Artificial intelligence in China: The development of social credit system and its use in the "war of people" against Covid-19*. Venice: Ca' Foscari University.
[42] Poirson, C. (2021). The legal regulation of facial recognition. In K. Miller & K. Wendt (Eds.), *The Fourth Industrial Revolution and its impact on ethics: Solving the challenges of the agenda 2030* (pp. 283-302). Cham: Springer. doi: 10.1007/978-3-030-57020-0 21.
[43] Pokhariyal, P., Patel, A., & Pandey, S. (2024). *AI and emerging technologies: Automated decision-making, digital forensics, and ethical considerations.* Boca Raton: CRC Press.doi: 10.1201/9781003501152.
[44] Regulation of the European Parliament and of the Council No. 2016/679 "On the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive No. 95/46/EC (General Data Protection Regulation)". (2016, April). Retrieved from https://eur-lex.europa.eu/eli/reg/2016/679/oj/eng.
[45] Regulation of the European Parliament and of the Council No. 2024/1689 "Laying Down Harmonised Rules on Artificial Intelligence and Amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act)". (2024, June). Retrieved from https://eur-lex.europa.eu/eli/reg/2024/1689/oj/eng.
[46] Resolution of the Government of the Republic of Kazakhstan No. 592 "On Approval of the Concept of Development of Artificial Intelligence for 2024-2029". (2024, July). https://adilet.zan.kz/rus/docs/P2400000592.
[47] Saparbekova, E.K., Smanova, A.B., Makhambetsaliyev, D.B., Nessipbaeva, I.S., & Nussipova, L.B. (2024). Comparative analysis of the concept of constitutional judicial law-making in the United States of America and Kazakhstan. *International Journal for the Semiotics of Law*, 38(2), 603-617. doi: 10.1007/s11196-024-10138-y.
[48] Singh, T. (2023). AI-driven surveillance technologies and human rights: Balancing security and privacy. In A.K. Somani, A. Mundra, R.K. Gupta, S. Bhattacharya & A.P. Mazumdar (Eds.), *Proceedings of SSIC 2023: Smart systems: Innovations in computing* (pp. 703-717). Singapore: Springer. doi: 10.1007/978-981-97-3690-4 53.
[49] Stensland, V.J. (2023). *A data-driven problem: Exploring predictive policing with random forest crime mapping in Oslo*. Oslo: University of Oslo.
[50] Taeihagh, A. (2021). Governance of artificial intelligence. *Policy and Society*, 40(2), 137-157. doi: 10.1080/14494035.2021.1928377.
[51] Universal Declaration of Human Rights. (1948, December). Retrieved from https://www.un.org/en/about-us/universal-declaration-of-human-rights.
[52] Wang, M. (2019). *Facial recognition deal in Kyrgyzstan poses risks to rights: Use of same tech in Xinjiang should serve as warning*. Retrieved from https://surl.lu/bwobuw.
[53] Wiek, K. (2023). *The Artificial Intelligence Act – the impact of AI on human rights standards in European law enforcement*. Enschede: University of Twente.
[54] Xia, L., Semirumi, D.T., & Rezaei, R. (2023). A thorough examination of smart city applications: Exploring challenges and solutions throughout the life cycle with emphasis on safeguarding citizen privacy. *Sustainable Cities and Society*, 98, article number 104771. doi: 10.1016/j.scs.2023.104771.
[55] Yanyshivskyi, M. (2024). Regulation of artificial intelligence in Ukraine in the framework of harmonisation of legislation with EU legal norms. *Democratic Governance*, 17(1), 53-62. doi: 10.23939/dg2024.53.

[56] Zaroff, A. (2022). *AI-based automated decision making: An investigative study on how it impacts the rule of law and the case for regulatory safeguards*. Lund: Lund University.
[57] Zeng, D., Cao, Z., & Neill, D.B. (2021). Artificial intelligence-enabled public health surveillance – from local detection to global epidemic monitoring and control. In L. Xing, M.L. Giger & J.K. Min (Eds.), *Artificial intelligence in medicine: Technical basis and clinical applications* (pp. 437-453). London: Academic Press. doi: 10.1016/B978-0-12-821259-2.00022-3.
[58] Zeng, J. (2022). *Artificial intelligence with Chinese characteristics: National strategy, security and authoritarian governance*. Singapore: Palgrave Macmillan. doi: 10.1007/978-981-19-0722-7.
[59] Zhekshe kyzy, A., & Shambetov, T. (2023). *"Akylduu" cameras: Has Bishkek adopted the Kremlin's methods?* Retrieved from https://www.azattyk.org/a/akylduu-kameralar-bishkek-kremldin-ykmasyna-oettuebue-/32459225.html.

Правові проблеми регулювання штучного інтелекту у правоохоронній діяльності з урахуванням міждисциплінарного підходу до соціально-правових трансформацій

Рауан Жалтирбаєва
Старший викладач
Актюбінський обласний університет ім. К. Жубанова
030000, просп. А. Молдагулова, 34, м. Актобе, Республіка Казахстан
https://orcid.org/0009-0009-1394-0863

Арайлим Джангабулова
Кандидат юридичних наук, доцент
Казахський національний університет імені аль-Фарабі
050040, просп. аль-Фарабі, 71, м. Алмати, Республіка Казахстан
https://orcid.org/0000-0002-4150-5393

Сауле Сулейменова
Доктор юридичних наук, професор
Казахський національний університет імені аль-Фарабі
050040, просп. аль-Фарабі, 71, м. Алмати, Республіка Казахстан
https://orcid.org/0000-0002-6754-9255

Шолпан Саімова
Кандидат юридичних наук
«Інститут парламентаризму» Департаменту матеріально-технічного забезпечення
010000, просп. Мангілік Ел, 8, м. Астана, Республіка Казахстан
https://orcid.org/0000-0002-9000-6136

Жанна Тлембаєва
Кандидат юридичних наук, професор
Астанський медичний університет
010000, вул. Бейбітшилік, 49А, м. Астана, Республіка Казахстан
https://orcid.org/0000-0003-4088-1087

Анотація. У цьому дослідженні розглядалися правові проблеми, пов'язані з регулюванням штучного інтелекту (ШІ) в правоохоронних органах, враховуючи його ширші соціально-правові трансформації. Використовуючи міждисциплінарний підхід, у дослідженні було проведено порівняльний правовий аналіз нормативно-правових актів штучного інтелекту в різних юрисдикціях, оцінка законодавчої бази, судових рішень і політичних ініціатив. Дослідження виявило ключові нормативні прогалини, зокрема відсутність чітких законодавчих визначень, проблеми підзвітності в поліцейській діяльності, керовані ШІ, і ризик упередженості алгоритмів. Завдяки порівняльному аналізу різних юрисдикцій виявлено значні відмінності в управлінні ШІ. Європейський Союз приймає запобіжний і нормативний підхід, класифікуючи правоохоронний штучний інтелект як високоризиковий і встановлюючи суворі вимоги дотримання. Сполучені Штати покладаються на децентралізоване управління, де ініціативи на державному рівні та судовий нагляд формують розгортання штучного інтелекту, що призводить до непослідовного правозастосування. Китай надає пріоритет державному контролю, швидко інтегруючи спостереження за штучним інтелектом у правоохоронні органи без незалежного

нагляду, що викликає занепокоєння щодо належного процесу та захисту прав людини. Навпаки, нові юрисдикції, такі як Казахстан і Киргизстан, знаходяться на ранніх стадіях регулювання штучного інтелекту, впроваджуючи поліцейські технології на основі ШІ, покладаючись на загальні правові положення. Дослідження показало, що інтеграція ШІ в правоохоронні органи створює як можливості, так і ризики. Хоча штучний інтелект підвищує ефективність поліцейської діяльності та розподіл ресурсів, він також посилює системні упередження, порушує конфіденційність даних і кидає виклик традиційним структурам підзвітності. Відсутність регуляторної гармонізації ще більше ускладнює транскордонне співробітництво в галузі штучного інтелекту та визначення відповідальності. Ці висновки підкреслили необхідність більш чіткої правової бази, міжнародної координації та етичного управління штучним інтелектом, щоб збалансувати імперативи безпеки та фундаментальні права. Враховуючи швидкі темпи впровадження штучного інтелекту, майбутні дослідження повинні зосередитися на емпіричних оцінках реального впливу штучного інтелекту на правові системи, громадську довіру та прозорість правоохоронних органів, гарантуючи, що регуляторні підходи залишатимуться адаптивними та справедливими

Ключові слова: алгоритмічна підзвітність; біометричне спостереження; захист даних; автоматизоване прийняття рішень; цифрові права; громадська довіра

UDC 343.8
DOI: 10.32518/sals2.2025.131

Соціально-правові студії. 2025. Т. 8, № 2
Social & Legal Studios. 2025. Vol. 8, No. 2

Problems of the development of post-penitentiary probation in Kazakhstan

Nurlan Tleshaliyev
PhD in Law, Associate Professor
Caspian University
050000, 85A Dostyk Ave., Almaty, Republic of Kazakhstan
https://orcid.org/0000-0003-3871-866X

Azamat Tleubayev
Graduate Student, Senior Lecturer
Caspian University
050000, 85A Dostyk Ave., Almaty, Republic of Kazakhstan
https://orcid.org/0009-0001-7099-0922

Gulzipa Duisenbayeva
Master of Science, Junior Researcher
Caspian University
050000, 85A Dostyk Ave., Almaty, Republic of Kazakhstan
https://orcid.org/0009-0001-8750-4193

Anzhelika Tsoy
Master of Science
Caspian University
050000, 85A Dostyk Ave., Almaty, Republic of Kazakhstan
https://orcid.org/0009-0002-7884-6922

Akmaral Smanova*
PhD in Law, Senior Lecturer
Al-Farabi Kazakh National University
050040, 71 Al-Farabi Ave., Almaty, Republic of Kazakhstan
https://orcid.org/0000-0003-4636-4240

Abstract. The purpose of this study was to conduct a critical analysis of the practice of post-penitentiary probation in Kazakhstan. Terminological, hermeneutic, and comparative methods were employed. The study explored the essence of probation, identified its main types, and examined post-penitentiary probation as an integral component in greater detail. The experiences of Norway and Sweden in this area were analysed, and it was established that these states effectively implement penitentiary probation through a combination of measures: guaranteeing humane treatment, adhering to the principle of normalisation, implementing individual supervision, facilitating the reintegration of released convicts, and reducing recidivism. The importance of incorporating these measures into the Kazakhstani system as prospects for development was emphasised. As a result, a comparative analysis of Kazakhstan's national legal acts and the international framework regulating penitentiary probation was conducted. Specifically, the following aspects were compared: the rights of persons released from prison; the definition of probation; the main principles and types of probation; means of rehabilitation and resocialisation; and the application of post-penitentiary probation. Additionally, statistics on the crime and security indices in Kazakhstan, Norway, and Sweden were analysed. It was found that Norway had the most favourable indicators, with a crime rate of 32.6 and a security index of 67.4; Kazakhstan occupied a middle position with scores of 45.9 and 54.1, respectively; while Sweden recorded a higher crime rate of 48.4 and

Suggested Citation

Article's History: Received: 14.03.2025 Revised: 25.05.2025 Accepted: 25.06.2025

Tleshaliyev, N., Tleubayev, A., Duisenbayeva, G., Tsoy, A., & Smanova, A. (2025). Problems of the development of post-penitentiary probation in Kazakhstan. *Social & Legal Studios*, 8(2), 131-143. doi: 10.32518/sals2.2025.131.

*Corresponding author

Copyright © The Author(s). This is an open access Article distributed under the terms of the Creative Commons Attribution License 4.0 (https://creativecommons.org/licenses/by/4.0/)

a security index of 51.6. The state of post-penitentiary probation provision in Kazakhstan was investigated, and its main problems were identified: high recidivism; insufficient supervision of former convicts; lack of financial resources; limited social and legal assistance; discrimination based on criminal records; low levels of inter-agency cooperation; and a shortage of qualified personnel. The findings of this study may be useful in identifying ways to address these issues in Kazakhstan

Keywords: probation; imprisonment; correctional institution; released convicted persons; regulatory legal act

Introduction

The issue of providing post-penitentiary probation in Kazakhstan remains relevant due to the challenges faced by individuals released from correctional institutions. These challenges include a high rate of recidivism, social stigmatisation, and deficiencies in the system of support for reintegration into society. Such problems highlight the urgent need to establish and enhance the system of control and assistance for persons on probation. Addressing these challenges is essential for preventing repeat offending, reducing recidivism, ensuring respect for human rights, and strengthening social security in Kazakhstan. For this reason, the experience of Norway and Sweden in the post-penitentiary probation system is of particular importance, as these countries have effectively implemented measures to ensure proper conditions of detention and assistance for individuals on post-trial probation (PTP).

Thus, A.E. Lerman *et al.* (2024) investigated the effectiveness of a joint supervision programme for individuals in the PTP, known as the Pathways Home Programme, compared with a traditional supervision system. It was found that participants in the programme were more likely (by 17%) to attend their first meeting with a probation officer within 48 hours of release and were less likely (by 14%) to breach the terms of probation within one year of release. The authors emphasised that Pathways Home Programme is an effective tool for successfully completing the probation period for high-risk individuals and demonstrated the value of encouraging the participation of convicts in the reintegration process.

The study by M. Berghuis *et al.* (2022) aimed to examine how different patterns of prison visits – specifically their duration, frequency, and consistency – affect the behaviour of offenders following their release. The researchers found that certain visitation patterns, such as more regular and timely visits, were associated with a reduction in offending during the trial period. It was emphasised that maintaining consistent and timely prison visits is an important factor in the successful reintegration of former prisoners and the prevention of recidivism. In turn, K.K. Rakhimberdin (2024) analysed the institution of detention as a form of punishment within the criminal legislation of Kazakhstan. The author examined the regulatory and practical aspects of the application of arrest as a punitive measure, identifying contradictions and shortcomings in legislative regulation, including discrepancies in legal concepts, lack of clarity in procedural norms, and challenges in harmonising detention practices. The researcher concluded that addressing these issues would enhance the effectiveness and transparency of detention as a form of punishment within Kazakhstan's criminal justice system. In parallel, G. Rakhimova *et al.* (2024) analysed the state of Kazakhstan's penal system, focusing on the disparity between legislative intentions and the actual experiences of recidivists. The authors observed that the penal system is in decline and fails to meet the needs of the citizens of wKazakhstan. The researchers stressed the need for fundamental reforms to ensure compliance with legal standards and to align with public expectations.

Meanwhile, S.T. Toedtman (2024) examined the Norwegian criminal justice system, particularly the contrast between its international reputation for advanced rehabilitation methods and criticism from domestic stakeholders. The study highlighted that low recidivism rates and the provision of humane detention conditions are strengths of the Norwegian probation system. However, the researcher noted that as a result of the Avbyråkratiserings- og effektiviseringsreformen reform, funding for certain rehabilitation programmes was reduced, which negatively affected the quality of services provided to convicts. S. Koffeld-Hamidane *et al.* (2023) conducted a qualitative study on how meetings with probation officers assist individuals who have served their sentences in avoiding a return to criminal behaviour. The study found that support, respect, and meaningful interaction during such meetings are key factors that encourage individuals to refrain from further criminal activity. The researchers concluded that improved communication between probation officers and their supervisees enhances motivation and reduces the risk of recidivism. In particular, E.A. Weswasi *et al.* (2023) conducted a quasi-experimental study to analyse the relationship between recidivism and the period following release from prison among adult offenders who were first-time detainees in Sweden. The results indicated that changes in the length of imprisonment do not influence recidivism rates, regardless of the criteria used to measure this indicator. The authors emphasised that the duration of imprisonment has minimal impact on the likelihood of reoffending after release.

In their study, P.J. Bäckström *et al.* (2022) evaluated the predictive validity of the Risk-Need-Responsivity Assessment (RNR-A) instrument used in Sweden by analysing recidivism data from 2,442 offenders over a 24-month follow-up period. The results demonstrated satisfactory predictive accuracy, with ROC-AUC values ranging from 0.67 to 0.76, indicating high reliability of the instrument in identifying individuals with varying levels of risk. The researchers found the RNR-A scale to be effective, although its predictive power was lower among offenders convicted of violent crimes compared to other types of offenders.

Despite the extensive scientific foundation on probation and its implementation, a significant gap remains in the study of the provision of post-penitentiary probation, particularly in Kazakhstan. There is also a lack of comprehensive and up-to-date research concerning the experiences of Kazakhstan, Norway, and Sweden. Even fewer studies incorporate a comparative perspective that examines national and international legislation, as well as the experiences of multiple legal systems in relation to post-penitentiary probation. The purpose of this study was to determine how post-penitentiary probation is provided in Kazakhstan and

to identify the main developmental challenges and future prospects for this form of probation. The principal objectives of the study were as follows:

- to investigate the positive aspects of the experience of Norway and Sweden in the provision of post-penitentiary probation;
- to conduct a comparative analysis of the legislation of Kazakhstan and international legislation on penitentiary probation;
- to examine the conditions for the provision of post-penitentiary probation in Kazakhstan, as well as measures to prevent recidivism, and to identify current problems and future prospects.

Materials and methods

To interpret and analyse the regulatory legal acts, a terminological method was employed, which facilitated the study of the concept and content of post-penitentiary probation, as well as probation more broadly. Additionally, the hermeneutic method was applied to establish the meaning of these definitions within a broader legal context, particularly to examine how these concepts are implemented in practice in the jurisdictions of Kazakhstan, Norway, and Sweden. To conduct a comparative analysis of the legal framework of Kazakhstan and international provisions in the field of penitentiary probation, the study referenced key regulatory legal acts, including the Law of the Republic of Kazakhstan No. 38-IV LRK "On Probation" (2016), and the Constitution of the Republic of Kazakhstan (1995), which are the primary national legal instruments in this area. Furthermore, the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) (1990) was used to illustrate key international standards for ensuring penitentiary probation. In addition, the following regional instruments were included for comparison: Recommendation of the Committee of Ministers No. CM/Rec(2010)1 "To Member States on the Council of Europe Probation Rules" (2010), and Directive of the European Parliament and of the Council No. 2016/343 "On the Strengthening of Certain Aspects of the Presumption of Innocence and of the Right to Be Present at the Trial in Criminal Proceedings" (2016).

The comparative method was crucial to the study, enabling the comparison of the provisions of Kazakh and international legal instruments on penitentiary probation, especially in relation to the core standards for its provision. In particular, the analysis focused on the following aspects: the rights of individuals on probation; the definition of probation; the fundamental principles of probation; types of probation; means of rehabilitation and resocialisation; and the implementation of probation.

In addition, statistical data from the World Population Review (2025) for the second half of 2024 were analysed with respect to the crime rate index and the safety index in Kazakhstan, Norway, and Sweden. The Global Organized Crime Index is updated every six months. Specifically, the Global Organized Crime Index is calculated by dividing the total number of registered crimes by the total population, with the result then multiplied by 100,000 to yield an indicator per 100,000 people. This methodology enables comparison of crime rates across different regions and population groups. It is important to note that the crime rate is influenced by multiple factors, including socio-economic variables such as unemployment and poverty, the level of law enforcement activity, and demographic aspects, particularly the age structure of the population.

Results

The experience of Norway and Sweden as advanced countries in providing post-penitentiary supervision. In general, probation is a criminal law instrument that grants a person found guilty of an offence the right to be released from serving a sentence in the form of deprivation of liberty or other punishments, or to be partially exempted from such a sentence. The application of probation is conditional upon compliance with specific requirements and is subject to monitoring by judicial or other authorised bodies (Dominey & Canton, 2022). Such conditions may include participation in counselling and rehabilitation programmes; restrictions on contact with certain individuals or bans on visiting specific locations; meetings with a probation officer; attendance at court sessions when required by judicial decision; stable employment or enrolment in specialised programmes aimed at supporting the reintegration of offenders into society, among others (Brooker *et al.*, 2020; Ruhland & Scheibler, 2021;).

Thus, the offender is granted the opportunity to remain in the community, which contributes to the process of rehabilitation while also safeguarding public security (Probation Explained: Everything…, 2024). The primary aim of probation is to facilitate the resocialisation of the offender and support his reintegration into society without the imposition of a custodial sentence. The focus of this process is the creation of conditions that enable the individual to return to a socially productive and socially adapted way of life. Probation therefore functions as a mechanism for mitigating punishment and providing social intervention based on principles of control, supervision, and trust (Moroz & Horislavska, 2024).

According to the United Nations Interregional Crime and Justice Research Institute (1997), probation is categorised as follows: Pre-trial probation – involves an agreement reached before the accused is found guilty or before they admit guilt (Dhami & van den Brink, 2022); Community supervision – allows the offender to serve a sentence outside prison but under continuous supervision by the relevant probation authorities (Jiang *et al.*, 2022; Schaefer *et al.*, 2022); Post-penitentiary probation, also known as "post-release supervision", applies to individuals who have served a prison sentence and are released under the condition of ongoing probationary oversight (Kuć, 2021; Chasciar *et al.*, 2025).

Thus, post-penitentiary probation is a central component of the probation system as a whole and may be characterised as a comprehensive approach to the reintegration of offenders into the community. This approach focuses on the psychological, social, and economic factors that determine the success of reintegration. A notable feature of this system is the provision of support tailored to the individual needs of each offender; probation officers develop a personalised plan for each supervisee, based on an assessment of the risk of reoffending and specific needs (Mertl, 2022). Such an approach has proven to be more effective in preventing recidivism. Moreover, public supervision, which emphasises support and assistance rather than direct control, promotes the involvement of non-governmental organisations (NGO) and local authorities (Stanek *et al.*, 2021). Hence, the essence of post-penitentiary probation lies in its function as a transitional phase between imprisonment and a return to full participation in society (Youssef, 2023; Jasiński, 2024).

Crucial to the implementation of PTP at the national level is the adoption of advanced international experience, particularly that of countries such as Norway and Sweden, which are recognised as leaders in the field of probation and maintain low recidivism rates. Both countries share a common approach to probation, which prioritises providing individuals on probation with appropriate support and access to services equivalent to those available to the general public (Todd-Kvam, 2020). In both jurisdictions, PTP is integrated into the correctional system, which is oriented towards the individual characteristics, risks, needs, and capacities of those under supervision. To support the effective and gradual reintegration of individuals on PTP, Norway and Sweden extensively apply progressive assessment methods and community-based programmes. Between 2020 and 2025, both countries continued to enhance their probation systems, employing the latest technologies and comprehensive intervention models to improve outcomes. The effectiveness of the post-penitentiary probation systems in these countries is evidenced by their consistently low recidivism rates and stable levels of public safety (Priestley & Vanstone, 2022).

Thus, the Norwegian concept of punishment is based on the principle of normalisation, which stipulates that the serving of a sentence should be as close as possible to life in freedom. This principle is particularly evident in the probation system, where the focus lies on the gradual transition of prisoners from high-security correctional institutions to open-type facilities, rehabilitation centres, and ultimately to release under community supervision. A key feature of the provision of post-penitentiary supervision in Norway is the state's commitment to supporting the reintegration of released individuals into normal social life. To this end, such individuals are offered assistance from local municipalities in securing employment, accessing education, receiving medical and social support, and, in general, are accompanied by the responsible authorities throughout the reintegration process.

An important tool for supervising individuals on PTP is the electronic monitoring system, which allows offenders to serve their sentences under house arrest. It should be noted that in recent years (particularly in 2023-2024), a trend has emerged indicating that the use of such monitoring in Norway is associated with a slight decrease in recidivism rates. Specifically, recidivism among individuals serving sentences under electronic monitoring ranges from 6% to 12%, compared to 5% to 15% for those held in custodial institutions. Thus, the application of this system reduces the burden on the penitentiary system and supports reintegration by maintaining family and community ties (Weswasi, 2025).

An integral aspect of post-penitentiary probation in Norway is the collaboration between probation officers and local organisations responsible for employment, housing, and access to healthcare services, as social security is essential to effective relapse prevention. Furthermore, rehabilitation programmes targeting individuals with substance abuse problems or mental health disorders are actively implemented within the post-penitentiary probation framework, with the participation of NGO. The Norwegian post-penitentiary probation system also places strong emphasis on the principles of voluntariness and respect for human dignity, fostering trust-based relationships between probation officers and their supervisees (Koffeld-Hamidane *et al.*, 2023).

Similar to Norway, the Swedish probation system also emphasises the importance of an individualised approach based on specific circumstances, the principle of normalisation, and rehabilitation. A key element of the Swedish model is the use of standardised assessment tools based on the RNR-A framework, which guides probation officers in determining the appropriate level of supervision and response measures, tailored to the characteristics, risks, and rehabilitation needs of each offender (Bäckström *et al.*, 2022). Since 2021, Sweden has been widely implementing the KRIMSTICS programme, adapted from Canada's Strategic Training Initiative in Community Supervision. KRIMSTICS provides a structured framework for engaging with individuals on community-based sentences, promoting socially adaptive behaviour and preventing recidivism through the use of cognitive behavioural therapy techniques.

Swedish prisons also collaborate with social services, healthcare providers, educational institutions, and employment agencies to ensure the comprehensive needs of incarcerated individuals are met. Moreover, prisons are responsible for preparing inmates for release, which includes the use of electronic monitoring and placement in rehabilitation centres to facilitate the transition from prison to society. Some offenders are subjected to enhanced supervision through electronic monitoring, allowing them to serve their sentences under house arrest under strictly regulated conditions (Spytska, 2024). This measure is typically applied to short-term sentences, as it has been shown to alleviate prison overcrowding without compromising public safety. Crucially, rehabilitation efforts also include treatment for substance addiction and the provision of psychological support (Becker-Pestka, 2022; Bonta, 2023).

The application of the RNR-A and KRIMSTICS models in Sweden during the 2022-2025 period has yielded improved outcomes within the prison system, owing to greater adherence to evidence-based practices and increased engagement with inmates (Sutton *et al.*, 2023). Compared to many other countries, Sweden maintains a relatively low recidivism rate – ranging between 30-40% in the years following release – reflecting a balanced correctional system that combines appropriate levels of supervision and rehabilitation with strong community involvement (Swedish National Council for Crime Prevention, n.d.). Thus, the post-penitentiary probation systems in Norway and Sweden demonstrate the effectiveness of integrating a humane approach, personalised supervision, and active reintegration of released prisoners into society to reduce recidivism.

Legal basis for providing penitentiary probation in Kazakhstan: Comparative analysis of national and international legal acts. The probation system in Kazakhstan is governed by an extensive regulatory and legal framework, primarily comprising the Constitution of the Republic of Kazakhstan (1995) and the Law of the Republic of Kazakhstan No. 38-IV LRK "On Probation" (2016). This framework also incorporates international legal instruments, including the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) (1990), Recommendation of the Committee of Ministers No. CM/Rec(2010)1 "To Member States on the Council of Europe Probation Rules" (2010), and Directive of the European Parliament and of the Council No. 2016/343 "On the Strengthening of Certain Aspects of the Presumption of Innocence and of the Right to Be Present at the Trial in Criminal Proceedings" (2016). Collectively, these documents define probation as a mechanism for re-adaptation into society, implemented through vocational

training and education, individual psychological support, and post-release behavioural monitoring of convicted persons (Adilbekova, 2021).

Accordingly, the legal regulation of probation in Kazakhstan – largely based on the principles enshrined in the Constitution of the Republic of Kazakhstan and the Law on Probation – provides a detailed definition of the rights of individuals undergoing probation. These rights include access to information concerning their rights and obligations, legal status (including the circumstances, nature, and content of the imposed sentence), and the conditions of its execution; as well as the procedures governing penitentiary probation. In addition, individuals have the right to appeal against decisions or actions of the probation authorities, and the opportunity to participate in social adaptation and rehabilitation programmes. This legal framework reflects a human rights-oriented approach and aligns fully with the constitutional guarantees of social protection and correction, as set out in Articles 16 and 34 of the Constitution of the Republic of Kazakhstan (1995). International instruments – particularly the Recommendation of the Committee of Ministers No. CM/Rec(2010)1 "To Member States on the Council of Europe Probation Rules" (2010) and Article 10 of the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) (1990) – establish comparable rights, such as the right to freedom from discrimination, dignity, and a fair trial. Moreover, Article 3 of the Directive of the European Parliament and of the Council No. 2016/343 "On the Strengthening of Certain Aspects of the Presumption of Innocence and of the Right to Be Present at the Trial in Criminal Proceedings" (2016) guarantees the presumption of innocence and the right to appeal, along with appropriate treatment during the trial period. However, Kazakhstani legislation is distinctive in that it explicitly codifies the right to receive information in one's native and comprehensible language – an element that is not strongly emphasised in international instruments.

According to Article 1 of the Criminal Procedure Code of the Republic of Kazakhstan (2014), probation is defined as a set of measures involving individual supervision and public legal education, aimed at re-education and the prevention of reoffending. These measures apply to suspects, convicted individuals, and persons released from custodial institutions. This definition integrates both control and educational functions, reflecting the holistic nature of the trial period. At the international level, Section V of the Tokyo Rules (1990) defines probation primarily as an alternative to imprisonment – one that does not involve deprivation of liberty and focuses on correction and social reintegration. Thus, while Kazakhstan's definition is consistent with the international perspective, it places greater emphasis on the element of control, including electronic monitoring and judicial obligations, thereby reflecting a more structured approach to supervisory functions.

It should also be noted that Article 12 of the Criminal Procedure Code of the Republic of Kazakhstan (2014) distinguishes the following types of probation: pre-trial probation; probation during the trial; post-sentence probation; and post-penitentiary probation. This classification is necessary to ensure an effective and timely response to the needs of specific groups at high risk of reoffending, at different stages of the criminal justice process – from investigation to imprisonment and reintegration into society. It is noteworthy that international legislation does not provide a unified classification of probation types, which represents a significant gap, resulting in considerable variation among states in their approaches to providing probation (Khablo & Svoboda, 2024).

At the same time, Article 3 of the Criminal Procedure Code of the Republic of Kazakhstan (2014) outlines the core principles of probation, including: legality, humanism, transparency (except in cases constituting state secrets), a differentiated and individualised approach, the promotion of law-abiding behaviour, and cooperation among public authorities. These principles are intended to strike a balance between control and support measures, with an emphasis on the application of differentiated methods and positive reinforcement. By comparison, the Recommendation of the Committee of Ministers No. CM/Rec(2010)1 "To Member States on the Council of Europe Probation Rules" (2010) identifies the following key principles of penitentiary probation: respect for the rights of offenders and humane treatment; prohibition of any form of discrimination; consideration of the individual characteristics of the offender in each case; observance of the presumption of innocence; and the prohibition of disproportionate penalties. Thus, the inclusion in Kazakhstani legislation of the principle of encouraging lawful behaviour – promoting compliance with the law – reflects an approach based on both deterrence and positive reinforcement, which is not as explicitly articulated in the international framework.

In Kazakhstan, the principal measures for the re-education of offenders and their reintegration into society are legally enshrined. According to Article 6 of the Law of the Republic of Kazakhstan No. 38-IV LRK "On Probation" (2016), these measures include: legal and social support for secondary education, access to medical services and psychological assistance, vocational training, provision of payments and benefits, establishment of social security mechanisms, social patronage and counselling services, provision of accommodation for persons on probation, rehabilitation activities, support for cultural development, and assistance with social reintegration. These measures are funded by the state and are mandatory, indicating the comprehensive role of the state in ensuring the reintegration of individuals who have committed offences and served their sentences.

At the international level, such measures are enshrined in the Tokyo Rules, which include: the provision of mandatory medical care to offenders (as set out in Article 13); the promotion of interaction between the public and individuals in correctional facilities (Articles 17-18); and cooperation between state and international actors in this area (Article 23). In this context, Kazakhstan has established a more universal and centralised system than that reflected in international legislation. This system ensures consistency and offers a wide range of re-education and reintegration measures. However, it is also more rigid, limiting flexibility and public participation.

Furthermore, Kazakhstani legislation explicitly defines post-release probation as a distinct process occurring after the completion of a custodial sentence. In particular, Part 2 of Article 17 of the Criminal Procedure Code of the Republic of Kazakhstan (2014) stipulates that this process includes measures of social support, assistance in resolving housing issues, the provision of permanent employment, and rehabilitation efforts aimed at facilitating the reintegration of former prisoners into society. By contrast, international law

lacks a clearly defined legislative framework for probation, which contributes to significant differences in how effectively states implement their own reintegration programmes for individuals released from custody.

Thus, Kazakhstan has developed a comprehensive probation system that not only aligns with international best practices but is also notable for institutionalising social patronage as a core function – an approach not commonly adopted in other jurisdictions. Overall, the probation system in Kazakhstan is well-developed and supported by a robust legal framework that establishes clear principles, rights, and procedures for the entire probation process – from pre-trial to post-release stages. In constructing this system, leading international standards were taken into account, particularly those enshrined in the Tokyo Rules and Council of Europe Probation Rules.

The strength of the national legislation lies in its systematic and exhaustive delineation of the rights and obligations of individuals under probation supervision, the requirement for rehabilitation measures, and the specification of various types of probation. Together, these elements form a clear and comprehensive system. Owing to the significant emphasis placed on the provision of social and legal assistance, combined with supervisory mechanisms – especially electronic monitoring – a balanced approach is achieved. This contributes to a reduction in recidivism and supports successful social reintegration.

However, the effectiveness of this system is directly influenced by the practical implementation and adherence to Kazakhstani legislation. The primary issues within the legal framework include: the insufficient involvement of the public and NGO, in contrast to international standards; the absence of a clear delineation of the powers and responsibilities of probation authorities, which leads to bureaucratic fragmentation and inconsistent practice; and the need to strengthen guarantees for the observance of the right to a fair trial in accordance with international standards. Notably, Kazakhstani legislation lacks explicit references to international norms on probation, which hinders the full harmonisation of national legislation with global standards and complicates mechanisms for accountability.

Post-penitentiary probation in Kazakhstan: Problems and prospects. Overall, the level of criminal activity in Kazakhstan remains relatively high, highlighting the urgent need for effective reforms in the field of post-penitentiary probation, particularly with a view to reducing recidivism. A reduction in repeat offending would, in turn, contribute to a decrease in the overall crime rate across the country (Rakhimova *et al.*, 2024). Figure 1 illustrates the crime rate index and the security index, based on Global Organized Crime Index data, for the three countries under study: Kazakhstan, Norway, and Sweden. Thus, the data presented in Figure 1 relate to the second half of 2024 and provide an analysis of crime and safety levels across 100 countries (where a lower crime index score and a higher safety score indicate better outcomes). According to the data in Figure 1, Norway demonstrates the most favourable indicators for both indices. Known for its effective post-penitentiary probation system and low crime rate, Norway recorded a crime index of 32.6 and a safety index of 67.4, reflecting the success of its crime prevention and rehabilitation strategies. Kazakhstan occupies a central position among the three countries under comparison, with a crime index of 45.9 and a safety index of 54.1. Sweden, meanwhile, registered a slightly higher crime index of 48.4 and a safety index of 51.6 (World Population Review, 2025). However, despite Kazakhstan's relatively better quantitative indicators, Sweden is recognised for its effective provision of probation services more broadly, and of PTP in particular. Sweden's measures focus specifically on supporting the mental health of prisoners and probationers, as well as implementing an individualised approach to supervision during PTP.

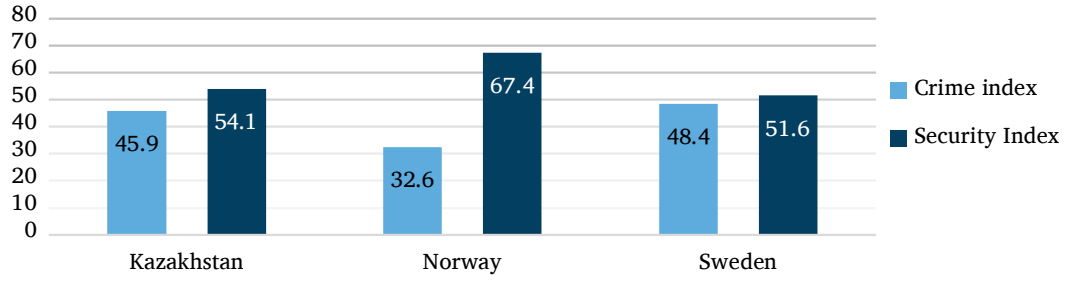


Figure 1. Crime and safety statistics according to Global Organized Crime Index for the second half of 2024 in Kazakhstan, Norway and Sweden

Source: created by the author based on World Population Review (2025)

In Kazakhstan, PTP is primarily aimed at reducing recidivism through the social reintegration of released prisoners and their supervision by relevant authorities. The Department of Probation Service, under the Ministry of Internal Affairs of Kazakhstan, is responsible for monitoring compliance with early release conditions. In parallel, local executive bodies and NGO – often with the support of international bodies such as the United Nations Office on Drugs and Crime (2024) – undertake measures to assist in the reintegration of convicts into society. The Department of Probation Service makes use of an integrated electronic criminal justice system, which enables the comprehensive registration and digital storage of personal data and documents concerning individuals on probation. This system facilitates the Department of Probation Service in exercising systematic control over the rehabilitation process of former prisoners.

Within the framework of the Department of Probation Service, three main bodies interact to support former convicts during rehabilitation: The Department of Probation Service oversees compliance with early release conditions through the use of electronic surveillance tools, particularly GPS bracelets that track an individual's location. The State Tax Service also conducts regular checks, especially of individuals considered to pose an elevated risk to public safety.

The local executive bodies hold the authority to provide direct support and assistance to persons under administrative supervision. This includes social and legal support, resolving issues related to accommodation, employment, document renewal, and establishing contact with municipal services. Law enforcement agencies are tasked with enforcing judicial restrictions and decisions, such as limitations on movement or travel, and the issuance of permanent residence permits for persons under administrative supervision (United Nations Office on Drugs and Crime, 2024).

Thus, in Kazakhstan, these institutions collaborate to provide effective support for individuals on probation, aiming to facilitate their reintegration into society and prevent potential recidivism. The following measures reflect not only how the state supports released convicts but also how it implements preventive strategies against further offences. One of the most pressing challenges for released individuals is securing stable housing. In response, the Government of Kazakhstan, through the local executive bodies, allocates temporary accommodation to such individuals. However, the availability and quality of this housing – particularly whether it is habitable – vary significantly across different regions. This, coupled with prevailing societal stigma against former prisoners, often results in their social isolation (United Nations Office on Drugs and Crime, 2019; Anuarbek & Zharkenova, 2020).

To address this issue, the state continues to invest in improving housing conditions to better support the reintegration process. In parallel, to assist with the employment of released individuals and their retraining in new professions (e.g., welder, carpenter, plasterer), Kazakhstan has established partnerships with local businesses and vocational colleges. Nevertheless, despite state efforts, many enterprises and institutions remain unwilling to employ individuals with criminal records. To overcome this barrier, and in alignment with international best practices, the state has launched initiatives aimed at incentivising employers and promoting small business development among former convicts (Mukasheva *et al.*, 2024).

Another important measure in Kazakhstan, aimed at facilitating rehabilitation during PTP, is the establishment of educational facilities directly within prisons, including secondary schools and vocational institutions. These initiatives aim to provide prisoners with opportunities to obtain formal education or enhance their professional skills, thereby improving their employment prospects upon release. Moreover, with the support of social workers who continue to engage with former prisoners, individual learning assistance is offered throughout the PTP period. However, the challenge of securing adequate funding for such educational and support programmes remains a significant obstacle (Mukasheva *et al.*, 2023).

In addition, a vital component of social rehabilitation is the provision of psychological assistance to support released prisoners in overcoming post-traumatic stress, addictions, and the challenges associated with reintegration into society. Psychological support services are offered through both state institutions and NGO; however, their availability remains limited due to a shortage of qualified specialists. To address this issue and ensure the provision of adequate psychological care, the government is working to expand the network of rehabilitation centres and emergency response programmes (Nesterov, 2020). In the context of PTP, it is equally important for the state to provide legal assistance to released individuals, who frequently encounter difficulties in restoring essential documents – such as identity cards – without which they cannot access social services, secure employment, or obtain housing. Legal services assist in restoring such documentation and guide individuals through bureaucratic procedures, helping them to overcome administrative barriers that hinder reintegration (Pylypenko & Zmysna, 2023). These services also play a role in combating discrimination based on criminal records. Although discrimination is prohibited by law, practical enforcement remains problematic. Legal aid services also support individuals in pre-trial detention by informing them of their rights and obligations in accordance with the conditions established by the court (Azhibaev, 2020; Zhunisbayeva *et al.*, 2021).

Overall, Kazakhstan's approach to PTP seeks to enhance the social welfare and reintegration of former prisoners. This includes the provision of housing, employment opportunities, access to education and psychological support, as well as legal aid aimed at restoring rights and protecting individuals from discrimination or harassment related to their criminal record. Through these comprehensive measures, Kazakhstan aims to establish an integrated post-penitentiary supervision system that supports individuals from the point of release to full reintegration into society. While these measures are fundamental to successful reintegration, persistent challenges – including limited resources and public stigma – underscore the need for further reforms and increased international cooperation to improve the overall effectiveness and accessibility of support services.

Thus, the provision of post-penitentiary supervision in Kazakhstan faces several significant challenges that undermine its effectiveness in supervising released prisoners and facilitating their social reintegration. These include: High recidivism rates and inadequate supervision of former convicts. Approximately 70% of released individuals reoffend and return to prison. This trend suggests that current post-penitentiary supervision measures are insufficient for preventing repeat offences. A contributing factor is the lack of differentiated supervision and the use of inadequate risk assessment methods. Many individuals under post-penitentiary supervision do not receive proper individualised support, which is a crucial condition for successful rehabilitation (Mukasheva *et al.*, 2024). Lack of financial resources, limited social and legal assistance, and discrimination based on criminal record. Released individuals often face stigma from employers and local communities, which restricts their access to employment and housing. The limited availability of comprehensive rehabilitation programmes – particularly those offering psychological support and vocational training – exacerbates their social isolation. Poor coordination among probation authorities, correctional institutions, NGOs, and local government bodies. Cooperation is often hampered by bureaucratic obstacles, leading to delays in the provision of essential services and disrupting the continuity of rehabilitation following release. Shortage of well-trained specialists to supervise individuals during PTP. Most probation authorities staff lack specialised training in psychology, social work, or rehabilitation methodologies. Consequently, the prevailing approach in practice tends to be punitive rather than supportive, which impedes positive behavioural change among probationers (Corley, 2022).

In response to these challenges, Kazakhstan has initiated a series of reforms aimed at improving the post-sentence probation system. These include the adoption of advanced electronic monitoring tools and the implementation of a unified probation case management system. These measures reflect the state's commitment to streamlining the probation process and optimising decision-making based on accurate and reliable data. A key prospective solution is the incorporation of risk and needs assessment mechanisms, which would enable probation officers to adopt a more individualised approach to supervision. This, in turn, would enhance the effectiveness of probation measures and help avoid imposing excessive restrictions on individuals assessed as posing a low risk to society (United Nations Office on Drugs and Crime, 2024).

An important direction for addressing the challenges in the provision of post-penitentiary supervision in Kazakhstan is international support, particularly from organisations such as the United Nations Office on Drugs and Crime and the EU. This support facilitates the implementation of projects aimed at strengthening the capacity of probation authorities, including the development of gender-sensitive tools and specialised training for probation authorities' staff. These initiatives are in line with international best practices, which emphasise rehabilitation, social reintegration, and the protection of human rights. Another promising direction involves enhancing Kazakhstan's legal reforms to expand opportunities for early release under house arrest schemes and to introduce conditional release from custody subject to compliance with supervision requirements. These reforms increase the number of individuals placed under community supervision instead of serving custodial sentences. This shift reflects a progressive move towards alternative sanctions, which not only alleviates prison overcrowding but also improves reintegration outcomes – provided the necessary resources are allocated to ensure the effectiveness of such measures (United Nations Office on Drugs and Crime, 2024; Tleubayev *et al.*, 2024).

Furthermore, the development of post-penitentiary supervision in Kazakhstan would greatly benefit from the adoption of advanced international practices, particularly those of Norway and Sweden. For instance, implementing the Norwegian Reintegration Guarantee model – which offers coordinated support for released prisoners in accessing housing, education, healthcare, and employment – would contribute to the establishment of a predictable and structured release process. This model emphasises shared responsibility between the state and society and involves dedicated professionals to coordinate reintegration efforts, helping to ensure a smoother transition from custody to community life – an area that remains a significant challenge in Kazakhstan.

From Sweden's experience, Kazakhstan could adopt the use of structured, evidence-based assessment tools, notably the RNR-A model and the KRIMSTICS programme. These tools enable a personalised approach to supervision, tailored to the risks and needs of released individuals, thereby enhancing the effectiveness of rehabilitation. Additionally, Sweden's principle of normalization – whereby prisoners have access to the same services as other members of society – can help reduce stigma and improve social inclusion in Kazakhstan. Both Norway and Sweden place strong emphasis on the professional training of prison staff and on cooperation with social services, healthcare providers, and employment agencies. By drawing on their experience, Kazakhstan has the opportunity to establish a more humane, effective, and rehabilitation-focused penitentiary system – one capable of reducing crime and recidivism, while supporting former convicts in their return to full participation in society.

Discussion

The provision of post-penitentiary supervision in Kazakhstan faces substantial challenges that hinder the effective reintegration of individuals who have served their sentences. Notably, post-penitentiary supervision suffers from poor coordination between penitentiary institutions, social services, and NGO, which is essential for addressing the complex and multifaceted needs of former convicts – particularly in securing employment, housing, and access to social assistance. By contrast, countries such as Norway and Sweden have implemented effective post-penitentiary supervision mechanisms grounded in principles such as individualised support, normalisation, institutional integration, and inter-agency cooperation. These systems contribute to lower recidivism rates and more successful reintegration outcomes. Drawing on the experience of these countries, Kazakhstan has the opportunity to enhance its post-penitentiary supervision by adopting a more holistic approach – one that incorporates legal reforms, improved social support mechanisms, and stronger collaboration between relevant institutions.

This study has examined the key challenges in the development of post-penitentiary supervision in Kazakhstan, with particular emphasis on the importance of adopting a differentiated approach to the supervision of former offenders and the potential benefits of integrating international best practices – specifically from Norway and Sweden – into the national framework. In this context, the findings are consistent with the study by S. Verweij *et al.* (2024), which explored the relationship between supervision and recidivism among Dutch prisoners released in 2012 and 2013. That study found that effective supervision contributes to reduced recidivism, but that the quality and targeting of support measures are more important than their sheer quantity. Although both studies underscore the critical role of supervision in reducing reoffending during the post-penitentiary supervision period, there are notable differences in focus and scope. While authors relied on empirical data from the Netherlands and concluded that increasing the number of probationary interventions does not necessarily yield improved outcomes, they emphasised the importance of targeted and constructive support. This view aligns with the findings of the present study; however, unlike S. Verweij *et al.*, this study also identified systemic and legislative barriers within Kazakhstan that impede the implementation of effective supervision practices. The findings of researchers are particularly relevant for Kazakhstan, as they highlight the importance of reforming the supervision system for persons in detention in order to enhance their reintegration into society. By addressing legal and institutional limitations, Kazakhstan can create a more functional, human-rights-oriented, and outcome-driven probation system.

The importance of individualised approaches to prisoners during incarceration is further supported by the findings of R. Yu *et al.* (2022), who concluded that the primary factors influencing reoffending among former prisoners in Sweden were individual characteristics rather than the conditions of detention within penitentiary institutions. Accordingly, the present study aligns closely with the conclusions of authors particularly in asserting that Kazakhstan's prison

system should move away from a standardised, one-size-fits-all model in favour of developing risk assessment tools and personalised supervision plans tailored to the specific needs of individual prisoners, as practised in Sweden. However, it is important to note that the study by R. Yu *et al.* (2022) presents a limitation in that it did not account for the jurisdictional differences across various countries. In contrast, the present study found that Kazakhstan faces distinct legislative constraints and resource limitations, which complicate the direct implementation of individualised approaches. This highlights the necessity of adapting international best practices – especially those from Sweden – to the socio-legal and institutional context of Kazakhstan.

A key finding of this study is the recognition that effective reintegration of individuals released from custody is determined less by the severity of the offence committed than by the availability of opportunities and support after release. This conclusion is consistent with the findings of K. Suonpää *et al.* (2023), who demonstrated that individuals imprisoned in Finland for serious violent crimes do not exhibit significantly higher rates of recidivism or lower employment levels compared to those convicted of less serious offences. Both the present study and the study by K. Suonpää *et al.* (2023) emphasise the critical importance of post-release outcomes, particularly the need for well-structured post-penitentiary supervision and reintegration measures. Overall, the research by the authors and the present study are in agreement on the necessity of providing high-quality, individualised assistance to former prisoners and ensuring adequate conditions for their social reintegration. Specifically, K. Suonpää *et al.* (2023) argue that the seriousness of the crime is not a decisive factor for successful reintegration – a view echoed in this study, which underlines the role of targeted support and systemic reform. Additionally, this study extends those findings by offering a critique of Kazakhstan's current legal and institutional framework, thereby underscoring the urgency of implementing proven international practices to improve reintegration outcomes.

In addition, this study revealed a lack of comprehensive social support, which constitutes a significant barrier to the effective implementation of PTP in Kazakhstan. Similar conclusions were drawn by D. Mukasheva *et al.* (2024), who found that prisoners' positive attitudes towards rehabilitation in Kazakhstan are closely linked to the availability of social support, the involvement of NGOs, and the maintenance of family ties. The researchers also observed that male prisoners generally exhibit more favourable perceptions of rehabilitation than female prisoners, and that harsh imprisonment conditions and chronic health issues adversely influence these perceptions. While D. Mukasheva *et al.* (2024) highlighted the importance of offenders' subjective perceptions during incarceration, the present study expands on this by examining how such perceptions should inform the design and implementation of rehabilitation programmes following release. Their findings were especially relevant for this study, as they underscored the pivotal role of social support. However, this study further demonstrates that the realisation of comprehensive social support in Kazakhstan requires substantial reform of the post-penitentiary supervision system, particularly within the legislative framework – thus complementing and extending the conclusions reached by D. Mukasheva *et al.* (2024) Both studies are aligned in their recognition of the critical role that social support mechanisms and inter-agency cooperation play in facilitating the successful reintegration of former prisoners in Kazakhstan.

Another key finding of the present study is the identification of societal stigma and lack of support as major impediments to the reintegration of ex-offenders. This aligns with the conclusions of a qualitative study by I.J. Sandbukt (2021) conducted in Norway, which emphasised that societal recognition and community support are essential to the successful rehabilitation of sex offenders, particularly in the absence of intensive criminal justice interventions. Overall, both studies agree that societal prejudice undermines the rehabilitation process and that active community engagement is vital to overcoming this challenge. A comparison of the research conducted by I.J. Sandbukt (2021) and the present study – both of which focus on the challenges of post-sentence probation – highlights a shared emphasis on the importance of public support and the implementation of effective measures to reduce recidivism. However, while I.J. Sandbukt's study demonstrated that public support exists, it also revealed that deep-seated societal prejudice remains a serious barrier to successful reintegration. This finding suggests that legal reforms alone are insufficient to address the stigma faced by former offenders. In contrast, the present study found that in Kazakhstan, these challenges are further exacerbated by systemic and legislative shortcomings. This represents a point of divergence from author's findings, as overcoming stigma in Kazakhstan requires not only raising public awareness but also significantly improving institutional practices and support mechanisms.

The findings of this study confirm that supervision during post-sentence probation contributes to reducing recidivism, particularly when combined with rehabilitation measures and risk-based strategies. Effective supervision also enhances employment prospects, which further decreases the likelihood of reoffending. Taken together, the studies analysed underscore that the success of reintegration efforts depends less on the intensity of control and more on the quality of supervision and its alignment with an individualised, needs-based approach for each person under supervision.

Conclusions

The examination of the probation system in Kazakhstan has revealed significant shortcomings within the state's approach to probation, stemming from legislative, institutional, and practical challenges. At the same time, the study highlights considerable potential for improvement and reform in this area. Probation is a vital component of the criminal justice system, aimed at facilitating the social reintegration of individuals released from prison and preventing recidivism through supervision and targeted support. However, the current state of probation in Kazakhstan differs markedly from the best practices observed in countries such as Norway and Sweden. These systems demonstrate the effectiveness of combining humane treatment of former offenders with individualised supervision and a strong focus on reintegration, all of which contribute to reduced recidivism rates.

Norway has achieved notable success by applying the principle of normalisation and actively involving society in the reintegration process, supported by the use of electronic monitoring systems. Sweden, on the other hand, has implemented structured risk assessment tools such as the RNR-A model and the KRIMSTICS programme to ensure the consistency and effectiveness of its probation measures.

Through the comparative analysis of national and international legislation, it was established that the Kazakh probation system is, in many respects, well developed. It defines clear principles, outlines the rights of individuals, and provides a structured framework for the entire probation process. A notable strength of Kazakhstan's legal framework is its comprehensive systematisation of the rights and obligations of persons subject to probation, including mandatory rehabilitation measures and distinct types of probation, thereby forming a coherent and integrated system. Nevertheless, the absence of explicit references to international probation standards in Kazakhstan's legislation presents a challenge to the full harmonisation of the national framework with international norms. This gap complicates accountability and limits the alignment of Kazakhstan's probation system with globally recognised principles and practices.

The main problems within the probation system in Kazakhstan include insufficient legal clarity, limited financial resources, the low professional level and inadequate training of probation officers, and weak coordination between state bodies and NGO. Additionally, serious obstacles to the social adaptation of released individuals include societal stigmatisation and a general lack of public awareness regarding probation. The absence of a holistic, differentiated, and individualised approach to reintegration – such as that employed in Norway and Sweden – limits the potential of probation as a viable alternative to imprisonment and contributes to high rates of reoffending.

Despite these challenges, the development of the probation system in Kazakhstan holds considerable promise. Key areas for improvement include strengthening interagency cooperation, upgrading the material and technical resources available to probation officers, and enhancing their professional training. Furthermore, expanding cooperation with civil society and increasing public awareness of the objectives and benefits of probation will contribute to more effective reintegration outcomes. A particularly promising direction for the Kazakh probation service is the adoption of modern electronic monitoring tools – similar to those used in Norway and Sweden – and the implementation of a unified case management system. In particular, the introduction of risk and needs assessment mechanisms, akin to the RNR-A used in Sweden, would allow probation officers to adopt a more individualised and effective approach to case supervision. Future research should include an expanded comparative analysis incorporating the experiences of additional countries – such as the United States, the United Kingdom, and Austria – in order to evaluate and refine Kazakhstan's approach to probation based on a broader set of international practices.

Acknowledgements

None.

Funding

This research has been funded by the Science Committee of the Ministry of Science and Higher Education of the Republic of Kazakhstan (Grant No. AP23485634 "Modern transformation of Kazakhstan's penitentiary system through the mechanism of public-private partnership").

Conflict of interest

None.

References

[1] Adilbekova, A. (2021). The concept of probation and the implementation of probation control over persons with a suspended sentence in the Republic of Kazakhstan. *International Penitentiary Journal*, 3(1), 26-30.

[2] Anuarbek, Ye., & Zharkenova, T. (2020). *An assessment of the rehabilitation of convicts in Kazakhstan*. Retrieved from https://nur.nu.edu.kz/server/api/core/bitstreams/f6279832-db9d-452e-8856-f001076de68c/content.

[3] Azhibaev, M. (2020). Reformation issues of the penal system in the Republic of Kazakhstan. *International Penitentiary Journal*, 2(3), 168-175. doi: 10.33463/2712-7737.2020.02(1-3).3.168-175.

[4] Bäckström, P.J., Danielsson, M., Starfelt Sutton, L.C., & Andersson, D. (2022). Evaluation of the predictive validity of a risk-need-responsivity assessment tool (RNR-A) in the Swedish prison and probation service. *Prison Journal*, 102(3), 367-390. doi: 10.1177/00328855221095561.

[5] Becker-Pestka, D. (2022). E-learning for prisoners. experiences from Sweden, Norway, Poland, Finland and Germany. *International Journal of Research in E-Learning*, 8(1).

[6] Berghuis, M., Nieuwbeerta, P., Palmen, H., Sentse, M., van Hazebroek, B., & van Ginneken, E. (2022). Visitation patterns and post-release offending: Exploring variations in the timing, rate, and consistency of prison visits. *Journal of Criminal Justice*, 81, article number 101904. doi: 10.1016/j.jcrimjus.2022.101904.

[7] Bonta, J. (2023). Training community supervision officers in the risk-need-responsivity model of offender rehabilitation: A review and implications. *Journal of Offender Rehabilitation*, 62(1), 39-58. doi: 10.1080/10509674.2022.2158986.

[8] Brooker, C., Sirdifield, C., & Marples, R. (2020). Mental health and probation: A systematic review of the literature. *Forensic Science International: Mind and Law*, 1, article number 100003. doi: 10.1016/j.fsiml.2019.100003.

[9] Chasciar, D.R., Chasciar, V., Coman, C., Toderici, O.F., Toader, L., Kovacs, A., & Bularca, M.C. (2025). Determinants of post-penitentiary social reintegration: Analysis of the needs and perceptions of persons released from detention in Romania. *Frontiers in Psychology*, 16, article number 1484889. doi: 10.3389/fpsyg.2025.1484889.

[10] Constitution of the Republic of Kazakhstan. (1995, August). Retrieved from https://www.akorda.kz/en/constitution-of-the-republic-of-kazakhstan-50912.

[11] Corley, F. (2022). *Kazakhstan: Post-prison "There's a block everywhere!"*. Retrieved from https://www.eurasiareview.com/23052022-kazakhstan-post-prison-theres-a-block-everywhere/.

[12] Criminal Procedure Code of the Republic of Kazakhstan. (2014, July). Retrieved from https://track.unodc.org/uploads/documents/BRI-legal-resources/Kazakhstan/16 - Criminal Procedure Code of the Republic of Kazakhstan EN.pdf.

[13] Dhami, M.K., & van den Brink, Y.N. (2022). A multi-disciplinary and comparative approach to evaluating pre-trial detention decisions: Towards evidence-based reform. *European Journal on Criminal Policy and Research*, 28, 381-395. doi: 10.1007/s10610-022-09510-0.

[14] Directive of the European Parliament and of the Council No. 2016/343 "On the Strengthening of Certain Aspects of the Presumption of Innocence and of the Right to Be Present at the Trial in Criminal Proceedings". (2016, March). Retrieved from https://eur-lex.europa.eu/eli/dir/2016/343/oj/eng.

[15] Dominey, J., & Canton, R. (2022). Probation and the ethics of care. *Probation Journal*, 69(4), 417-433. doi: 10.1177/02645505221105401.

[16] Isibayeva, E.I. (2024). The impact of the probation service on the socialization of persons released from prison. *Bulletin of the Institute of Legislation and Legal Information of the Republic of Kazakhstan*, 1(76), 164-173. doi: 10.52026/2788-5291_2024_76_1_164.

[17] Jasiński, K. (2024). Fear of freedom in the context of social re-adaptation of repeat offenders. In I. Visković, Z. Zacłona & I. Radovanović (Eds.), *Pedagogy in education practice* (pp. 218-237). Split: University of Split.

[18] Jiang, S., Zhang, D., & Lambert, E.G. (2022). Views of community corrections supervision and their predictors: An officer and offender comparison. *Prison Journal*, 102(1), 84-107. doi: 10.1177/00328855211069305.

[19] Khablo, O., & Svoboda, I. (2024). International standards for the application of the presumption of innocence in criminal proceedings. *Scientific Journal of the National Academy of Internal Affairs*, 29(1), 55-65. doi: 10.56215/naia-herald/1.2024.55.

[20] Koffeld-Hamidane, S., Andvig, E., & Karlsson, B. (2023). Spotlighting the probation meeting – Lived experiences of desistance-supporting interaction following imprisonment. *European Journal of Probation*, 15(3), 218-237. doi: 10.1177/20662203231199397.

[21] Kuć, M. (2021). The role of post-penitentiary assistance in counteracting the social stigmatisation and marginalisation of former convicts released from penitentiary facilities. *Biuletyn Stowarzyszenia Absolwentów i Przyjaciół Wydziału Prawa Katolickiego Uniwersytetu Lubelskiego*, 16(1), 149-164. doi: 10.32084/sawp.2021.16.1-9.

[22] Law of the Republic of Kazakhstan No. 38-IV LRK "On Probation". (2016, December). Retrieved from https://adilet.zan.kz/kaz/docs/Z1600000038.

[23] Lerman, A.E., Sadin, M., Morrison, W., & Wieselthier, J. (2024). The effects of post-release community supervision reform. *Journal of Experimental Criminology*, 20, 23-48. doi: 10.1007/s11292-022-09524-y.

[24] Mertl, J. (2022). What seems to be the problem? Ex-prisoners' reentry/resettlement in the Czech Republic. *Crime & Delinquency*, 70(8), 1993-2016. doi: 10.1177/00111287221115645.

[25] Moroz, I., & Horislavska, I. (2024). The legal and penitentiary system as repressive apparatus: Legal methods of protecting a civil and political rights. *Law. Human. Environment*, 15(2), 85-100. doi: 10.31548/law/2.2024.85.

[26] Mukasheva, D., Kudabekov, M., Yessimova, D., Tulkinbayev, N., & Konvisar, A. (2023). Resocialisation programmes in Kazakhstan. In U. Pape, H. Stöver & I.I. Michels (Eds.), *Social work and health in prisons* (pp. 189-219). Madrid: Nomos. doi: 10.5771/9783748935988-189.

[27] Mukasheva, D., Tulkinbayev, N., Prilutskaya, M., Yessimova, D., & Stöver, H. (2024). Behind bars: Understanding prisoner perception of penitentiary rehabilitation in Kazakhstan. *International Journal of Law, Crime and Justice*, 77, article number 100669. doi: 10.1016/j.ijlcj.2024.100669.

[28] Nesterov, A.Y. (2020). Features and problems of post-prison adaptation of juvenile convicts: Methods and ways to overcome them. *Bulletin the National Academy of Sciences of the Republic of Kazakhstan*, 4(386), 251-264. doi: 10.32014/2020.2518-1467.126.

[29] Priestley, P., & Vanstone, M. (2022). Looking back – Looking forward. In M. Vanstone & P. Priestley (Eds.), *The Palgrave handbook of global rehabilitation in criminal justice* (pp. 687-699). Cham: Palgrave Macmillan. doi: 10.1007/978-3-031-14375-5_39.

[30] Probation Explained: Everything You Need to Know. (2024). Retrieved from https://www.jedplatform.com/2024/07/24/define-probation/.

[31] Pylypenko, L., & Zmysna, I. (2023). Essence, classification and functions of social services in Ukraine. *Democratic Governance*, 16(1), 118-128. doi: 10.23939/dg2023.01.118.

[32] Rakhimberdin, K.K. (2024). The institution of arrest as a punishment in the legislation of the republic of Kazakhstan: Collisions, problems, and application prospects. *Bulletin of the Institute of Legislation and Legal Information of the Republic of Kazakhstan*, 4(79), 118-126. doi: 10.52026/2788-5291_2024_79_4_118.

[33] 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 and Legal Studios*, 7(4), 59-68. doi: 10.32518/sals4.2024.59.

[34] Recommendation of the Committee of Ministers No. CM/Rec(2010)1 "To Member States on the Council of Europe Probation Rules". (2010, January). Retrieved from https://surl.li/dyapzp.

[35] Ruhland, E., & Scheibler, E. (2021). Probation officer discretion in monitoring and violating supervision conditions. *Probation Journal*, 69(2), 177-196. doi: 10.1177/02645505211041578.

[36] Sandbukt, I.J. (2021). Reentry in practice: Sexual offending, self-narratives, and the implications of stigma in Norway. *International Journal of Offender Therapy and Comparative Criminology*, 67(9), 930-951. doi: 10.1177/0306624x211049184.

[37] Schaefer, L., Moir, E., & Williams, G.C. (2022). When a loved one is on community supervision: The crime controller strategies used by "PoPPs" (parents/partners/peers of probationers and parolees). In B. Stickle (Ed.), *Field studies in environmental criminology* (pp. 81-98). London: Routledge. doi: 10.4324/9781003240280.

[38] Spytska, L. (2024). Symptoms and main features of personality formation of a psychopath. *Archives of Psychiatry and Psychotherapy*, 26(1), 34-43. doi: 10.12740/APP/172226.

[39] Stanek, K.M., Grzegolec, N., & Mikuli, I. (2021). Social and professional readaptation programs in the world as a good example of practices in the field of post-penitentiary aid in Poland. *Probacja*, 2, 53-72. doi: 10.5604/01.3001.0014.9326.

[40] Suonpää, K., Aaltonen, M., Tyni, S., Ellonen, N., & Kivivuori, J. (2023). Post-release outcomes of lethal and non-lethal offenders: Recidivism and participation in employment or education. *Journal of Criminal Justice*, 88, article number 102108. doi: 10.1016/j.jcrimjus.2023.102108.

[41] Sutton, L.C., Persson, B.N., & Danielsson, M. (2023). Predicting intimate partner violence recidivism using the Swedish prison and probation service's risk-need-responsivity assessment (RNR-A). *Nordic Journal of Criminology*, 24(1). doi: 10.18261/njc.24.1.4.

[42] Swedish National Council for Crime Prevention. (n.d.). *Statistics from the judicial system*. Retrieved from https://bra.se/english/statistics/statistics-from-the-judicial-system#h-Recidivism.

[43] Tleubayev, A, Taubayev, B, Aitimov, B, & Tinistanova, S. (2024). Leading practices of development of probation service. *Scientific Herald of Uzhhorod University. Series "Physics"*, 55, 2361-2371. doi: 10.54919/physics/55.2024.236ki1.

[44] Todd-Kvam, J. (2020). Probation practice, desistance and the penal field in Norway. *Criminology & Criminal Justice*, 22(3), 349-366. doi: 10.1177/1748895820953192.

[45] Toedtman, S.T. (2024). *Exploring the exceptional corrections paradigm: An analytical case-study of the Norwegian model of criminal justice*. Retrieved from https://hdl.handle.net/10037/34106.

[46] United Nations Interregional Crime and Justice Research Institute. (1997). *Promoting probation internationally*. Retrieved from https://unicri.org/sites/default/files/2021-06/Probation international.pdf.

[47] United Nations Office on Drugs and Crime. (2019). *The EU, the UN and the Netherlands support social reintegration of prisoners in Kazakhstan: Visit to Karagandy region*. Retrieved from https://www.unodc.org/roca/en/news/the-eu--the-un-and-the-netherlands-support-social-reintegration-of-prisoners-in-kazakhstan -visit-to-karagandy-region.html.

[48] United Nations Office on Drugs and Crime. (2024). *Fostering regional collaboration on probation: The study visit of Kyrgyzstan's and Tajikistan's delegations to Kazakhstan*. Retrieved from https://www.unodc.org/roca/en/NEWS/news 2024/july/fostering-regional-collaboration-on-probation -the-study-visit-of-kyrgyzstans-and-tajikistans-delegations-to-kazakhstan.html.

[49] United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules). (1990, December). Retrieved from https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-standard-minimum-rules-non-custodial-measures.

[50] Verweij, S., Beijersbergen, K.A., Weijters, G., Wermink, H.T., & Blokland, A.A. (2024). Supervision following release from prison and reoffending during and after the supervision period. *Crime & Delinquency*. doi: 10.1177/00111287241277767.

[51] Weswasi, E.A. (2025). Effect of early prison release with electronic monitoring. *Journal of Criminal Justice*, 97, article number 102379. doi: 10.1016/j.jcrimjus.2025.102379.

[52] Weswasi, E.A., Sivertsson, F., Bäckman, O., & Nilsson, A. (2023). Does sentence length affect the risk for criminal recidivism? A quasi-experimental study of three policy reforms in Sweden. *Journal of Experimental Criminology*, 19, 971-999. doi: 10.1007/s11292-022-09513-1.

[53] World Population Review. (2025). *Crime rate by country 2025*. Retrieved from https://worldpopulationreview.com/country-rankings/crime-rate-by-country.

[54] Youssef, C. (2023). Prison to desistance: (re)integration and aftercare for those released from prison. *Journal of Forensic Practice*, 25(4), 356-374. doi: 10.1108/JFP-04-2023-0013.

[55] Yu, R., Långström, N., Forsman, M., Sjölander, A., Fazel, S., & Molero, Ya. (2022). Associations between prisons and recidivism: A nationwide longitudinal study. *PloS One*, 17(5), article number e0267941. doi: 10.1371/journal.pone.0267941.

[56] Zhunisbayeva, G., Zabikh, Sh., Chokina, M., Ryssaldiyeva, A., Osmanova, G., & Zayed, N.M. (2021). Problems of re-socialization of citizens released from the places of deprivation of liberty. *Journal of Legal, Ethical and Regulatory Issues*, 24(6).

Проблеми розвитку постпенітенціарної пробації в Казахстані

Нурлан Тлешалієв
Кандидат юридичних наук, доцент
Каспійський університет
050000, просп. Достика, 85А, м. Алмати, Республіка Казахстан
https://orcid.org/0000-0003-3871-866X
Азамат Тлеубаєв
Аспірант, старший викладач
Каспійський університет
050000, просп. Достика, 85А, м. Алмати, Республіка Казахстан
https://orcid.org/0009-0001-7099-0922
Гульзіпа Дуйсенбаєва
Магістр
Каспійський університет
050000, просп. Достика, 85А, м. Алмати, Республіка Казахстан
https://orcid.org/0009-0001-8750-4193
Анжеліка Цой
Магістр
Каспійський університет
050000, просп. Достика, 85А, м. Алмати, Республіка Казахстан
https://orcid.org/0009-0002-7884-6922
Акмарал Сманова
Кандидат юридичних наук, старший викладач
Казахський національний університет імені аль-Фарабі
050040, просп. аль-Фарабі, 71, м. Алмати, Республіка Казахстан
https://orcid.org/0000-0003-4636-4240

Анотація. Метою цього дослідження був критичний аналіз практики постпенітенціарної пробації в Казахстані. Використано термінологічний, герменевтичний та порівняльний методи. У дослідженні розглянуто сутність пробації, визначено її основні види, а також більш детально проаналізовано постпенітенціарну пробацію як невід'ємну складову. Проаналізовано досвід Норвегії та Швеції у цій сфері та встановлено, що ці держави ефективно впроваджують пенітенціарну пробацію через комплекс заходів: гарантування гуманного поводження, дотримання принципу нормалізації, здійснення індивідуального нагляду, сприяння реінтеграції звільнених засуджених та зниження рівня рецидивної злочинності. Було підкреслено важливість включення цих заходів у казахстанську систему як перспективи розвитку. У результаті було проведено порівняльний аналіз національних нормативно-правових актів Казахстану та міжнародної бази, що регулює пенітенціарну пробацію. Зокрема, порівнювалися такі аспекти: права осіб, звільнених з місць позбавлення волі; визначення пробації; основні принципи та види пробації; засоби реабілітації та ресоціалізації; застосування постпенітенціарної пробації. Крім того, було проаналізовано статистичні дані щодо індексів злочинності та безпеки в Казахстані, Норвегії та Швеції. З'ясовано, що найбільш сприятливі показники має Норвегія, де рівень злочинності становить 32,6, а індекс безпеки – 67,4; Казахстан посідає середню позицію з показниками 45,9 та 54,1 відповідно; а у Швеції зафіксовано вищий рівень злочинності – 48,4 та індекс безпеки – 51,6. Було досліджено стан надання постпенітенціарної пробації в Казахстані та визначено її основні проблеми: високий рівень рецидивної злочинності; недостатній нагляд за колишніми засудженими; брак фінансових ресурсів; обмеженість соціальної та правової допомоги; дискримінація за ознакою судимості; низький рівень міжвідомчої співпраці; нестача кваліфікованого персоналу. Результати цього дослідження можуть бути корисними для визначення шляхів вирішення цих проблем у Казахстані

Ключові слова: пробація; позбавлення волі; виправна установа; звільнені засуджені; нормативно-правовий акт

UDC 340.1:343.98
DOI: 10.32518/sals2.2025.144

Соціально-правові студії. 2025. Т. 8, № 2
Social & Legal Studios. 2025. Vol. 8, No. 2

Legal regulation of the concept of "bot farms" as a response to manipulation of Internet users

Dina Dryzhakova*
Postgraduate Student
Taras Shevchenko National University of Kyiv
01033, 60 Volodymyrska Str., Kyiv, Ukraine
https://orcid.org/0009-0004-7585-5860

Abstract. The aim of this study was to develop a legislative definition of bot farms, thereby creating a basis for legal regulation of their use. The research employed the formal-legal and comparative-legal methods. The issue of bot farms is an emerging area of interest, prompted by increasing trends in the use of bots for purposes such as propaganda, fraud, and disinformation. Bots can be categorised into the following groups: one-day bots, classic bots, foreign bots, non-standard bots, and bots with complex behaviour. Furthermore, the study identified the purposes and areas of activity of bot farms, which include generating artificial traffic for financial gain, and conducting propaganda, disinformation, and the promotion of narratives and specific viewpoints within society. The study also examined the legislative regulation of the creation and operation of bot farms. A comparative analysis was conducted of the legal norms in European Union countries and the United States of America concerning the spread of artificial intelligence and the use of bots. The legal framework addressing liability for the use of bot farms for criminal purposes was reviewed. Relevant legislative proposals were analysed, the adoption of which could influence prosecution for disinformation and the deployment of criminal bots under martial law. Specific cases involving the exposure of bot farms were considered, along with the distinctive legal mechanisms used to counteract the activities of illegal bot farms, based on the experiences of foreign jurisdictions. The practical value of the study lies in the fact that it showed that Ukrainian legislation is not adapted to regulate the development of bot technologies, especially AI-based bots, and therefore needs to be revised by the legislator to combat the growing risks of disinformation and manipulation

Keywords: cybersecurity; artificial intelligence; criminal liability; social networks; fake information; propaganda

Introduction

Bot farms have emerged as a formidable instrument in the Russian Federation's information warfare strategy, specifically aimed at fracturing Ukrainian society, fomenting discord, and undermining international support for Ukraine. The predominant concentration of these bot farms was in Kyiv, Odessa, Lviv, and Zaporizhzhia, where they generated fraudulent identities and online groups to disseminate pro-Russian narratives and misinformation (Kostenko *et al.*, 2022). Bot farms, or "botnets", have been increasingly used to propagate unlawful material intended to destabilise public order in Ukraine, compromise its worldwide image, and diminish its diplomatic initiatives. This tendency has raised significant worries about cybersecurity since botnets are used for many illicit operations, including the manipulation of public opinion and the incitement of territorial alterations. In the wake of the Russian Federation's full-scale invasion, bot farms have attracted considerable scrutiny for their involvement in misinformation efforts aimed at both the general populace and state authorities. These bots have been deliberately used to undermine frontlines and occupied areas, jeopardise national security, and disseminate disinformation that diminishes the legitimacy of the Ukrainian government.

Globalisation and digitalisation have created novel strategies for influencing Internet users, making information security a vital component of national security (Tkachenko *et al.*, 2025). Since the start of the invasion, bot farms have become a vital component of Russia's hostile information operations. In 2022, the Security Service of Ukraine documented more than 4,500 cyberattacks, inflicting material damage equal to that of military operations (National Cybersecurity Coordination Centre, 2023). In 2025, the information landscape is a comprehensive battlefield, using sophisticated technologies and instruments. Ukrainian law currently lacks essential definitions for phrases such as "bot", "bot farm", and "cyberwarfare", underscoring the pressing need for comprehensive legal frameworks to tackle these modern issues.

As the concepts of bot and bot farm are relatively new, there is still insufficient research on the topic within the scientific community. The creation of large volumes of fake accounts is carried out with the intent to disseminate disinformation and pursue criminal objectives (Kravchuk *et*

Suggested Citation

Article's History: Received: 16.03.2025 Revised: 27.05.2025 Accepted: 25.06.2025

Dryzhakova, D. (2025). Legal regulation of the concept of "bot farms" as a response to manipulation of Internet users. *Social & Legal Studios*, 8(2), 144-154. doi: 10.32518/sals2.2025.144.

*Corresponding author

Copyright © The Author(s). This is an open access Article distributed under the terms of the Creative Commons Attribution License 4.0 (https://creativecommons.org/licenses/by/4.0/)

al., 2024). This practice can inflict harm both on individual citizens and on the state as a whole by spreading panic among the population, discrediting public authorities in the eyes of civil society, and damaging Ukraine's reputation on the international stage. H.M. Fadhil *et al.* (2022) introduced a machine learning approach for botnet identification. Their methodology used several classification algorithms to identify dangerous bots throughout networks, demonstrating how artificial intelligence may improve the efficacy of botnet detection. The model enhanced the accuracy and efficiency of botnet detection by the use of data mining methods, significantly impacting real-time network security management. P. Rataj (2025) offered a legal analysis of botnet defence, emphasising the convergence of cybersecurity and data protection legislation inside the European Union. He examined the legal frameworks inside the EU and their applicability to the protection of personal data in the context of botnet attacks. His study emphasised the difficulties of implementing cybersecurity legislation against botnet operators while upholding privacy rights and suggested enhancements to existing legal norms to tackle the escalating hazards presented by bots in digital contexts.

I. Mbona and J.H.P. Eloff (2022) used Benford's rule, a statistical notion often utilised in fraud detection, to discern irregular patterns in bot behaviour. Through the analysis of numerical data distribution in social media activity, they demonstrated the efficacy of this technique in identifying bots that diverge from typical user behaviours, so providing an additional instrument for botnet identification. In another study, I. Mbona and J.H.P. Eloff (2023) explored the categorisation of social media bots as either malicious or benign by means of semi-supervised machine learning methodologies. Their study focused on differentiating between malicious bots employed for disseminating misinformation and benign bots that may fulfil legal functions, such as customer service or automated content distribution. The research provided significant insights into the automation of dangerous bot identification on social media platforms using machine learning, aiding continuing efforts to counter digital manipulation and enhance online security.

Q. He *et al.* (2022) introduced an innovative method for detecting essential bots inside a botnet using the principles of gravitational law. The authors devised an approach that predicts the most important bots inside a network by applying this model to large-scale botnet infections. This strategy proved essential for identifying the most harmful bots during a botnet assault and is especially valuable for comprehending the dissemination and effects of botnets in real-time networks. J.M. Hodgins (2022) examined the use of social media bots to influence political outcomes. Author underscored the need for proactive steps and legislation to avert foreign meddling in democratic processes by concentrating on the role of bots in disseminating misinformation and undermining public opinion. This highlighted the increasing apprehension over the utilisation of bots for political manipulation, which was subsequently examined by T. Shadmy (2022), who proposed a legislative framework that reconciles free expression with the need to mitigate the dissemination of misinformation. Both works emphasised the necessity of legal measures to counteract the impacts of bots on public opinion and election integrity.

The aim of this study was to investigate and define the concept of bot farms in the context of cybersecurity measures, to develop a legislative definition informed by international experience, and to establish effective and relevant mechanisms for countering and preventing the use of bot farms in actions aimed at undermining Ukraine's national security. The objectives of the study include defining the concept of bots and bot farms, identifying the features of their operation, and examining the legal regulation of bot farm activities.

Materials and methods

In the course of conducting research to establish legal regulation in the field of cybersecurity and cyberspace, the following regulatory legal acts were studied: Code of Ukraine on Administrative Offenses (1996), Criminal Code of Ukraine (2001), Law of Ukraine No. 2657-XII "On Information" (1992), Law of Ukraine No. 2849-IX "On Media" (2022). Draft laws submitted for consideration to the Verkhovna Rada of Ukraine and designed to resolve gaps in liability for the criminal use of bots to harm national security were also used, namely: Draft Law of Ukraine No. 11115 "On Amendments to Certain Laws of Ukraine on Regulation of the Activities of Information Sharing Platforms Through Which Mass Information is Distributed" (2024), Draft Law of Ukraine No. 9223 "On Amendments to the Criminal and Criminal Procedure Codes of Ukraine Regarding the Establishment of Liability for Certain Actions Against the Foundations of National Security of Ukraine" (2023).

In order to fully and comprehensively study this topic, special methods of scientific knowledge were used, such as formal-legal, logical-legal, comparative-legal, and legal analysis methods. Using the formal-legal method, the regulatory framework regulating the US and European Union in the field of cybersecurity was studied, in particular, United States Senate Bill No. 1001 "Bots: Disclosure" (2018), BOTS Act (2016), Digital Services Act (2022) and the Code of Practice on Disinformation (2022) in order to determine the international practice of legal regulation of bots and bot farms. Using the legal dogmatic method, the concept of bot farms was defined in the context of their role in undermining information security.

At the initial stage of the study, the problem was identified. Also, the concept of a bot was clarified, their classification, features of creation and application were studied. The nature of bots and the procedure for their creation were studied. The next stage of the study was the determination of the regulatory and legal regulation of relations in the information environment, the establishment of levels of responsibility for offenses in cyberspace. After that, the legal mechanisms for regulating relations in the field of information security in the USA and the EU were studied. The Explanatory Note to the Draft Law of Ukraine No. 11115 (2024) was also studied regarding the detection and neutralisation of bot farms by special services in Ukraine since the beginning of the full-scale invasion of the Russian Federation. At the final stage of the study, the main directions for improving national legislation in the field of information security were identified.

Results

On average, Internet users spend more than two hours per day on social networks. The Internet has become a primary platform for communication on current events, culture, and politics, thereby increasing the significance of influencing what is seen and discussed online. Against this backdrop,

fake accounts – or bots – are present on every social network and exist in vast numbers. Bots are automated social media accounts created to perform specific actions and imitate the behaviour of genuine users. A botnet, or collection of such accounts, constitutes a network of bots that are programmed to execute identical tasks, unified by a shared objective and closely interconnected through mutual subscriptions (Makhortykh *et al.*, 2022).

Bots are, therefore, specially designed programmes that automatically perform the same actions as ordinary users. These bots may closely resemble legitimate accounts, complete with individual profiles and activity histories. They can post comments, publish content, and give likes on social networks. Bots are capable of fulfilling a broad range of functions, including entertainment, search, broadcasting, viewing, "liking", subscribing, and content publication (Shynkar & Levchenko, 2023). By nature, bots serve as a convenient interface for users interacting with various web services. As such, bots will continue to evolve technologically to better replicate human behaviour, particularly through the integration of artificial intelligence (Rawat *et al.*, 2023). The development of AI has enabled the generation of an unlimited number of synthetic images of non-existent individuals. AI-based bots can now comprehend natural language, analyse messages, and identify user needs. Furthermore, bot management software – referred to as "bot harvesters" – has become increasingly common, allowing the control of dozens or even hundreds of such accounts (Ye *et al.*, 2024). To influence public opinion, increase socio-psychological tension, and disseminate criminal disinformation, Russian special services actively deploy various informational and technical tools, including botnets, microblogs, and social networks, to undermine national information security. Social networks, in particular, are among the least protected mediums for countering the spread of false, anti-Ukrainian content (Dzyana & Dzyanyy, 2023).

Draft Law of Ukraine No. 9223 (2023) establishes legal provisions addressing the creation, acquisition, utilisation, or sale of accounts within automated information systems, electronic communication networks, and social media platforms. The legislation seeks to combat the spread of misinformation and the manipulation of public sentiment via these accounts. It specifically criminalises the usage of accounts that deliberately harbour false information about the user and are used to disseminate and spread incorrect data, including impersonating unverified persons or obstructing the actions of individuals and legal bodies. Actions detrimental to Ukraine's sovereignty, territorial integrity, defence capabilities, or national security are subject to sanctions that may include fines or restrictions on personal freedom. The proposed legislation further suggests that the Security Service of Ukraine be designated as the authority for the pre-trial investigation of certain offences. The legislation does not expressly define "bot farms", but its provisions include acts often linked to these operations; therefore, it seeks to mitigate misinformation and protect national security.

One of the state's principal responsibilities is to monitor information resources – such as online publications, social media platforms, blogs, forums, and personal pages – to identify those disseminating disinformation, inciting interethnic hatred, or promoting violence and intolerance, with the aim of blocking or disabling such resources (Kovalchuk, 2025). Recently, the use of bot farms to negatively impact Ukraine's information space has escalated significantly. Through fake accounts, information is disseminated that provokes panic among the population and discredits Ukrainian authorities both domestically and internationally (Zoltick & Maisel, 2023).

Criminal bot farms are being actively used by Russian propaganda to conduct information and psychological operations that adversely affect the psychological well-being of the Ukrainian population, influence public opinion about the military, and incite panic through the dissemination of propaganda, disinformation, and selective exaggeration or suppression of information. The most vulnerable to such influence are populations residing in the occupied territories and in the aggressor state itself; however, populations in EU countries and those living in Ukrainian-controlled areas are also subject to this negative impact. Representatives of the Russian special services utilise every available tool to deploy bots and bot farms, including platforms such as Facebook, Telegram, Viber, TikTok, and others, employing both technological and psychological strategies to intensify the impact of information on public perception. These activities are further facilitated by objective factors such as electricity outages across much of the occupied territories and the absence of Ukrainian telecommunications. Disinformation, in this context, refers to the public dissemination of unverified or knowingly false information that may adversely affect the exercise of citizens' legitimate rights and interests or threaten the national security of the state (Zelenov, 2024). "Fake" can be defined as false information presented through fabricated websites, impersonated social media profiles, or accounts mimicking other individuals. Bots, in turn, are specialised programmes that manage accounts and strategically post comments at specific times to maximise impact (Odilla, 2023). Bots are classified into several categories, as presented in Table 1.

Table 1. Bot classification

Name	Characteristic
Mayflies	Created automatically for a short period of time to perform single tasks. They are usually easy to detect because they create social media profiles without a photo or with an empty news feed.
Classic bots	Created for a longer period using scripts, the account filling is more complete, but images of people are never used
Alien bots	Correspond to the characteristics of classic bots, but the accounts have foreign names because they are created on foreign bot farms.
Non-template bots	These accounts match the characteristics of a real person. They are more complex, but there is no segmented audience that allows you to distinguish a bot from a real user.
Bots with complex behavior	Systems that are created using complex programs and that accurately mimic the behaviour of real people on social networks

Source: compiled by the author based on F. Odilla (2023)

Bot farms are understood as facilities where numerous bots are created with the intent of performing specific tasks. In essence, a bot farm is an operational base for individuals who generate large numbers of bots for the purpose of engaging in criminal activities (Harbinja *et al.*, 2023). Generally, bot farms function in two principal directions. The first involves the creation of bots to generate artificial traffic as a means of financial gain. The second concerns the execution of propaganda, dissemination of disinformation, and promotion of particular narratives and ideological viewpoints within society (Ahmad *et al.*, 2023). Upon examining this issue, several key reasons can be identified for the widespread use of bot farms in Ukraine. These include: the promotion of specific political views and narratives among the population; the shaping of public opinion in ways that serve the interests of the aggressor; fraudulent activities; and the theft of citizens' personal data by bots for subsequent misuse.

To combat and prevent the spread of disinformation, bot activity, and other manipulative information technologies within Ukraine, the Centre for Countering Disinformation under the National Security and Defence Council has been operational since its establishment on 11 March 2021. The Centre's primary functions include countering disinformation in the military domain, addressing crime in the information sphere, regulating information policy across all sectors, and engaging in scientific and technical initiatives. Its principal focus is on combating disinformation on the Internet and in the media. At the legislative level in Ukraine, the mechanism for countering disinformation – depending on the type of legal liability – involves three key areas, which are presented in Table 2.

Table 2. Sectors of legal regulation of disinformation

Sector	Regulatory and legal acts
Civil liability	Constitution of Ukraine (1996) Article 278 of the Civil Code of Ukraine (2003) Law of Ukraine No. 2657-XII "On Information" (1992) Law of Ukraine No. 2849-IX "On Media" (2022)
Administrative and legal liability	Article 173-1 of the Code of Ukraine on Administrative Offenses (1996)
Criminal liability	Articles 109, 110, 250, Section 2, Article 361 of the Criminal Code of Ukraine (2001)

Source: compiled by the author

It is evident that the existing legal framework for the prevention and prosecution of cyber offences remains incomplete and inadequate, as many innovative technologies operate outside the boundaries of current legislation. The existing legal framework in Ukraine, encompassing statutes such as the Code of Ukraine on Administrative Offenses (1996), the Criminal Code of Ukraine (2001), and Law No. 2657-XII "On Information" (1992), fails to sufficiently address the problem of bot farms and the utilisation of bots for disinformation and manipulation. These laws mostly address concerns such as fraud and privacy infringements, but they are deficient in explicit regulations governing the development, utilisation, and effects of automated systems, such as bots, that affect public opinion or compromise national security. The Criminal Code of Ukraine addresses offences such as fraud and identity theft, but it fails to identify or criminalise the use of bot farms in relation to political manipulation or misinformation operations.

Law of Ukraine No. 2657-XII "On Information" (1992) pertains to information dissemination but fails to delineate the regulation of automated or artificial intelligence-driven content development, which is essential to the functioning of bot farms. Moreover, Draft Law of Ukraine No. 9223 (2023) establishes penalties for actions undermining national security, such as disseminating false information through automated accounts. However, it does not have the comprehensiveness to address the intricate dynamics of contemporary bot farm operations, underscoring the necessity for more precise and updated legislation to combat these emerging threats.

In an effort to regulate legal relations within the information space, Draft Law of Ukraine No. 11115 (2024) has been submitted to the Verkhovna Rada. The authors of this draft law highlight that although the Law of Ukraine No. 2849-IX "On Media" (2022) defines information sharing platforms, their activities are not sufficiently regulated. Providers of such platforms are not classified as media entities, and as a result, they are not legally obliged to protect users' personal data, block illegal content, or hold channel owners accountable for the distribution of such content. The draft law proposes the following mechanisms for regulating the activities of information sharing platforms:

1. Defining providers of information sharing platforms as distinct entities within the media sector. This proposal conforms to the Law of Ukraine No. 2849-IX "On Media" (2022), which governs media operations in the digital realm. Classifying online platforms as media businesses would expand regulatory authority to include internet-based services that disseminate material to the public. This is legally robust since it incorporates these platforms inside the media system, mandating compliance with duties akin to those of conventional media outlets, hence enhancing responsibility in information dissemination.

2. Establishing that such platforms operate specific accounts or channels through which mass information is disseminated. This proposal aligns with Ukrainian legal standards on media regulation and information dissemination. It recognises the responsibility of platforms in regulating and overseeing content dissemination, assuring their accountability for the material disseminated via their channels. This provision aims to improve transparency and traceability of content sources in response to the proliferation of disinformation on digital platforms, along with Ukraine's current legislative framework regarding information security and transparency.

3. Introducing legislative obligations for information sharing platform providers by analogy with the existing requirements for video sharing platforms. The analogy to video sharing platforms, as shown in the Directive of the European Parliament and of the Council No. 2018/1808 (2018) and Ukraine's media rules, is a rational strategy for regulating online material dissemination. This encompasses

responsibilities such as content moderation, removal of unlawful information, and safeguarding user protection. This idea aims to eliminate regulatory discrepancies between traditional media and contemporary digital platforms by applying uniform standards to all information-sharing platforms. Nonetheless, there may be apprehensions over the balance between these responsibilities and the freedom of speech, as well as the potential for excessive control that hinders innovation and communication.

4. Requiring providers to appoint a representative in Ukraine for official communications. This requirement extends to all platforms registered within the European Union. This stipulation aligns with the Regulation of the European Parliament and of the Council No. 2022/2065 (2022) and the General Data Protection Regulation (2016), which necessitate that platforms appoint a designated representative in the territory of their operations. This idea might strengthen Ukraine's capacity to enforce its laws against international platforms and guarantee adherence to national norms. It may also enhance collaboration with global technology firms, particularly on content moderation and data security. This clause may provoke apprehensions about jurisdictional issues and the extraterritorial applicability of Ukrainian law, especially for platforms functioning inside the EU and other countries.

Additionally, a group of People's Deputies led by Georgy Mazurashu submitted Draft Law of Ukraine No. 9223 (2023). This draft proposes to supplement the Criminal Code of Ukraine (2001) with a new Article 114-3 "Use of accounts for the purpose of spreading false information or for influencing decision-making, actions, or omissions". The draft law was developed in alignment with Ukraine's Information Security Strategy, approved by Presidential Decree No. 685/2021 "On the Decision of the National Security and Defence Council of Ukraine "On the Information Security Strategy" (2021), to strengthen legal accountability for the dissemination of false information. Given that social media platform owners often respond inadequately to reports concerning fake profiles and pages involved in information attacks, it has become necessary to address the issue through legislative amendments. These changes aim to strengthen the role of specially authorised state bodies in their interactions with social media owners and administrators.

In order to counter and prevent the negative consequences caused by disinformation, law enforcement agencies in Ukraine have been actively engaged in dismantling bot farms. Since the beginning of the full-scale invasion, media outlets have regularly reported on the detection and shutdown of such operations. In 2022 alone, the Security Service of Ukraine (SBU) dismantled five bot farms comprising more than 100,000 fake accounts. These accounts were used to spread disinformation among the populations of Ternopil, Kharkiv, Poltava, Cherkasy, and Transcarpathia. The bot farms operated across various platforms, including some promoting the ideology of the aggressor state, which are banned in Ukraine. During searches, SBU representatives seized: 100 sets of GSM gateways; nearly 10,000 SIM cards from various mobile operators, used to conceal illegal activity; and computer equipment containing evidence of criminal operations. Criminal proceedings were initiated under Article 110 of the Criminal Code of Ukraine (2001) – Encroachment on the Territorial Integrity and Inviolability of Ukraine – which carries a penalty of up to 15 years' imprisonment (Cyber Police of Ukraine, 2023).

At the legislative level, there is currently no officially defined concept of "destructive content" or "destructive information"; however, related terms such as "harmful", "prohibited", and "illegal" information are commonly referenced. The significant increase in harmful content is a global issue. To address this, many countries – including Germany, the United Kingdom, France, Austria, and Turkey – have enacted relevant legislation aimed at regulating the online environment and fostering a safe informational space (Ivan & Manea, 2022). For instance, in 2020, the Turkish Parliament passed amendments to Law of Turkey No. 5651 "On Regulation of Broadcasts via Internet and Combating Crimes Committed by the Means of Such Publications" (2007) stricter control over social networks and the content disseminated on their platforms. This law, especially the need for social media corporations to establish official representative offices in Turkey, aids in combating bot farms by ensuring that platforms are directly responsible for the material they host and distribute (Gulati & Gulati, 2024). Encouraging Turkish individuals to oversee content-related complaints and evaluate compliance with national legislation facilitates the identification and elimination of detrimental or fraudulent activities, including the operations of bot farms that disseminate misinformation or influence public sentiment. The legislation's requirement for platforms to retain user data in Turkey improves law enforcement's capacity to monitor and investigate illegal activity, such as bot farm operations (Cantekin, 2020). Prospective sanctions, such as fines, advertising prohibitions, or traffic limitations, function as formidable deterrents, motivating platforms to establish more rigorous monitoring and moderation systems, therefore limiting the expansion of automated bots and their nefarious applications. Under this law, companies must establish official representative offices in Turkey to process content-related complaints.

The only piece of bot-specific legislation enacted in the United States to date is Bill of the Senate of the California No. 1001 "Bots: Disclosure" (2018). This law makes it unlawful to "use a bot to communicate or interact with another person online with the intent to mislead the other person as to the artificial identity of the person, to knowingly mislead the person as to the content of the communication, to induce the purchase or sale of goods or services in a commercial transaction, or to influence the outcome of an election". The legislation defines a "bot" as "an automated online account where all or substantially all of the actions or postings of that account are not the result of the actions of a real person". However, this law does not prohibit the use of all bots; rather, it stipulates that no liability arises if the use of bots is clearly disclosed (Kovac, 2022). The implementation of Bill of the Senate of the California No. 1001 (2018) is fundamentally based on transparency requirements. It stipulates that bots used for communication with the goal to deceive in commercial or political settings must be explicitly identified as non-human. Failure to provide such disclosure renders the bot user legally accountable. Enforcement procedures rely on consumer complaints, enquiries by governmental agencies, or civil litigation instead of proactive oversight. The law's restricted jurisdiction, applicable only to contacts with California citizens, coupled with the lack of a designated enforcement agency, has limited its practical efficacy and posed obstacles in achieving widespread compliance across platforms.

The BOTS Act (2016) is a legislative measure in the United States that pertains to the regulation of automated systems, including bots, within the wider digital landscape. This legislation explicitly criminalises the use of bots for deceptive purposes, especially in instances where they are employed to mislead individuals about their identity or the nature of the content they engage with. Often used for misinformation and propaganda, the Act offers a legal framework that may guide national legislation in Ukraine. Considering that the principal objective of bot farms often involves manipulating public perception through the artificial inflating of interaction or the promotion of certain ideological narratives, the Act's emphasis on bot transparency and disclosure corresponds with Ukraine's need to establish similar measures. This statute underscores the legal accountability for the conduct of automated accounts, serving as a crucial reference for Ukraine as it endeavours to enhance its legal frameworks on cybersecurity, information security and misinformation. The Act exemplifies the balance between public safety and freedom of speech by concentrating on the fraudulent applications of bots, rather than imposing sweeping restrictions on automated online interactions. This equilibrium is especially pertinent as Ukraine faces the deployment of bots by adversarial forces, including Russian agents, which are used not just to influence public sentiment but also to undermine national security.

Artificial Intelligence Act (2024) is a significant EU law designed to regulate the implementation of AI systems according to their risk assessment. The Act specifically targets high-risk AI applications, including those used for misinformation and manipulation via bot farms. The Act's stipulations about transparency, accountability, and human oversight of AI systems provide essential guidance for Ukrainian legislators aiming to govern AI-operated bot farms, which often use intricate algorithms to mimic human behaviour and evade discovery. The Act mandates that AI systems presenting substantial hazards to public safety or fundamental rights adhere to rigorous transparency and risk assessment standards. This precisely corresponds with Ukraine's need to establish more robust legal definitions and frameworks for AI technologies that facilitate bot farms, especially those used in cyberwarfare and psychological operations. Digital Service Act (2022) is an extensive regulatory framework aimed at fostering a safer online environment by ensuring platforms are responsible for the material they host and the algorithms they use. It requires corporate platforms to adopt steps to reduce the dissemination of illicit material, including misinformation, and to enforce enhanced transparency standards for targeted advertising and automated content moderation.

Digital Service Act (2022) is especially pertinent to bot farms since it imposes substantial responsibilities on digital platforms to vigilantly oversee and regulate the operations of automated systems. Regulation provides a framework for Ukraine to hold both platforms and bot operators responsible. The stipulations of the Regulation for transparent content control and the need for platforms to promptly address harmful material might be implemented in Ukrainian digital environments, where bots are used to distort political debate and disseminate disinformation. Furthermore, its focus on the significance of risk management strategies corresponds with the study's conclusions that bot farms pose a systemic danger to national security. The Code of Practice on Disinformation (2022), revised by the European Commission, fortifies prior initiatives to address online misinformation by broadening the range of parties engaged and intensifying the responsibilities of technology platforms. The Code mandates platforms to enhance transparency in political advertising, collaborate with fact-checkers, and guarantee that their algorithms do not facilitate the dissemination of incorrect information. This self-regulatory mechanism is essential for addressing the role of bots in amplifying misinformation. The Code of Practice on misinformation offers Ukraine a chance to foster enhanced cooperation among governmental bodies, technology firms, and civil society in combating bot-driven misinformation. By implementing analogous measures to those in the Code, Ukraine might mandate platforms to proactively address bot-driven misinformation and hold them responsible for adverse effects on national security.

A significant step in countering propaganda was the adoption of the Code of Practice on Disinformation by the European Commission (2018). This Code was the first self-regulatory document of its kind globally, designed to encourage companies to collaborate in addressing the challenge of disinformation. The Code was signed by representatives of leading online platforms, including Facebook, Google, Twitter, YouTube, and Microsoft (Pagallo *et al.*, 2023). By signing, these platforms committed to establishing systems for verifying the websites on which advertising is placed. They are also required to disclose specific actions taken and to grant independent third parties' access to their platforms to monitor compliance. Additionally, the Code calls for limitations on the misuse of advertising systems by distributors of disinformation. To ensure accountability, signatories must submit regular compliance reports. Notably, a strengthened version of the Code of Practice on Disinformation (2022) was signed and published. The updated Code includes a broader array of stakeholders, allowing a wider range of entities to contribute through commitments relevant to their specific fields. These commitments include demonetising the spread of disinformation, enhancing transparency in political advertising, reinforcing cooperation with fact-checkers, and facilitating researcher access to data. The Code's stipulations, such as eliminating misinformation, augmenting openness in political advertising, and fostering collaboration with fact-checkers, are crucial for mitigating the impact of bot farms, which often create fraudulent accounts to disseminate deceptive material or ideas. The Code enhances openness in political advertisements and facilitates improved data access for academics, hence enabling more efficient detection and monitoring of bot operations. Moreover, its focus on cooperation with fact-checkers facilitates the identification and refutation of false narratives disseminated by bot farms, so aiding in the reduction of their detrimental effects on democratic processes and public confidence. The Code establishes a systematic framework for social media platforms and other stakeholders to combat the detrimental actions of bot farms.

Established democratic states, like the United States and EU member states, refrain from imposing excessively stringent rules on bot use, opting instead to create frameworks that enable social media platform proprietors to adopt self-regulatory measures. This methodology is pertinent to Ukraine, as the legislative framework governing bot farms and cybersecurity is insufficiently established, lacking explicit regulations about the legal status of information-sharing platforms. To rectify these deficiencies, it is imperative to revise current legislation, including the Law of Ukraine No. 2657-XII

"On Information" (1992), by clearly defining and codifying concepts such as disinformation and harmful content. The existence of harmful material should provide the legal foundation for criminalising bot farm operations and ensuring accountability for those responsible. In light of these changes, information policy must prioritise measures that effectively combat the dissemination of illicit material. National security services are essential to this process, diligently monitoring media channels to detect and mitigate risks to national information security (Kharchenko *et al.*, 2017). Neutralising bot farms, particularly those generating substantial quantities of malicious bots, continues to be one of the most efficacious strategies in the fight against misinformation.

Currently, there is no standardised legal definition for bot farm, and the topic remains insufficiently explored. The expanding magnitude and influence of bot farms indicate that this problem is beyond economic interests and now represents a substantial danger to national and international security. Global strategies for bot regulation, especially those emphasising the need for distinct frameworks to tackle misinformation, election integrity, and speculation, vary in their breadth and aim. Some laws, such as those proposed in Ukraine aim primarily to address the impact of bots on elections and national security, while others, like the EU's strategy, include more extensive controls on information manipulation, including the economic and social ramifications of misinformation. Understanding these differences and the reasons behind them, whether to reduce speculation, ensure fair voting, or fight misinformation, can impact Ukraine's law-making efforts. Consequently, it is imperative for Ukraine to implement a comprehensive and clearly articulated regulatory framework that tackles the many concerns presented by bot farms, using international best practices while conforming to its national security objectives.

Discussion

The regulation of bot farms and misinformation is an urgent issue, with international frameworks and state law changes striving to address these difficulties. Draft Law of Ukraine No. 11115 (2024) and Draft Law of Ukraine No. 9223 (2023) are initiatives aimed at regulating bot farms, emphasising openness and responsibility for information-sharing platforms. Nevertheless, the present analysis concluded that these proposed legislations remain insufficient in handling the technological complexities of bot farms. K. Mezei and B. Szentgáli-Tóth (2023) observed that Ukrainian legislation aimed at combating misinformation inadequately addresses the rapidly advancing technology used by bot farms. This evaluation corresponded with the results of the present research, which indicated that Ukraine's legislative framework is deficient in explicit definitions and thorough regulations governing automated networks that influence public opinion.

Conversely, international frameworks like the Regulation of the European Parliament and of the Council No. 2016/679 (2016) and the Regulation (EU) 2022/2065 (2022) provided more comprehensive tools for regulating bot activity. These regulations emphasised platform accountability, openness, and data safeguarding, as articulated by L. Böck *et al.* (2022). The present analysis concured with these methodologies since they extended beyond the basic regulation of misinformation to address the foundational architecture of bot networks. Nonetheless, the proposed legislation in Ukraine did not adequately address these overarching issues, limiting its efficacy. Draft Law of Ukraine No. 11115 (2024) mandated that platforms designate representatives in Ukraine, so guaranteeing responsibility for detrimental information. Although this represented progress in enhancing openness, it fails to directly confront the technology aspects of bots and bot farms.

H.K. Gidey *et al.* (2023) examined the architectural issues faced by cognitive bots, highlighting their advanced skills that surpass traditional bot behaviour. Their results indicated that as bots advance with AI, they increasingly replicate human behaviour and decision-making processes, complicating detection and regulating efforts. This finding corresponded with the present analysis, which underscored the escalating danger presented by AI-driven bots and the need for legal frameworks to evolve in response to these breakthroughs.

The research conducted by F. Gallwitz and M. Kreil (2022) on botnet data monitoring under the Regulation of the European Parliament and of the Council No. 2016/679 (2016) advocated for a more proactive strategy in bot regulation, highlighting the need for data protection measures to mitigate automated manipulation. This differs from the Ukrainian strategy, which emphasises punitive actions over preventative and data-informed solutions. The current research agreed with F. Gallwitz and M. Kreil (2022), supporting the idea of adding better data security measures and active strategies to find and stop harmful bot activities.

O.M. Yaroshenko *et al.* (2022) examined the legal control of artificial intelligence, specifically in the context of labour law, in industrialised nations. They contended that AI, particularly regarding autonomous systems such as cognitive bots, presents considerable regulatory concerns. This aligned with the present study's assessment of Ukraine's proposed legislation, which inadequately addresses the implications of AI in bot operations. The authors underscored the need for legal frameworks that explicitly address the extensive implications of AI, including labour law and security issues. The present research agreed with this viewpoint, saying that AI's involvement in bot activities requires a transition from conventional legal frameworks to more extensive, technology-specific legislation. E. Aïmeur *et al.* (2023) emphasised the significance of collaboration with fact-checkers and improving platform transparency to address misinformation. Their research underscored the inadequacies of depending on voluntary self-regulation by platforms, indicating that more rigorous procedures are necessary. This result diverged from the more permissive stance seen in Draft Law of Ukraine No. 11115 (2024), which heavily depends on platform proprietors to manage content regulation internally. The present research advanced this argument by stating the need for a more complete regulatory framework that encompassed not just transparency but also explicit rules for bot detection and responsibility for automated content generation.

D. Gesmann-Nuissl and S. Meyer (2022) emphasised the consumer protection dimensions of bot regulation, contending that openness in bot use is crucial for protecting consumers from manipulation. Their results correspond with the present research, which advocates for the compulsory disclosure of bots to enhance public confidence. Nonetheless, the research challenged the proposed legislation for its lack of explicit restrictions regarding bot behaviour and its effects on users. This disparity highlights a substantial deficiency in Ukraine's strategy: while the legislation emphasised platform responsibilities, it neglected to address

the particular detriments inflicted by bots, including psychological manipulation and market distortion. J. Hutson *et al.* (2023) examined the difficulties of regulating developing technologies such as cognitive bots, which possess more advanced skills than conventional bots. This corresponds with the study's conclusions, emphasising the need for legislative changes that adapt to technological progress. The suggested laws in Ukraine do not effectively deal with these issues, and this study highlighted the need to clearly define and regulate advanced bot technologies, especially those using AI and machine learning, to keep the laws relevant as technology rapidly evolves.

While the present analysis recognised the significance of the proposed legislation in Ukraine, it determined that these regulations insufficiently tackle the intricacies of bot farm operations. The research endorsed the suggestions of global frameworks, promoting more extensive and technologically informed regulation. By synthesising global research results and emphasising transparency alongside the technological infrastructure of bots, Ukraine may establish a more robust legal framework to address misinformation and bot farm activities.

Conclusions

This research aimed to examine and provide a legislative definition for "bot farms", emphasising the establishment of a comprehensive legal framework for their regulation. The study effectively accomplished this objective by investigating the increasing use of bots in cybercrimes, including misinformation, propaganda, and fraud. It delineated the principal attributes of bot farms, including their ability to produce substantial quantities of fraudulent accounts for the propagation of modified information, and underscored the escalating danger these operations pose to national security, especially in relation to Ukraine's current crisis. The research, via comparative examination of foreign legal frameworks such as those of the European Union and the United States, underlined the need for analogous regulatory methods in Ukraine, particularly with the intricacies of automated systems like bots.

The study conducted a comprehensive analysis of current Ukrainian legislation and legal initiatives, including Draft Laws No. 9223 and No. 11115, and assessed potential enhancements to mitigate the rising danger of bot farms. It determined that, while certain advancements have occurred, substantial deficiencies persist in the proper definition and regulation of automated bot networks. Key results indicate the inadequacy of existing legal definitions of "bot" and "bot farm" in Ukraine's legal framework, with the absence of comprehensive regulations to oversee their utilisation in both local and foreign spheres. The research highlighted the difficulties in regulating misinformation while protecting freedom of speech, a worry reflected in international legislative initiatives such as the EU's Digital Services Act and California Senate Bill No. 1001.

This study revealed that Ukraine's legislative system needs to develop explicit definitions of bot farms and associated activities, while prioritising cybersecurity and national security. The research indicated that Ukraine must use more efficient strategies for identifying and dismantling bot farms, especially since they persist in influencing public perception and security. By using worldwide best practices and conforming to global cybersecurity standards, Ukraine may enhance the protection of its information space from dangerous bot activities. The results emphasised the essential need for legislative frameworks that address bot farms' activities while also improving openness in digital content distribution to avert abuse.

Future studies need to investigate the formulation of more precise legal definitions for bot farms and related technologies, together with the actual use of these concepts within Ukraine's legal framework. Subsequent research may concentrate on technical innovations in bot identification, including the use of AI and machine learning and their integration into the legal framework to improve enforcement. The ongoing global discussion about regulating artificial intelligence and its effects on digital manipulation needs close attention, as these developments will significantly impact future laws related to bot farm activities.

Acknowledgements

None.

Funding

The study was not funded.

Conflict of interest

None.

References

[1] Ahmad, A., Waseem, M., Liang, P., Fahmideh, M., Aktar, M.S., & Mikkonen, T. (2023). Towards human-bot collaborative software architecting with ChatGPT. In *Proceedings of the 27th international conference on evaluation and assessment in software engineering* (pp. 279-285). New York: Association for Computing Machinery. doi: 10.1145/3593434.3593468.

[2] Aïmeur, E., Amri, S., & Brassard, G. (2023). Fake news, disinformation and misinformation in social media: A review. *Social Network Analysis and Mining*, 13(1), article number 30. doi: 10.1007/s13278-023-01028-5.

[3] Bill of the Senate of the California No. 1001 "Bots: Disclosure". (2018, September). Retrieved from https://calmatters.digitaldemocracy.org/bills/ca_201720180sb1001.

[4] Böck, L., Fejrskov, M., Demetzou, K., Karuppayah, S., Mühlhäuser, M., & Vasilomanolakis, E. (2022). Processing of botnet tracking data under the GDPR. *Computer Law & Security Review*, 45, article number 105652. doi: 10.1016/j.clsr.2021.105652.

[5] Cantekin, K. (2020). *Turkey: Parliament passes law imposing new obligations on social media companies*. Retrieved from https://www.loc.gov/item/global-legal-monitor/2020-08-06/turkey-parliament-passes-law-imposing-new-obligations-on-social-media-companies/.

[6] Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/go/435-15.

[7] Code of Practice on Disinformation by the European Commission. (2018, April). Retrieved from https://ec.europa.eu/newsroom/dae/redirection/document/87534.

[8] Code of Practice on Disinformation. (2022, June). Retrieved from https://digital-strategy.ec.europa.eu/en/policies/code-practice-disinformation.

[9] Code of Ukraine on Administrative Offenses. (1996, October). Retrieved from https://zakon.rada.gov.ua/go/80731-10.

[10] Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/en/254%D0%BA/96-%D0%B2%D1%80#Text.
[11] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/en/2341-14.
[12] Cyber Police of Ukraine. (2023). *Over 4,000 bots to discredit the Ukrainian Defense Forces and spread propaganda in favour of Russia: Vinnytsia Region police liquidated a large-scale bot farm*. Retrieved from https://cyberpolice.gov.ua/news/ponad--botiv-dlya-dyskredytacziyi-syl-oborony-ukrayiny-ta-poshyrennya-propagandy-na-koryst-rosiyi-policzejski-vinnychchyny-likviduvaly-masshtabnu-botofermu-7868/.
[13] Decree of the President of Ukraine No. 685/2021 "On the Decision of the National Security and Defense Council of Ukraine "On the Information Security Strategy". (2021, December). Retrieved from https://zakon.rada.gov.ua/laws/show/685/2021#n5.
[14] Directive of the European Parliament and of the Council No. 2018/1808 "On the Amending Directive No. 2010/13/EU "On the Coordination of Certain Provisions Laid Down by Law, Regulation or Administrative Action in Member States Concerning the Provision of Audiovisual Media Services (Audiovisual Media Services Directive) in View of Changing Market Realities". (2018, November). Retrieved from http://data.europa.eu/eli/dir/2018/1808/oj.
[15] Draft Law of Ukraine No. 11115 "On Amendments to Certain Laws of Ukraine on Regulation of the Activities of Information Sharing Platforms Through Which Mass Information is Distributed". (2024, March). Retrieved from https://itd.rada.gov.ua/billinfo/Bills/Card/43884.
[16] Draft Law of Ukraine No. 9223 "On Amendments to the Criminal and Criminal Procedure Codes of Ukraine Regarding the Establishment of Liability for Certain Actions Against the Foundations of National Security of Ukraine". (2023, April). Retrieved from https://itd.rada.gov.ua/billInfo/Bills/Card/41788.
[17] Dzyana, H., & Dzyanyy, R. (2023). Public administrative activity in the conditions of contemporary uncertainty: Information and communication aspect. *Democratic Governance*, 16(1), 37-51. doi: 10.23939/dg2023.01.037.
[18] Explanatory Note to the Draft Law of Ukraine No. 11115 "On Amendments to Certain Laws of Ukraine on Regulation of the Activities of Information Sharing Platforms Through Which Mass Information is Distributed". (2024). Retrieved from https://itd.rada.gov.ua/billInfo/Bills/pubFile/2274626.
[19] Fadhil, H.M., Makhool, N.Q., Hummady, M.M., & Dawood, Z.O. (2022). Machine learning-based information security model for botnet detection. *Journal of Cybersecurity and Information Management*, 9(1), 68-79. doi: 10.54216/JCIM.
[20] Gallwitz, F., & Kreil, M. (2022). Investigating the validity of botometer-based social bot studies. In F. Spezzano, A. Amaral, D. Ceolin, L. Fazio & E. Serra (Eds.), *Proceedings of the 4th multidisciplinary international symposium "Disinformation in open online media"* (pp. 63-78). Cham: Springer. doi: 10.1007/978-3-031-18253-2_5.
[21] Gesmann-Nuissl, D., & Meyer, S. (2022). Siri 2.0 – conversational commerce of social bots and the new law of obligations of data: Explorations for the benefit of consumer protection. *Robotics*, 11(6), article number 125. doi: 10.3390/robotics11060125.
[22] Gidey, H.K., Hillmann, P., Karcher, A., & Knoll, A. (2023). Towards cognitive bots: Architectural research challenges. In P. Hammer, M. Alirezaie & C. Strannegård (Eds.), *Proceedings of the 16th international conference "Artificial general intelligence"* (pp. 105-114). Cham: Springer. doi: 10.1007/978-3-031-33469-6_11.
[23] Gulati, J., & Gulati, G.C. (2024). Analysing the algorithm of zoombombing as a cybercrime in digital era: Legal risks and challenges. *Journal of Electrical Systems*, 20(4), 2445-2452. doi: 10.52783/jes.2751.
[24] Harbinja, E., Edwards, L., & McVey, M. (2023). Governing ghostbots. *Computer Law & Security Review*, 48, article number 105791. doi: 10.1016/j.clsr.2023.105791.
[25] He, Q., Wang, L., Cui, L., Yang, L., & Luo, B. (2022). Gravity-law based critical bots identification in large-scale heterogeneous bot infection network. *Electronics*, 11(11), 1771. doi: 10.3390/electronics11111771.
[26] Hodgins, J.M. (2022). Countering Russian subversion during federal elections in Canada in the era of social media and fake news. *ITSS Verona Magazine*, 1(1).
[27] Hutson, J., Banerjee, G., Kshetri, N., Odenwald, K., & Ratican, J. (2023). Architecting the metaverse: Blockchain and the financial and legal regulatory challenges of virtual real estate. *Journal of Intelligent Learning Systems and Applications*, 15(1), 1-23. doi: 10.4236/jilsa.2023.151001.
[28] Ivan, D.L., & Manea, T. (2022). AI use in criminal matters as permitted under EU law and as needed to safeguard the essence of fundamental rights. *International Journal of Law in Changing World*, 1(1), 17-32. doi: 10.54934/ijlcw.v1i1.15.
[29] Kharchenko, V., Ponochovnyi, Y., Qahtan, A.-S.M., & Boyarchuk, A. (2017). Security and availability models for smart building automation systems. *International Journal of Computing*, 16(4), 194-202. doi: 10.47839/ijc.16.4.907.
[30] Kostenko, O., Jaynes, T., Zhuravlov, D., Dniprov, O., & Usenko, Y. (2022). Problems of using autonomous military AI against the background of Russia's military aggression against Ukraine. *Baltic Journal of Legal and Social Sciences*, 4, 131-145. doi: 10.30525/2592-8813-2022-4-16.
[31] Kovac, M. (2022). Autonomous artificial intelligence and uncontemplated hazards: Towards the optimal regulatory framework. *European Journal of Risk Regulation*, 13(1), 94-113. doi: 10.1017/err.2021.28.
[32] Kovalchuk, D. (2025). Utilising large language models for automated real-time cyber threat analysis. *Bulletin of Cherkasy State Technological University*, 30(1), 48-58. doi: 10.62660/bcstu/1.2025.48.
[33] Kravchuk, M., Kravchuk, V., Hrubinko, A., Podkovenko, T., & Ukhach, V. (2024). Cyber security in Ukraine: Theoretical view and legal regulation. *Law, Policy and Security*, 2(2), 28-38. doi: 10.62566/lps/2.2024.28.
[34] Law of the Turkey No. 5651 "On Regulation of Broadcasts via Internet and Combating Crimes Committed by the Means of Such Publications". (2007, May). Retrieved from https://mbkaya.com/turkish-internet-law/.
[35] Law of Ukraine No. 2657-XII "On Information". (1992, October). Retrieved from https://zakon.rada.gov.ua/laws/show/en/2657-12#Text.
[36] Law of Ukraine No. 2849-IX "On Media". (2022, December). Retrieved from https://zakon.rada.gov.ua/go/2849-20.

[37] Makhortykh, M., Urman, A., Münch, F.V., Heldt, A., Dreyer, S., & Kettemann, M.C. (2022). Not all who are bots are evil: A cross-platform analysis of automated agent governance. *New Media & Society*, 24(4), 964-981. doi: 10.1177/14614448221079035.
[38] Mbona, I., & Eloff, J.H.P. (2022). Feature selection using Benford's law to support detection of malicious social media bots. *Information Sciences*, 582, 369-381. doi: 10.1016/j.ins.2021.09.038.
[39] Mbona, I., & Eloff, J.H.P. (2023). Classifying social media bots as malicious or benign using semi-supervised machine learning. *Journal of Cybersecurity*, 9(1), article number tyac015. doi: 10.1093/cybsec/tyac015.
[40] Mezei, K., & Szentgáli-Tóth, B. (2023). Some comments on the legal regulation on misinformation and cyber attacks conducted through online platforms. *Lexonomica*, 15(1), 33-52. doi: 10.18690/lexonomica.15.1.33-52.2023.
[41] Odilla, F. (2023). Bots against corruption: Exploring the benefits and limitations of AI-based anti-corruption technology. *Crime, Law and Social Change*, 80(4), 353-396. doi: 10.1007/s10611-023-10091-0.
[42] Pagallo, U., Bassi, E., & Durante, M. (2023). The normative challenges of AI in outer space: Law, ethics, and the realignment of terrestrial standards. *Philosophy & Technology*, 36, article number 23. doi: 10.1007/s13347-023-00626-7.
[43] Public Law of the United States of America No. 114-274 "BOTS Act 2016". (2016, September). Retrieved from https://www.congress.gov/bill/114th-congress/senate-bill/3183.
[44] Rataj, P. (2025). Botnet defense under EU data protection law. *Computer Law & Security Review*, 56, article number 106080. doi: 10.1016/j.clsr.2024.106080.
[45] Rawat, R., Oki, O., Chakrawarti, R.K., Adekunle, T.S., Lukose, J.M., & Ajagbe, S.A. (2023). Autonomous artificial intelligence systems for fraud detection and forensics in dark web environments. *Informatica*, 47(9), 51-62. doi: 10.31449/inf.v46i9.4538.
[46] Regulation of the European Parliament and of the Council No. 2016/679 "On the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation)". (2016, April). Retrieved from http://data.europa.eu/eli/reg/2016/679/oj.
[47] Regulation of the European Parliament and of the Council No. 2022/2065 "On a Single Market for Digital Services and Amending Directive 2000/31/EC (Digital Services Act)". (2022, October). Retrieved from http://data.europa.eu/eli/reg/2022/2065/oj.
[48] Shadmy, T. (2022). Content traffic regulation: A democratic framework for addressing misinformation. *Jurimetrics Journal*, 63.
[49] Shynkar, T., & Levchenko, T. (2023). Manipulative technologies in terms of information security. *Society. Document. Communication*, 8(2), 270-286. doi: 10.31470/2518-7600-2023-19-270-286.
[50] Tkachenko, O., Chechet, A., Chernykh, M., Bunas, S., & Jatkiewicz, P. (2025). Scalable front-end architecture: Building for growth and sustainability. *Informatica (Slovenia)*, 49(1), 137-150. doi: 10.31449/inf.v49i1.6304.
[51] Yaroshenko, O.M., Melnychuk, N.O., Zhygalkin, I.P., Silchenko, S.O., & Zaika, D.I. (2022). Problems of legal regulation of artificial intelligence in labour law of developed countries. *Informatologia*, 55(1-2), 160-169. doi: 10.32914/i.55.1-2.13.
[52] Ye, X., Yan, Y., Li, J., & Jiang, B. (2024). Privacy and personal data risk governance for generative artificial intelligence: A Chinese perspective. *Telecommunications Policy*, 48(10), article number 102851. doi: 10.1016/j.telpol.2024.102851.
[53] Zelenov, D. (2024). Psychological mechanisms of influence of disinformation and fake news on the formation of public opinion on Ukrainian European integration: Analysis of Russian propaganda. *Scientific Studios on Social and Political Psychology*, 30(2), 25-35. doi: 10.61727/ssspj/2.2024.25.
[54] Zoltick, M.M., & Maisel, J.B. (2023). Societal impacts: Legal, regulatory and ethical considerations for the digital twin. In N. Crespi, A.T. Drobot & R. Minerva (Eds.), *The digital twin* (pp. 1167-1200). Cham: Springer. doi: 10.1007/978-3-031-21343-4 37.

Правове регулювання поняття «бот-ферми» як відповідь на маніпулювання користувачами Інтернету

Діна Дрижакова
Аспірант
Київський національний університет імені Тараса Шевченка
01033, вул. Володимирська, 60, м. Київ, Україна
https://orcid.org/0009-0004-7585-5860

Анотація. Метою цього дослідження була розробка законодавчого визначення поняття бот-ферм, чим створити основу для правового регулювання їх використання. У дослідженні використовувалися формально- та порівняльно-правовий методи. Питання бот-ферм є новою сферою інтересів, викликаною зростаючими тенденціями використання ботів для таких цілей, як пропаганда, шахрайство та дезінформація. Ботів можна розділити на такі групи: одноденні боти, класичні боти, іноземні боти, нестандартні боти та боти зі складною поведінкою. Крім того, у дослідженні було визначено цілі та сфери діяльності бот-ферм, які включають генерування штучного трафіку для отримання фінансової вигоди, а також проведення пропаганди, дезінформації та просування наративів і певних точок зору в суспільстві. У дослідженні також розглянуто законодавче регулювання створення та функціонування бот-ферм. Було проведено порівняльний аналіз правових норм країн Європейського Союзу та Сполучених Штатів Америки щодо поширення штучного інтелекту та використання ботів. Було розглянуто правову базу, що регулює відповідальність за використання бот-ферм у злочинних цілях. Було проаналізовано відповідні законодавчі пропозиції, прийняття яких може вплинути на переслідування за дезінформацію та використання злочинних ботів в умовах воєнного стану. Було розглянуто конкретні випадки, пов'язані з викриттям бот-ферм, а також особливості правових механізмів, що використовуються для протидії діяльності незаконних бот-ферм, на основі досвіду іноземних юрисдикцій. Практична цінність дослідження полягає в тому, що воно показало, що українське законодавство не адаптоване для регулювання розвитку бот-технологій, особливо ботів на основі штучного інтелекту, у зв'язку з чим існує необхідність його перегляду законодавцем для боротьби зі зростаючими ризиками дезінформації та маніпуляцій

Ключові слова: кібербезпека; штучний інтелект; кримінальна відповідальність; соціальні мережі; фейкова інформація; пропаганда

UDC 347.23:343.2/.7(477)
DOI: 10.32518/sals2.2025.155

Соціально-правові студії. 2025. Т. 8, № 2
Social & Legal Studios. 2025. Vol. 8, No. 2

Protection of property rights in civil and criminal law of Ukraine: Points of intersection and problems of law enforcement

Nataliia Parasiuk*
PhD in Law, Associate Professor
Lviv State University of Internal Affairs
79007, 26 Horodotska Str., Lviv, Ukraine
https://orcid.org/0000-0002-7489-9181

Vasyl Parasiuk
PhD in Law, Associate Professor
Lviv State University of Internal Affairs
79007, 26 Horodotska Str., Lviv, Ukraine
https://orcid.org/0000-0002-8195-7597

Ivanna Zdrenyk
PhD in Law, Associate Professor
Lviv State University of Internal Affairs
79007, 26 Horodotska Str., Lviv, Ukraine
https://orcid.org/0000-0002-8645-0701

Rostyslav Boryslavskyi
PhD in Law
Lviv State University of Internal Affairs
79007, 26 Horodotska Str., Lviv, Ukraine
https://orcid.org/0000-0001-8941-7942

Abstract. The relevance of the study is determined by the need to improve mechanisms for the legal protection of property rights in the context of Ukraine's integration into the European legal space and against the backdrop of problems in distinguishing between civil and criminal law remedies. The aim was to identify the intersection of civil and criminal law in the sphere of property rights protection, identify contradictions in law enforcement, and determine areas of convergence in legal approaches. The study used logical-legal, comparative-legal and dogmatic methods, which made it possible to analyse the norms of Ukrainian legislation, decisions of national and international courts and law enforcement practice. The study examined the peculiarities of the implementation of the principle of inviolability of property rights in civil and criminal proceedings and analysed the problems of seizure of property of persons who do not have the procedural status of a suspect or accused. It was established that the current version of the procedural legislation of Ukraine does not ensure an adequate balance of interests of the parties in the case of seizure of property, which leads to a violation of the rights of civil defendants. The peculiarities of the differentiation of coercion in civil and criminal law were identified, and the functions of seizure of property as a means of securing a claim and as a procedural instrument in criminal proceedings were distinguished. The experience of Romania and North Macedonia in protecting property rights in the context of legal convergence was analysed. A conclusion was made about the advisability of adapting certain foreign practices to the Ukrainian context, in particular regarding changes to the procedures for imposing seizure of property and strengthening procedural guarantees. The practical value of the work lies in the fact that its results can be used by judges, lawyers, legislators and law enforcement officials to improve approaches to the protection of property rights and bring national law enforcement practice into line with European standards

Keywords: property rights; civil law; criminal law; protection; coercion; convergence

Suggested Citation

Article's History: Received: 22.02.2025 Revised: 28.05.2025 Accepted: 25.06.2025

Parasiuk, N., Parasiuk, V., Zdrenyk, I., & Boryslavskyi, R. (2025). Protection of property rights in civil and criminal law of Ukraine: Points of intersection and problems of law enforcement. *Social & Legal Studios*, 8(2), 155-164. doi: 10.32518/sals2.2025.155.

*Corresponding author

Copyright © The Author(s). This is an open access Article distributed under the terms of the Creative Commons Attribution License 4.0 (https://creativecommons.org/licenses/by/4.0/)

Introduction

In the current conditions of transformation of the legal system of Ukraine, integration into the European legal space and strengthening of the importance of the institution of human rights protection, the problem of effective protection of property rights is becoming particularly urgent. At the same time, there is a significant gap in law enforcement practice regarding the consistency of approaches in civil and criminal law to the protection of property rights. The vagueness of the boundaries between these two branches of law, insufficient systematisation of judicial practice, abuse of property seizure mechanisms and contradictions between the norms of different codes create a threat to the implementation of the constitutional right to property. Therefore, the issue of convergence of civil and criminal law mechanisms for the protection of property rights requires a thorough scientific rethinking and the development of balanced approaches.

According to Article 13 of the Ukrainian Constitution (1996), the state's obligation to provide equal protection for all property rights subjects is the cornerstone of the field's property rights protection philosophy. There is no consensus among court authorities about how to settle cases involving property rights violations, according to an examination of contemporary judicial practice. In cases when general jurisdiction courts and commercial courts use the rules of current legislation in an uncertain manner while evaluating issues relating to the protection of breached rights, the owners' constitutional rights are violated. This is because judicial bodies are uncertain about how to apply civil law provisions uniformly to disputes of this kind. The inviolability of property rights is, naturally, one of the fundamental tenets of a democratic society and a state under the rule of law. This is reflected in Art. 41 of the Constitution of Ukraine (1996), which states that no one may be unlawfully deprived of their right to own property. Private property rights are unalienable.

At the same time, Ukraine's criminal procedural laws likewise adopted the aforementioned Fundamental Law standard. Therefore, while conceptual approaches to the inviolability of the right to property are described in Article 16 of the Criminal Procedure Code of Ukraine (2001), their specifics are covered in a number of other norms that govern the temporary restriction or deprivation of a person's right to property. In particular, this concerns the conduct of a search, inspection, investigative experiment, temporary seizure of property, imposition of arrest, transfer of seized property to the management of the ARMA, etc. Thus, given the considerable list of cases of restriction of the right to property, such a right no longer seems to be as monolithic and absolute as it is defined in the Constitution of Ukraine (1996). Moreover, as experts rightly point out, in modern Ukrainian realities, restriction or even deprivation of a person's right to property before the sentence enters into legal force, unfortunately, is a fairly common practice.

The issue of legal protection of property rights is increasingly being considered in the context of broader social challenges – war, cyber threats, economic transformation, digitalisation and tax policy. In this regard, the study by V. Alkema *et al.* (2024) deserves attention, which emphasises the importance of security potential, including in the area of property rights, for the stability of Ukrainian enterprises in conditions of a long-term war. In turn, M. Bani-Meqdad *et al.* (2024) analyse the latest threats to intellectual property rights in the context of the digital environment. They emphasise that effective legal protection of such rights is a prerequisite for sustainable development of regions and part of a broader system of human rights. This provision can be transferred to material property rights – especially in the area of law enforcement in the context of digitalisation of the legal process. Interesting accents in the field of modern property management are made by a team of authors led by F. Naz *et al.* (2022), who in their study analyse the transformation of real estate management taking into account artificial intelligence. Important in the context of rights protection is that algorithmic tools can strengthen or, conversely, disrupt the balance of interests of the parties, in particular in property litigation.

In the field of property taxation, W. McCluskey and F. Plimmer (2011) raise the issue of creating a fiscal space for property tax in Central and Eastern European countries. They demonstrate that effective tax policy is possible only under the condition of legal certainty and protection of property rights. In the broader economic context, Ł. Mach (2019) examines the impact of the global economic crisis on the European real estate market, which indirectly demonstrates the close connection between the stability of property rights and macroeconomic security. T. Kačerauskas (2012) analyses the social, legal and communicative aspects of the creative economy. Author emphasises that the institutionalisation of property rights – including intellectual property rights – is an integral element of new economic models, which can be used in the formation of strategies for protecting property rights in a hybrid legal environment.

The purpose of the study was to explore the points of intersection between civil and criminal law in the context of property rights protection, reveal inconsistencies in law enforcement practice, and outline potential directions for harmonising legal approaches.

Materials and methods

The object of the study was social relations that arise in the process of implementing and protecting property rights within the civil and criminal law of Ukraine. The subject of the study was the norms of civil and criminal law of Ukraine, judicial practice, as well as conceptual approaches to the application of protection and enforcement measures in the field of property rights, taking into account national and foreign experience, in particular the legal positions of the European Court of Human Rights. The study used the logical-legal method of scientific knowledge, with the help of which all conclusions that we make in the research process are logically substantiated, and with the help of this method legal concepts are formed and revealed. The comparative legal analysis method is also employed, for comparison of the main provisions of property rights protection under the legislation of Ukraine and other countries, as well as a comparison of methods of property rights protection in civil and criminal law. Romania, North Macedonia and, indirectly, the countries of the European Union, whose practice is reflected by the European Court of Human Rights, were selected for analysis. The comparative analysis of these countries allowed not only to identify legal conflicts in the Ukrainian context, but also to substantiate ways of potential improvement of legislation through borrowing best practices. Finally, the dogmatic method was applied to analyse the norms

of civil legislation of Ukraine and other countries that regulate property rights protection relations, in order to establish their content, purpose, and interrelationship. Dogmatic method allowed for a deep analysis of the current norms of the Civil Code of Ukraine, the Criminal Code of Ukraine, the Criminal Procedure Code of Ukraine and to determine the logic of their application, gaps and conflicts in the regulation of relations regarding arrest, forced alienation and restriction of property rights.

The following categories of sources were analysed within the framework of the study: regulatory legal acts of Ukraine: Constitution of Ukraine (1996), Civil Code of Ukraine (2003), Criminal Code of Ukraine (2001), Criminal Procedure Code of Ukraine (2012). For example, the provisions of Article 41 of the Constitution, Articles 316-317 of the Civil Code and Articles 170-171 of the Criminal Procedure Code (2012) became the main basic texts for legal analysis. The provisions of the Criminal Code of Romania (Article 238) and the Law of North Macedonia "On Property and Other Property Rights" (2001), which enshrines *actio publiciana*, are used. Also, in the article used the analytical works and professional publications of A. Crisu-Ciocinta (2015), E. Zendeli (2019), S. van Erp and K. Zimmermann (2024), which highlighted the nature of the convergence of civil and criminal law regarding the protection of property rights and official publications of analytical resources, in particular, the statistical data of the International Property Rights Index (2018).

Results and Discussion

The protection of property rights necessitates the preservation of the notion of legal security and faith in the legal order. This protection, as part of the implementation of constitutional legal warrants, encompasses numerous elements and is anticipated in most legal areas. Although there is no question that the most significant and comprehensive protection of property rights is provided by civil law, namely real property law, property rights are also safeguarded by other legal branches, such as criminal law.

The right of ownership, as defined by Article 316 of the new Ukrainian Civil Code (2003) (henceforth referred to as the Civil Code), which went into effect on January 1, 2004, is the right of an individual to a thing (property), which he exercises in conformity with the law at his own will, independent of the will of others. The owner has the right to own, use, and dispose of his property, according to Part 1 of Article 317 of the Ukrainian Civil Code (2003). The idea of property rights is contained in Article 316 of the Ukrainian Civil Code (2003). The right of ownership is the legal right that an individual has to anything (property), which he may use as he pleases, independent of other people's wishes.

Speaking about the essence and legal nature of legal relations regarding the protection of property rights, one should mention that the legal fact giving rise to these legal relations is an offense. Namely this fact determines what method can be applied and other aspects of the mechanism for implementing the right to protection. Legal science has been discussing the correlation of these categories for a long time. Researchers of the issue of the correlation of legal categories of protection and defence of property rights noted that this issue is purely theoretical, does not significantly affect the implementation of property rights, but it is quite possible to consider the protection and defence of property rights as two separate sets of actions. In particular, it is indicated that when the violation is only probable, then the measures of a legal or technical nature taken by a person are covered by the concept of "defence". But if the rights holder has sufficient grounds to believe that his right will be violated or there is a real threat of such a violation, the preventive measures taken are covered by the concept of "protection".

O. Hnativ (2014) writes that defence should be considered as a legal method that prevents right violation, and protection – as one that occurs in the event of its violation and entails the restoration of the corresponding property right. This point of view seems quite justified. At the same time, the jurisdictional mechanism of protection can be belonging to civil law (by filing lawsuits in court) or criminal law (filing applications to law enforcement agencies about the commission of a criminal offense). Among the civil law methods of protection, it is worth highlighting, in particular, the following: 1) filing a lawsuit to reclaim property from someone else's illegal possession; 2) filing a lawsuit to return unjustly acquired or preserved property (conditional lawsuit); 3) filing a lawsuit to recognise the right of ownership; 4) filing a lawsuit to remove obstacles to the use of property (negatory action); 5) filing a claim for compensation for damages caused by violation of the owner's right.

As M. Matiyko (2016) notes, "the provision of legal norms by state coercion is a property of the law itself. The use of coercion to implement legal provisions is not a feature of any of the branches of law. It is inherent in all of them. The differentiation of coercion in branches of law manifests itself primarily in the role of protective legal relations, on which the different degree of coercion in different branches largely depends". One cannot but agree with this statement. Accordingly, this is one of the important points of intersection in the protection of property rights in civil and criminal law. At the same time, regulatory norms prevail in civil law, while protective civil legal relations perform a supporting role for them and therefore are significantly inferior to the latter in number. In civil law, coercion only ensures the fulfilment of an obligation that can occur voluntarily, without the use of coercion.

The differentiation of coercion by branches of law and by subbranches and institutions of civil law is also manifested in the measures related to it. In civil law, these are primarily measures of a property nature, unlike criminal law (Matiyko, 2016). In civil law, in relations regarding the protection of property rights, only measures of a property nature are used, and the protection of other types of regulatory civil relations does not exclude the possibility of applying measures of non-property influence (Dudnyk, 2016). It should also be noted the legal equality in relations regarding the protection of property rights, which is manifested in the reciprocity and uniformity of measures of coercion for the parties to civil legal relations.

The purpose of the use of coercion in civil law is primarily to protect subjective civil rights, while for criminal law it is more important to punish the offender. Coercion stops the violation of the subjective civil right of ownership and provides the necessary conditions for its exercise, or restores the violated right. A common feature of coercion in civil law is the use of coercion depending on the will of the person whose right has been violated. The initiative of the parties as a feature of relations regarding the protection of the subjective right of ownership is primarily associated with the claim

procedure for the use of coercive measures. Article 392 of the Civil Code of Ukraine (2003) grants the owner the right to file a lawsuit for the recognition of his ownership right, especially in cases of its appeal or non-recognition by another person, or in the event of the loss of a document confirming his ownership right.

It is crucial to highlight that in legal proceedings involving the protection of property rights, the subject of protection is directly the rights to the designated items. Rights can be violated by others, and civil law provides a variety of means for a person to safeguard his violated or contested rights and legally protected interests. At the same time, methods of protecting property rights can be divided depending on the legal consequences of their application. Existing methods of protecting property rights can be differentiated depending on them (Table 1).

Table 1. Classification of the methods of protecting property rights

Property-legal methods of protection	Recovery of property from someone else's illegal possession
	Removal of obstacles to the owner's exercise of the right to use and dispose of his property
	Recognition of the right of ownership
	Recognition of the illegality of a legal act that violates the right of ownership
Obligatory-legal methods of protection	Methods of protecting property rights in contractual obligations
	Methods of protecting property rights in non-contractual obligations

Source: developed by the authors

The basic law of the state empowers the legislative branch to establish the substance and boundaries of property rights, but this authority must be applied seriously in order to strike a fair balance between the general interest of society and the individual interest. Achieving property rights implies the state's commitment to ensure and defend legally acquired property (Crisu-Ciocinta, 2015). Beyond the protection provided by constitutional rules, there is also civil protection of the subjective property right by defining this actual right, establishing its legal characteristics, and the manner in which it is purchased and set up. Also, criminal protection is provided primarily by juridical norms that indict illegal activities that harm a person's assets, as well as norms included in the general portion of the Criminal Code (Sokha, 2019).

One of the main tasks of the Criminal Code of Ukraine (2001) is the legal provision of property protection (Part 1, Article 1 of the Criminal Code of Ukraine). The implementation of this task at the legislative level is carried out primarily by establishing a prohibition on damaging an object under the threat of criminal punishment. In other words, the recognition of certain socially dangerous acts that encroach on property as crimes aims to implement the task of its criminal legal protection. In the event of a crime, this task is not performed in a preventive aspect, the corresponding goal is not achieved. However, the effect of the law does not end there, moreover, the norms provided for by the Special Part of the Criminal Code of Ukraine (2001) come into force.

Objects of criminal legal protection related to property relations are placed under protection by means of regulations contained in various sections of the Special Part of the current Criminal Code of Ukraine (2001). The peculiarity of such polyobjects is that, taking into account the main direct object, the legislator recognises not property relations but others as generic. An analysis of such provisions shows that property damage is caused precisely to a secondary object placed under protection, but not primarily, however along with another object, for example, causing property damage when violating traffic safety rules and transport operation, committing crimes against the environment, causing damage in case of violating safety rules at work, committing certain crimes against public safety, etc.

Undoubtedly, the inviolability of the right to property, as envisioned in Ukraine's existing legislation, is a basic tenet of a democratic society and a law-bound state. For example, Article 41 of Constitution of Ukraine (1996) expressly states that no one shall be wrongfully dispossessed of his or her ownership rights. The right to private property is unquestionable. At the same time, Ukraine's criminal procedure legislation now incorporates the aforementioned main law standard. Therefore, conceptual approaches to the ownership right inviolability are described in Article 16 of the Criminal Code of Ukraine (2001). These approaches are outlined in several other norms of the Code that govern the temporary restriction or deprivation of an individual's ownership rights. It specifically addresses searches, examinations, investigative experiments, property seizures, attachments, and the transfer of confiscated property to ARMA (Asset Recovery and Management Agency), among other things.

It is worth mentioning that the existence of institutions such as ARMA in the public sector is not a novel concept. Almost every European country has a governmental entity authorised to hold and administer property known as an exhibit, which is used as a tool to commit a crime or obtained as a result of the latter. In line with Article 100 of Criminal Procedure Code of Ukraine (2001), ARMA is empowered not only to administer property but also to alienate it. Simultaneously, no circumstances in which property alienation is lawful or permitted have been identified. As a result, law enforcement officials use legal gaps to force ARMA to sell attached assets.

Thus, officials of pre-trial investigative organisations and prosecutors, who have a broad range of powers, clearly abuse their authority to restrict property rights. As a result, persons with no involvement in a criminal offense face completely unjustifiable restrictions on their right to property. In order to demonstrate the aforementioned, attorneys from one of the law firms in Ukraine look at the following case: "we attempted to have the relevant investigative judge's decision overturned after discovering that our client's property had been attached, even though they had not been questioned in a criminal proceeding as a witness, much less a suspect" (Lysak & Poshyvanyuk, 2024). The judges' panel concluded that the property had been attached in advance after considering the attorneys' claims. The attachment was, therefore, cancelled. On the next day, however, the prosecutor filed a move for property attachment in a first-instance court. Surprisingly, the investigating court approved the application on the same day as the new attachment. Criminal practitioners understand how difficult it is to get an

investigative judge to examine an ordinary motion or defence complaint within an acceptable time frame. Simultaneously, motions submitted by prosecutors or investigators (even those involving property attachment) are processed promptly, as is customary. Even more unexpected is that if a lawyer is aware of such motions filed by a prosecutor and wants to attend the hearings, the urge to evaluate them quickly fades for some reason. These facts lead to the gloomy conclusion that the principles of Criminal Procedure Code of Ukraine (2012), which incorporate the idea of equality of parties to a criminal proceeding, are mostly ineffective in the country's current criminal justice system. This is just one example of the schism that has developed between "court-prosecutor" and "court-lawyer" (Lysak & Poshyvanyuk, 2024).

The above-mentioned Ukrainian lawyers believe that the problem of uncontrollable attachment of property owned by individuals who have not been designated as suspects or defendants in criminal proceedings can be solved by making simple changes to Criminal Procedure Code of Ukraine (2012). To accomplish this, it is sufficient to: a) restrict the quantity of motions for property attachment that detectives and prosecutors may submit to the investigative judge; and b) require investigative judges to inform property owners of the consideration of motions for property attachment (just notices, excluding mandatory participation). These straightforward adjustments will instantly end many abuses committed by prosecutors and pre-trial investigation organisations (Lysak & Poshyvanyuk, 2024).

Property rights create quite obvious points of intersection between civil and criminal law. However, this intersection is ambiguous and has certain pitfalls. O. Skarbachuk (2021) observes that while attempting to analyse arrest as a measure to secure a civil claim in criminal proceedings, it is immediately apparent that the normative regulation of such a measure in the Criminal Code of Ukraine (2001) does not match to a comparable measure provided for in the Civil Code of Ukraine (2012). Therefore, measures to secure criminal proceedings (such as pre-trial investigations, court proceedings, and procedural actions related to the commission of an act permitted by the criminal legislation are referred to as property arrests under Article 170 of the Criminal Code of Ukraine (2001), while measures to secure the claim (statements on the merits of the case in which the plaintiff's claims are set out in writing) are referred to as property arrests under Article 149 of the Civil Code of Ukraine (2003). In other words, the functions of arrest in criminal and civil processes are distinct.

Moreover, within the criminal proceeding's framework, one should distinguish several types of property seizure. In particular, property seizure is a temporary, until cancelled in the manner specified by this Code, deprivation by decision of an investigating judge or court of the right to alienate, dispose of, and/or use property, as stated in Part 1 of Article 170 of the Criminal Procedure Code of Ukraine (2001). According to Article 317 of the Civil Code of Ukraine (2003), the owner has the right to hold, use, and dispose of his property; as a result, the idea of "alienation of property" is a part of the idea of "disposal of property". Therefore, there are several types of seizure:

a) a temporary prohibition on the owner of the property to use and dispose of the property belonging to him (e.g., seizure of the property in order to secure material evidence with its subsequent storage in the pre-trial investigation body);

b) a temporary prohibition on the owner of the property to dispose of the property belonging to him (e.g., seizure of the property in order to secure a civil claim).

Since the specified types of seizure of property provide for different scope of the owner's rights, which are limited, it is necessary to apply differentiated grounds for their application, namely: to provide that proving the reasonable possibility of concealment, damage, spoilage, destruction, transformation, alienation is entrusted to the pre-trial investigation body only in the case when the petition for seizure provides, in addition to the prohibition of disposal of property (including its alienation), a prohibition of use of such property by the owner. Otherwise, the petition of the civil plaintiff for the application of such seizure without proving the circumstances provided for in paragraph 2, part 1, article 170 of the Code of Criminal Procedure of Ukraine (2001) is sufficient.

According to Part 6 of Article 171 of the Code of Criminal Procedure of Ukraine (2001), a civil defendant's property may be seized if there is a legitimate civil claim in criminal proceedings. Additionally, the value of the property that will be seized to secure a civil claim must be equal to the amount of damage caused by the criminal offense (Part 8 of Article 170 of the Code of Criminal Procedure of Ukraine, 2001). Furthermore, according to Part 3 of Article 171 of the Ukrainian Code of Criminal Procedure (2012), the civil plaintiff's (his representative's) petition must include the amount of damage resulting from the criminal offense, the amount of the claim, and proof of the fact that damage was caused.

O. Skarbachuk (2021) rightly notes that the above provisions significantly worsen the position of the civil plaintiff in view of the following: (1) the validity of the amount of the civil claim (in this context, it should be noted that the civil process operates with the concepts of "amount of claims" and "cost of claim") can be established exclusively based on the results of the court's consideration of the relevant civil claim, and therefore the specified requirement cannot be achieved either at the stage of pre-trial investigation or at the stage of preparatory proceedings; (2) the civil plaintiff, having the opportunity to obtain information from public registers about real estate owned by the civil defendant on the right of private ownership, is deprived of the opportunity to obtain data on the value (market or estimated) of the specified objects in order to assess its proportionality to the amount of damage caused; (3) evidence of the fact of causing damage by a criminal offense is usually contained in the materials of the criminal proceedings, and the fact itself is established as a result of the judicial investigation. In fact, the commission of an unlawful act by a civil defendant, the occurrence of harmful consequences, and the causal relationship between them, as grounds for compensation for the damage caused, are established within the framework of criminal proceedings, and based on the results of consideration of a civil claim, only a reasonable amount of compensation for the damage caused is established.

O. Skarbachuk (2021) believes that the seizure of the property of a civil defendant as a measure to secure a civil claim should be fully regulated by the norms of the Ukrainian Civil Code (2003), in order to ensure a balance of interests of the parties to criminal proceedings. The moment of filing a petition must be established as the filing of a civil claim in the pre-trial investigation (the petition is considered by the investigating judge) or the moment of filing a civil claim in the preparatory proceedings (considered by the court).

It is important to remember that criminal law and civil law are two distinct and expansive legal systems with different sets of rules and penalties. However, in judicial practice, some aspects of convergence of public and private law are often observed. In particular, the introduction of private law regulation in criminal law is associated, first of all, with the presence of a private interest of the victim (Kucher, 2017). One of the types of private interests falling within the scope of criminal law are private interests regulated by the norms of civil and other branches of law, including property relations. Also, in some situations, criminal and civil law are applied simultaneously, for example, when compensating the victim for damage caused by a crime. Modern researchers emphasise that convergence confirms that the tasks, functions and purpose of law, including with respect to the protection of property rights, are uniform, and the systemic and sectoral (branch) division of law is conditional (Dzyanyy *et al.*, 2024; Kryshtanovych *et al.*, 2024).

Aside from the protection provided by extra-criminal legal standards, the property right is consistently protected by the criminal law, just like any other fundamental human right. Like other essential individual rights, the property right is primarily protected by implicating the circumstances that jeopardise it. A situation that is in compliance with the law is the sole scenario that the legal criminal norm must safeguard; an individual who obtained an item unlawfully is not entitled to the protection of this condition. Nemo auditor *propriam turpitudine mallegans*, which states that no one may use their own guilt to defend their interests, is used in the context of property when it comes to the requirement that the acquisition of the property right have a licit nature. It implies that the individual who engaged in unlawful behavior when acquiring the property right could not be eligible for legal protection (van Erp & Zimmermann, 2024).

In this context, it is interesting to address the experience of Romania. The definition provided by the criminal legislator for the offense known as "trust abuse" may be used to determine the need of the licit nature of acquiring the property right in order to get protection from the criminal law: "The unjust appropriation, disposal or use of somebody else's asset by the person who received it on the basis of a title and with a certain purpose, or the refuse to give it back is punished with imprisonment from 3 months to 2 years or with a fine" where there is the application of the phrase "*unjust*" – (Article 238, paragraph 1 of the Criminal Code of Ukraine (2001)). It denotes the absence of a title that would justify the offender's actions, which include turning the mere possession of an object into full ownership. The particular of the trust abuse offense is when the offender transforms their status as a mere holder of another person's property into that of the purported owner of that property (Crisu-Ciocinta, 2015).

The following circumstances establish the presence of the trust abuse offense: the offender should not have obtained the property right over the personal asset that constitutes the material object of the offense at the time of the appropriation, disposal, use, or refusal to return. According to the hypothesis, the offender's actions do not fall inside the criminal illicit realm once they have acquired the asset. Stated differently, the owner of the asset or the individual to whom the owner transferred ownership will be protected by the law when the criminal's actions, such as taking, selling, or using someone else's property or refusing to return it, do not depend on the property right that the criminal has lawfully obtained.

Article 160 of the Law of North Macedonia "On Ownership and Other Real Rights" (2001) (LOORR) contains the provisions of the *actio publiciana*. According to paragraph 1 of the Law, the person who legally and legally obtained an individually determined item and who was unaware that he was no longer the owner (presumed owner) has the right to ask the conscientious holder who possesses the item on a weaker or no legal basis to return it (Crisu-Ciocinta, 2015). The *actio publiciana* cannot be classified as a real property suit because the plaintiff has to demonstrate that, rather than having the right of ownership, the item he is requesting be returned was obtained legally and that he was unaware that he was no longer the owner (presumed owner) (Paragraph 1 of the Law). As a result, the plaintiff must demonstrate that he possesses qualified ownership, meaning that it is legitimate, authentic, and lawful.

As one can see, it concerns two people with conflicting legal rights to ownership, each of whom asserts a stronger title to the thing. The second paragraph of the LOORR (2001) (though it is not comprehensive as such) resolves this conflict of legal grounds in one of the Macedonian cases. It states that when two people believe they are the presumed owners of the same item, the person who has acquired the item as a burden has a stronger legal basis than the person who has not. The owner of the thing takes priority if both parties have equally strong legal foundations. According to A. Crisu-Ciocinta (2015), the right to file a lawsuit under paragraph 1 of this article is perpetual.

In Macedonia, when property rights are protected in criminal proceedings, the legal property claim related to the payment of damages, return of the item, or voiding of the legal act created by the commission of the criminal offense at the request of the authorised person may also be examined (Article 97 of the Criminal Code of the North Macedonia (1996)). In this case, Article 103 of the Criminal Code stipulates that if the court finds that an item is the property of the injured party and is being held by the accused, another criminal, or someone to whom the object was given for safekeeping, it must state in its ruling that the item must be returned to the injured party if the legal and property claim calls for it. On the recommendation of the public prosecutor and other authorised individuals, temporary measures may be put in place during the criminal process in order to protect the property and legal claim resulting from the criminal offense, in accordance with the rules that apply to the enforcement process (Article 106 of the Code). "If multiple injured parties are in a dispute over the ownership of the objects, they shall be referred to litigation, and the court in the criminal procedure shall only rule on the safeguarding of the objects as a provisional security measure", states Article 107, paragraph 2 of the Criminal Code of the North Macedonia (1996). This approach is of high interest in the discussions and considerations of both separate spheres and convergence of property rights protection in civil and criminal law. When using evidence, one must adhere to a number of principles, including the principles of contradiction, equality of parties, presumption of innocence, freedom of evidence, non-discrimination, reasonableness, openness, legality, reasonableness, and non-discrimination (Stoianov *et al.*, 2023).

Property rights are regarded essential human rights and are protected by constitutional provisions, international conventions, and a plethora of laws and by-laws. The institution of property rights constitutes a complicated legal category,

making it difficult to provide a description that encompasses all of its features. According to civil law theory, ownership may be described as a legal relationship in which a given property belongs entirely to a certain subject based on the force of the legal norm (Zendeli, 2019). The protection of property rights is one of the most fundamental goals of any legal system. In current legal literature, property rights are viewed as a civil society institution, a fundamental Institute of private rights, and a universal value (Vasyliev, 2024). Property protection is a regulation that ensures that everyone has the right to own property and cannot be stripped of it. Importantly, under this law, property encompasses not only physical items, but also firm shares, intellectual property (such as trademarks), and social security benefits. In some situations, a person's professional practice (for example, medical or legal) might be considered a "possession" (Murat, 2021).

The two fundamental paradigms of property rights are the "bundle of sticks" approach and the "discrete asset" approach. Over the last century, scholars abandoned the previously dominant "discrete asset" approach. While some scholars recently have suggested reintegrating the "discrete asset" approach into property theory, the legal community – both academic and professional – remains substantially wedded to the "bundle" approach. At the same time, there is a sense that the public at large generally adheres to the "discrete asset" approach (Nash, 2009). Meanwhile, the paradigmatic frame through which property rights are presented has an effect upon perceptions of those rights.

As Ukrainian scholar O. Hnativ (2014) correctly points out, one of the most important issues in the history of Ukrainian public awareness is the question of property rights and their social function. The concept of property rights has always played a major role in civil law. Its main provisions determine the content of other sections of civil law contractual, inheritance, obligation law, etc. This explains the continuous interest in the study of property rights protection by representatives of legal science. Furthermore, International Property Rights Index (2018) show that there is a clear link between the strength of a country's legal institutions and the protection of property rights (see Fig. 1). Property rights protection has a high positive link with the rule of law (r = 0.91), as well as with judicial independence (r = 0.93). The trend line also demonstrates that when the quality (score) of legal institutions (rule of law and judicial independence) declines, so does the quality of property rights protection. Thus, the quality (effectiveness) of property rights protection is an indicator of the quality of institutes, and, thus, represents highly important area of concern for Ukraine, within the process of European integration.

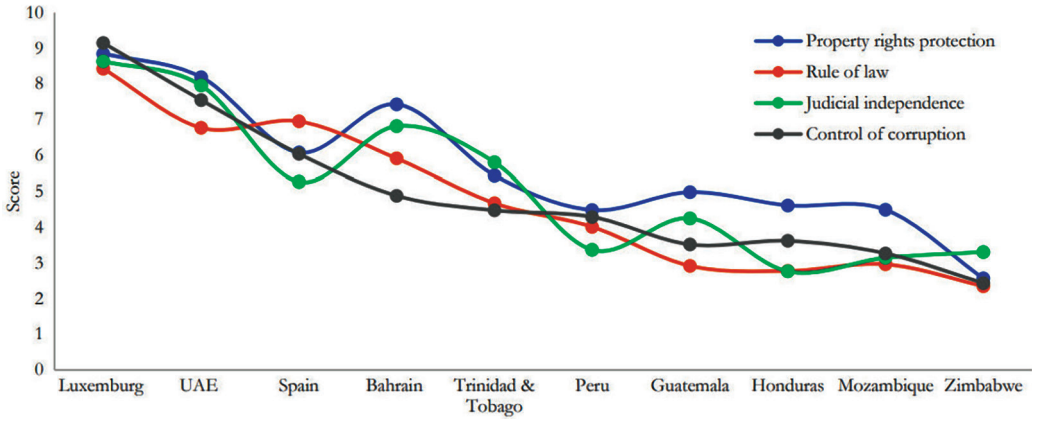


Figure 1. Property rights protection and legal institutions quality
Source: International Property Rights Index (2018)

Property law in a digital and globalising society is a rapidly developing area of property law studies. The legal categorisation of digital assets and the question of whether it is feasible to "own" data are two of the fundamental difficulties in the field of digitalisation, which is not surprising to property attorneys (Zimmermann, 2022). Nevertheless, EU-level talks are still ongoing, thus these rights have not yet become incorporated as a result of EU events. T. de Graaf (2019) has made an intriguing addition to this discussion by investigating the legal classification of bitcoins using both property law and contract law. An overview of bitcoin technology is provided for this reason in order to guarantee that everyone is aware of the fundamental technological procedures. After this is accomplished, the technology is examined from the perspectives of both property law and contract law. By comparing bitcoins to "documentary intangibles", T. de Graaf (2019) argues that they can be qualified, focusing on the paper's broader property law component. Naturally, these areas represent a sound challenge also for Ukrainian legislative field, since the country is an active participant in the global digital transformation processes and formation of digital assets/properly. This fact makes the task of balance, aligning, and convergence between interpretation and addressing property rights protection in civil and criminal law of Ukraine even more crucial.

Conclusions

The study conducted a comprehensive analysis of the mechanisms for protecting property rights in the civil and criminal law of Ukraine, with a focus on identifying points of intersection between these two branches of law and identifying existing problems of law enforcement. Key gaps in legislation and contradictions in judicial practice that lead to abuses, in particular regarding the seizure of property without proper judicial control, are outlined. The paper analyses the conceptual apparatus (protection, coercion, seizure of property), distinguishes the functions and legal consequences of coercive measures in civil and criminal proceedings.

For the first time, the convergence paradigm is systematically applied – both at the theoretical level and through the analysis of comparative material from Romania, North Macedonia and the practice of the European Court of Human Rights. This made it possible to show the practical possibility of harmonising Ukrainian legislation with European standards in terms of the protection of property rights. The value of the study lies in identifying real risks for property rights holders in the context of modern law enforcement practice, in particular regarding the activities of ARMA (National Agency for Investigation and Asset Management), and in proposing specific amendments to the Criminal Procedure Code of Ukraine to limit abuses by pre-trial investigation bodies.

The right to property represents one of the core human rights, and without its effective protection, a guarantee of the full protection of other human rights cannot exist. The problems of protection and defence of property rights are becoming especially relevant in the current conditions of Ukraine's integration into the European international community, in the context of the adaptation of domestic legislation in the sphere of international law on the problems of the implementation and protection of property rights. Proving the infringement of property rights is seen as one of the court's and the parties' primary responsibilities in criminal and civil actions. The proof must, however, be legitimate and not infringe upon the inviolability of property rights. In this vein, as the conducted research shows, the gradual borrowing of techniques tested in other branches of criminal procedure from them is capable of ensuring procedural convergence without the creation of supra-branch structures of judicial law. Since Ukraine has committed to respecting human rights in accordance with international standards (the flow of applications to the European Court from individuals and legal entities against Ukraine is constantly growing, including in connection with violations of property rights), it is extremely necessary to organise a systematic study by civil servants, and primarily judges, of decisions of the European Court and national courts of EU member states.

Acknowledgements

None.

Funding

The study was not funded.

Conflict of interest

None.

References

[1] Alkema, V., Hryhoruk, P., Skhidnytska, H., & Sylkin, O. (2024). Resilience and strategic management: Ways to ensure economic and social security of Ukrainian enterprises during long-term warfare. *Clio. Journal of History, Human Sciences and Critical Thought*, 9, 740-767. doi: 10.5281/zenodo.14567108.

[2] Bani-Meqdad, M.A.M., Senyk, P., Udod, M., Pylypenko, T., & Sylkin, O. (2024). Cyber-environment in the human rights system: Modern challenges to protect intellectual property law and ensure sustainable development of the region. *International Journal of Sustainable Development and Planning*, 19(4), 1389-1396. doi: 10.18280/ijsdp.190416.

[3] Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/go/435-15.

[4] Constitution of Ukraine. (1996, June). Retrieved from https://www.president.gov.ua/documents/constitution.

[5] Criminal Code of the North Macedonia. (1996, November). Retrieved from https://www.vertic.org/media/National%20Legislation/Macedonia_FYR/MK_Criminal%20Code_2009.pdf.

[6] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/go/2341-14.

[7] Criminal Procedure Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/go/2341-14.

[8] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/go/4651-17.

[9] Crisu-Ciocinta, A. (2015). The legal protection of the property right. *SEA – Practical Application of Science, Romanian Foundation for Business Intelligence, Editorial Department*, 7, 27-32.

[10] De Graaf, T. (2019). The qualification of bitcoins as documentary intangibles. *European Review of Private Law*, 27(5), 1051-1073. doi: 10.54648/ERPL2019057.

[11] Dudnyk, R. (2016). *Branch differentiation of Ukrainian law: Concept, levels and trends of dev development*. (PhD dissertation, Odesa Law Academy, Odesa, Ukraine).

[12] Dzyanyy, R., Kryshtanovych, M., Kiblyk, D., Kovalskyi, M., Primush, R., & Nazarenko, T. (2024). Formation of drivers of sustainable development: Administrative and legal support to ensure information security. *International Journal of Sustainable Development and Planning,* 19(4), 1611-1619. doi: 10.18280/ijsdp.19043.

[13] Hnativ, O. (2014). *Protection of property rights in civil law*. (PhD dissertation, Ivan Franko Lviv National University, Lviv, Ukraine).

[14] International Property Rights Index. (2018). Retrieved from https://internationalpropertyrightsindex.org/.

[15] Kačerauskas, T. (2012). Creative economy and technologies: Social, legal and communicative issues. *Journal of Business Economics and Management*, 13(1), 71-80. doi: 10.3846/16111699.2011.620151.

[16] Kryshtanovych, M., Lapychak, N., Bundz, R., Drymalovska, K., Bohashko, O., & Herzanych, V. (2024). Administrative and legal guidelines for standardisation of financial reporting of enterprises as socio-economic systems. *Financial and Credit Activity Problems of Theory and Practice*, 4(57), 495-504. doi: 10.55643/fcaptp.4.57.2024.4472.

[17] Kucher, V.O. (2017). Inviolability of property rights under the civil legislation of Ukraine. *Bulletin of the Lviv University of Trade and Economics. Legal Sciences*, 4, 277-286.

[18] Law of North Macedonia "On Ownership and Other Real Rights". (2001, February). Retrieved from https://www.libertas-institut.com/de/MK/nationallaws/law_on_ownership_and_other_real_rights.pdf.

[19] Lysak, O., & Poshyvanyuk, T. (2024). Restrictions on property rights in criminal proceedings. *Equity*. Retrieved from https://equity.law/en/press-center/publications/1064.html.

[20] Mach, Ł. (2019). Measuring and assessing the impact of the global economic crisis on European real property market. *Journal of Business Economics and Management*, 20(6), 1189-1209. doi: 10.3846/jbem.2019.11234.
[21] Matiyko, M.V. (2016). Civil legal relations regarding the protection of property rights. *Journal of Civil Jurisprudence*, 20, 39-42.
[22] McCluskey, W., & Plimmer, F. (2011). The creation of fiscal space for the property tax: The case of Central and Eastern Europe. *International Journal of Strategic Property Management*, 15(2), 123-138. doi: 10.3846/1648715X.2011.582748.
[23] Murat, S. (2021). Protection of property rights in international law. *Baltic Journal of Legal and Social Sciences*, 4, 4-13.
[24] Nash, J. (2009). Packaging property: The effect of paradigmatic framing of property rights. *Tulane Law Review*, 84(3), article number 691.
[25] Naz, F., Kumar, A., Upadhyay, A., Chokshi, H., Trinkūnas, V., & Magda, R. (2022). Property management enabled by artificial intelligence post Covid-19: An exploratory review and future propositions. *International Journal of Strategic Property Management*, 26(2), 156-171. doi: 10.3846/ijspm.2022.16923.
[26] Skarbachuk, O. (2021). Attachment of property as a measure to secure a civil claim in criminal proceedings. In *Round table "Current Problems of criminal law and process"* (pp. 21-23). Ostroh: The National University of Ostroh academy.
[27] Sokha, S. (2019). Problems of property rights protection in criminal proceedings. *Young Scientist,* 12(76), 83-86.
[28] Stoianov, M., Fedorov, I., Volosko, I., Gurtieva, L., & Pavlyshyn, A. (2023). The protection of property rights in criminal and civil proceedings: ECtHR practice. *Amazonia Investiga*, 12(64), 83-93. doi: 10.34069/AI/2023.64.04.8.
[29] van Erp, S., & Zimmermann, K. (2024). *Research handbook on European property law*. Northampton: Edward Elgar Publishing.
[30] Vasyliev, S.V. (2024). *Legal convergence of procedural law of Ukraine*. Kyiv: Alerta.
[31] Zendeli, E. (2019). Methods pf protection of the property right in the legal system of Republic of North Macedonia. *SEEU Review*, 14(2), 135-149. doi: 10.2478/seeur-2019-0024.
[32] Zimmermann, K. (2022). What's new in European Property Law?: An overview of publications in 2019-2021. *European Property Law Journal*, 11(1-2), 105-128. doi: 10.1515/eplj-2022-0004.

Захист прав власності в цивільному та кримінальному праві України: точки перетину та проблеми правозастосування

Наталія Парасюк
Кандидат юридичних наук, доцент
Львівський державний університет внутрішніх справ
79007, вул. Городоцька, 26, м. Львів, Україна
https://orcid.org/0000-0002-7489-9181

Василь Парасюк
Кандидат юридичних наук, доцент
Львівський державний університет внутрішніх справ
79007, вул. Городоцька, 26, м. Львів, Україна
https://orcid.org/0000-0002-8195-7597

Іванна Здреник
Кандидат юридичних наук, доцент
Львівський державний університет внутрішніх справ
79007, вул. Городоцька, 26, м. Львів, Україна
https://orcid.org/0000-0002-8645-0701

Ростислав Бориславський
Доктор філософії в галузі права
Львівський державний університет внутрішніх справ
79007, вул. Городоцька, 26, м. Львів, Україна
https://orcid.org/0000-0001-8941-7942

Анотація. Актуальність дослідження зумовлена необхідністю удосконалення механізмів правового захисту майнових прав в умовах інтеграції України до європейського правового простору та на тлі проблем розмежування цивільно-правових і кримінально-правових засобів впливу. Метою роботи було виявлення перетину цивільного й кримінального права у сфері захисту права власності, з ідентифікацією суперечностей у правозастосуванні та визначенням напрямів конвергенції правових підходів. У дослідженні використано логіко-юридичний, порівняльно-правовий та догматичний методи, що дозволило проаналізувати норми українського законодавства, рішення національних і міжнародних судів та правозастосовну практику. У межах роботи було досліджено особливості реалізації принципу недоторканності права власності у цивільному та кримінальному процесах, проаналізовано проблеми арешту майна осіб, які не мають процесуального статусу підозрюваного чи обвинуваченого. Було встановлено, що чинна редакція норм процесуальне законодавство України не забезпечує належного балансу інтересів сторін у випадку накладення арешту на майно, що призводить до порушення прав цивільних відповідачів. Було виявлено особливості диференціації примусу у цивільному та кримінальному праві, а також розмежовано функції арешту майна як засобу забезпечення позову та як процесуального інструменту у кримінальному провадженні. Проаналізовано досвід Румунії та Північної Македонії щодо захисту права власності в умовах правової конвергенції. Зроблено висновок про доцільність адаптації окремих іноземних практик до українського контексту, зокрема щодо зміни процедур накладення арешту на майно та зміцнення процесуальних гарантій. Практична цінність роботи полягає у тому, що її результати можуть бути використані суддями, адвокатами, законодавцями та працівниками правоохоронних органів для удосконалення підходів до захисту права власності та приведення національної правозастосовної практики у відповідність до європейських стандартів

Ключові слова: права власності; цивільне право; кримінальне право; захист; примус; конвергенція

UDC 341.9: 556.1
DOI: 10.32518/sals2.2025.165

Соціально-правові студії. 2025. Т. 8, № 2
Social & Legal Studios. 2025. Vol. 8, No. 2

Role of the European Union in addressing climate change migration and protecting immigrants' rights

Joana Koçi*
Master
University of Tirana
1010, 4 Mother Teresa Sq., Tirana, Albania
https://orcid.org/0009-0000-9156-6509

Abstract. The purpose of this study was to comprehensively assess the European Union's climate migration policy in terms of its compliance with international human rights standards. The research a structured qualitative methodology was applied, combining doctrinal legal analysis, comparative policy evaluation, and critical interpretation of official and non-governmental reporting. The study found that while European Union institutions demonstrate a growing recognition of climate change as a driver of migration, a significant gap persists due to the lack of a clear legal status for climate migrants within the European Union framework. Existing legal instruments were found to be inadequately adapted to the specific needs of those displaced primarily by environmental factors, creating a protection vacuum. Analysis of international reports confirmed the escalating scale of the issue, with, for example, 83.4 million internally displaced persons globally by the end of 2024, 9.8 million of these due to natural disasters. The European Union's practical measures, while including humanitarian aid and funding for adaptation, were often characterised as short-term and insufficient to address the root causes or long-term protection needs. It was established that the dominant European Union discourse frames climate migration primarily as a humanitarian or security challenge, rather than a comprehensive human rights issue, a stance that has drawn consistent criticism from non-governmental organisations for prioritising border control over humanitarian principles. The study identified this discursive framing as a central barrier to systemic legal reform and, based on a comparative legal analysis and institutional policy review, formulated concrete recommendations for transitioning to a humanistic paradigm in the European Union's climate migration policy, thereby determining the practical significance of the research

Keywords: international protection; environmental change; global warming; internally displaced person; legal norms

Introduction

Climate migration has emerged as one of the most pressing and complex global challenges of the 21st century, driven by the escalating impacts of climate change on human settlements, livelihoods, and the enjoyment of fundamental human rights. Increasing frequency and intensity of natural disasters, progressive desertification, water scarcity, and other environmental transformations compel millions to leave their homes in search of safer conditions. According to the IDMC (2025), climate-vulnerable regions are already witnessing the loss of livelihoods, displacement from ancestral lands, and erosion of access to essential services, including health care, housing, and education. By the end of 2024, approximately 9.8 million people were newly displaced by natural disasters, contributing to a global total of 83.4 million internally displaced persons, a significant increase from 75.9 million the previous year.

Despite the scale of this phenomenon, the current international legal system provides neither a universally accepted definition of "climate migrant" nor a coherent framework for their protection. The Convention Relating to the Status of Refugees (1951), which remains the cornerstone of international protection, does not recognise environmental causes as legitimate grounds for refugee status, as demonstrated in the study by S. Dutta and A. Basu (2025). This lacuna leaves climate-displaced individuals in a state of legal ambiguity, excluded from established protections and international support mechanisms. The inadequacy of legal protections has become increasingly evident in both developing and developed regions. For instance, K.S. Mahmood (2024) illustrates that even countries such as Bangladesh, which have incorporated international climate obligations into national law, continue to struggle with the effective implementation of protection measures for climate-displaced populations.

Moreover, the integration of scientific knowledge into policy design is increasingly seen as vital to addressing the structural drivers of climate migration. A. Koskina *et al.* (2024) argue that science-based policymaking, as mandated by the Paris Agreement, remains underutilised, particularly with regard to the governance of climate-induced migration. They note that while the use of empirical climate data has been promoted, its actual influence on shaping binding legal norms and operational protection mechanisms

Suggested Citation **Article's History**: Received: 29.02.2025 Revised: 19.05.2025 Accepted: 25.06.2025

Koçi, J. (2025). Role of the European Union in addressing climate change migration and protecting immigrants' rights. *Social & Legal Studios*, 8(2), 165-176. doi: 10.32518/sals2.2025.165.

*Corresponding author

Copyright © The Author(s). This is an open access Article distributed under the terms of the Creative Commons Attribution License 4.0 (https://creativecommons.org/licenses/by/4.0/)

remains limited. The vulnerability of certain regions to climate-induced displacement has been thoroughly documented in the literature. A. Thomas *et al.* (2020) provide a comprehensive review of small island developing states (SIDS), which are among the most exposed to the multifaceted effects of climate change, including rising sea levels, habitat loss, and intensified extreme weather events. Their research shows that SIDS, despite their diverse geographies, share a common vulnerability and have consistently advocated for stronger international action and climate justice mechanisms. These findings underscore the urgent need for coordinated international efforts to address climate migration through both adaptation and mitigation strategies.

Within the European context, the European Union has acknowledged the connection between climate change and migration in strategic documents such as the EU Adaptation Strategy (2021), which outlines the need for smarter, faster, and more systemic adaptation to the unavoidable effects of climate change (Krasivskyy, 2024). However, the transformation of this recognition into binding legal instruments and robust protection frameworks for displaced populations remains slow and insufficient. Analyses by R. Negrón *et al.* (2025) underscore the persistent lack of a clear international legal definition of "climate migrant", which severely hampers the development of coherent protection mechanisms. Their work also highlights that climate migration is often framed in legal and policy discourse as an emergent issue lacking epistemic consensus, which complicates both national-level responses and transnational coordination. These concerns are amplified in the European Union, where the current legal and policy frameworks are yet to offer a harmonised, human rights-oriented response to the increasing scale of climate-induced displacement.

The absence of a formal legal status for climate migrants in both international and EU law, as highlighted by D. Chotouras *et al.* (2024), contributes to systemic exclusion and marginalisation. They argue for a human rights-based approach, emphasising the importance of recognising a legally binding right to a healthy environment and integrating this principle into international migration governance. Similarly, K.W. Junker *et al.* (2022) propose a reparative justice framework that acknowledges historical responsibilities for climate degradation and advocates the use of existing financial instruments under the Paris Agreement to support displaced populations. Further, legal scholarship has begun to explore more radical interpretations of international law to address environmental harm. K.W. Brynzanska (2024) explores the legal possibility of qualifying certain types of environmental destruction as acts of genocide, particularly when they are intended to destroy a national, ethnic, or religious group. While this perspective is not directly operational in the context of climate migration, it broadens the conceptual horizon and stresses the urgent need for innovative legal thinking to confront the environmental crises of our time.

The purpose of the study was to assess the legal and institutional framework of the EU's climate migration policy and to identify systemic gaps, internal inconsistencies, and areas of legal uncertainty that hinder the effective protection of climate-displaced persons. The analysis focused on three key objectives: first, to examine the principal strategic documents and legislative initiatives of the EU that shape its policy responses to climate-induced migration between 2019 and 2025; second, to assess the practical measures undertaken by the EU in this period, including funding programmes and humanitarian actions, in terms of their coherence, effectiveness, and alignment with declared policy goals; third, to conduct a legal analysis of the normative architecture of EU migration law, with emphasis on the identification of outdated legal provisions, regulatory lacunae, and inconsistencies between sectoral policies, thereby providing a foundation for targeted recommendations to improve legislative and procedural safeguards for climate migrants.

Materials and methods

The documentary basis of this study was organised in a structured manner to ensure a comprehensive and systematic examination of the European Union's climate migration policy. At the core of the analysis were foundational EU strategic frameworks, notably the European Green Deal (2019) and the Pact on Migration and Asylum (2024), which set the political direction for the Union's climate and migration agendas. These high-level strategies were examined for their recognition of climate migration as an emerging policy issue situated at the intersection of environmental transformation, humanitarian concerns, and cross-border governance.

To assess how these strategic intentions are operationalised, the study conducted a detailed analysis of binding EU legal instruments that form the regulatory framework governing migration and asylum. This included Council Directive of the Council of the European Union No. 2001/55/EC "On Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts between Member States in Receiving Such Persons and Bearing the Consequences Thereof" (2001), Directive of the European Parliament and of the Council No. 2011/95/EU "On Standards for the Qualification of Third-Country Nationals or Stateless Persons as Beneficiaries of International Protection, for a Uniform Status for Refugees or for Persons Eligible for Subsidiary Protection, and for the Content of the Protection Granted" (2011), Regulation of the European Parliament and of the Council No. 604/2013 "On Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in One of the Member States by a Third-Country National or a Stateless Person" (2013), and Directive of the European Parliament and of the Council No. 2008/115/EC "On Common Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals" (2008). Each of these legal acts was analysed in terms of its applicability and adequacy in addressing the specific vulnerabilities of climate-displaced populations, with a particular focus on definitional exclusions and implementation gaps.

Complementing this legal-analytical framework, institutional reports and policy evaluations issued by EU bodies, such as the European Parliament (2022), the European Council (2024), and the European Migration Network Inform (2023), were also examined. These sources provided insight into the internal discourse within the EU on climate migration and offered a narrative of how institutional awareness and political commitments are evolving in response to empirical pressures. The analytical value of these documents lies in their role as intermediaries between high-level strategic objectives and practical implementation, often revealing internal contradictions and the pace of policy development.

In addition to EU sources, the study included reports and datasets from international organisations with recognised expertise in forced displacement. The United Nations High Commissioner for Refugees (UNHCR) (2023; 2024; 2025), the International Organisation for Migration (IOM) (2023; 2024; 2025), and the World Bank (2021) were of particular relevance for understanding the quantitative scale and geographic dynamics of climate-induced mobility. Their empirical data and projections served as critical benchmarks for assessing the responsiveness and adequacy of EU policy in light of global trends and obligations under international law. The Convention relating to the Status of Refugees (1951) was also used as a normative point of reference to highlight the limitations of existing international frameworks in protecting climate-displaced individuals.

Furthermore, the study drew on analytical reports produced by international non-governmental organisations including Amnesty International (2023; 2024), CARE International (2023), Oxfam America (2022), and the Child Rights Resource Centre (2024). These sources were selected for their contribution to highlighting overlooked human rights issues, regional vulnerabilities, and the operational failures of national and supranational responses. The Organised Crime and Corruption Reporting Project (2022) was consulted specifically in relation to the risks of human trafficking and exploitation among climate migrants, especially in the Western Balkans region. The rationale for including these reports lies in their independent, often field-based assessments that offer a necessary critical lens and enrich the otherwise institutional policy perspective. Additional insight into the political and strategic dimensions of climate-induced displacement was derived from reports by the International Crisis Group (2023), which underscored risks of regional destabilisation linked to unmanaged migration flows. The Centre for European Policy Studies (2023) was used to evaluate the EU's financial and humanitarian commitments, while the European Council on Foreign Relations (2020) offered critical assessments of intergovernmental coordination. Finally, the gender dimension of climate migration was informed by the UN Women (2023) report, which provided data on the intersection of climate vulnerability and gender-based risks, particularly affecting women and girls during displacement.

Results

The intensifying intersection of climate change and human mobility presents an unprecedented challenge for legal systems, humanitarian governance, and migration management in the European Union and beyond. As environmental disruptions increasingly compel people to leave their homes, the adequacy of existing legal and policy frameworks is brought into question. Despite growing political recognition of climate-induced displacement, significant inconsistencies persist between normative declarations and the practical protection afforded to those affected.

The European Green Deal (2019) recognises climate change not only as a global threat, but also as an existential crisis that has a cascading impact on various areas of life, including migration, security, economy, and social stability. The Pact on Migration and Asylum (2024), while not directly focusing on climate migration as a major category, identifies the need to comprehensively address external factors of migration, including climate change, environmental degradation, and natural disasters, as significant determinants of migration flows. Numerous statements by the European Council on Foreign Relations (2020), European Parliament (2022), and the European Council (2024) have repeatedly stressed the urgent necessity of international cooperation to effectively address climate migration and the absolute need to protect fundamental human rights in the context of climate displacement.

Specifically, the European Migration Network Inform (2023) called for the urgent development of a comprehensive and integrated EU strategy on climate migrants, including a clear legal framework for their international protection, expansion of humanitarian aid programmes, and strengthening of international coordination. In this report, the European Migration Network emphasised the need to recognise climate migration as a separate category of forced migration that requires special legal regulation and protection. Despite the clear recognition of climate migration at a high political level, the EU legal framework is still critically under-adapted to the pressing needs of climate migrants, creating a major legal and protection vacuum.

Directive of the Council of the European Union No. 2001/55/EC (2001) on temporary protection, while providing a mechanism for temporary protection in cases of mass displacement, is not tailored for the specific needs of climate migrants, and its application to this category of migrants is limited and problematic. The Convention relating to the Status of Refugees (1951) and its derivative Directive of the European Parliament and of the Council No. 2011/95/EU (2011) clearly define refugee status based on a well-founded fear of persecution for reasons of race, religion, nationality, political opinion, or association with a particular social group, which deliberately does not cover persons forcibly displaced purely as a result of climate-related factors and environmental degradation. Thus, climate migrants, in the absence of persecution under the Convention, do not fall under the formal legal definition of refugees under current international and European law, which creates a legal gap in the critical area of their effective protection. An in-depth analysis of the theoretical legal framework of EU policy revealed a fundamental internal contradiction between the political recognition of the growing problem of climate migration and the continued lack of sufficient legal mechanisms to effectively address it and protect vulnerable groups. Additionally, Regulation of the European Parliament and of the Council No. 604/2013 (2013), which is a key element of EU migration policy and establishes clear criteria and formalised mechanisms for determining the Member State responsible for the initial examination of an application for international protection, contains absolutely no provisions that would in any way consider the climate factors or environmental vulnerability when allocating responsibility for the examination of asylum applications submitted by climate migrants, ignoring the specifics of their situation.

Further in-depth analysis revealed that the dominant EU discourse on climate migration is often limited to a general statement of the existence of a severe problem without providing concrete and effective legal solutions or practical protection mechanisms. A simplistic approach prevails in EU official documents, which views climate migration mainly as a humanitarian challenge requiring assistance to victims, rather than as a comprehensive issue of protecting the fundamental human rights of those in vulnerable situations. Such a one-sided approach inevitably leads to undesirable

fragmentation of the EU's common policy in the extremely sensitive area of migration and substantially complicates the development of truly comprehensive and effective measures aimed at protecting the rights of climate migrants in the long term. Specifically, the official reports of the European Agency for the Management of Operational Cooperation at the External Borders (Frontex, 2023; 2024) conventionally focus exclusively on strengthening control over the EU's external borders and strictly preventing illegal migration by any means, which creates other, often insurmountable, challenges for potential climate migrants desperately seeking asylum and protection in the EU, ignoring the root causes of their forced migration. Analogously, Directive of the European Parliament and of the Council No. 2008/115/EC (2008) on return, which primarily establishes harmonised standards and clear procedures for the forced return of third-country nationals who are illegally present in the territory of the Member States, could potentially be applied to vulnerable climate migrants who have not been formally authorised to stay legally in the EU, with no regard for the specific and often tragic circumstances of their climate-related displacement and need for international protection. Critically, an in-depth analysis of various theoretical approaches to a comprehensive definition of climate migration revealed a persistent lack of consensus among leading scholars, international organisations, and policy makers on widely accepted terminology and objective criteria for a clear definition of the category of climate migrants. The prolonged lack of international consensus on the basic definition of a climate migrant significantly complicates international cooperation in this crucial area and creates major obstacles to the development of coherent and effective mechanisms for the international protection of vulnerable groups.

According to the leading experts of the influential United Nations Refugee Agency (2022), it is urgent to intensify coordinated international efforts to reach a broad consensus on a working definition of a climate migrant and to expedite the development of fundamental international legal standards for the effective protection of their human rights. The extensive analysis of available empirical data from a wide range of authoritative sources helped to assess the real scale and clear trends of climate migration at the critical global and vulnerable regional levels. Detailed statistics from leading international organisations, such as the United Nations High Commissioner for Refugees (UNHCR) (2023; 2024; 2025), the International Organisation for Migration (IOM) (2023; 2024; 2025), and the World Bank (2021), convincingly confirmed the steady increase in the total number of internally displaced people in the world, which was directly related to the increasing frequency of environmental disasters, extreme weather events, and progressive global climate change. The UNHCR (2024) unequivocally stated that natural disasters and increasingly extreme weather events were one of the principal causes of large-scale internal displacement of vulnerable populations, and in calendar year 2024, the total number of internally displaced persons due to environmental disasters alone reached an alarming 83.4 million people worldwide. Table 1 illustrates global and regional trends in population displacement directly related to climate change and natural disasters. The data highlights both the current scale of the problem and the alarming projections for the future, including a marked increase in internal climate-related migration in the world's most vulnerable regions.

Table 1. Global and regional trends in climate and disaster-related displacement

Indicator	Region/World	Value	Year	Units	Notes
Internally displaced persons (IDPs) due to natural disasters	World	9.8	2024	mn people	–
Total number of IDPs in the world	World	83.4	2024	mn people	–
Internal displacement caused by conflict and violence	World	73.5	2024	mn people	–
Number of new disaster-related displacements	World	9.8	2024	mn people	–
Number of people living in flood zones	World	189	2010	mn people	–
Number of people living in areas at high risk of flooding due to sea level rise	World	267	2020	mn people	Includes areas below the predicted water level for annual flooding
Number of people living in flood zones	World	406	2050	mn people	
Forecast of internal climate migration	Africa (sub-Saharan Africa), South Asia, Latin America	Up to 85.7 (Africa), 40.5 (South Asia), 17.1 (Latin America)	2050	mn people	Separate forecasts for each region
Forecast of internal climate migration	World	216	2050	mn people	
Number of people facing acute food shortages caused by extreme weather events	World	258	2023	mn people in 58 countries/ territories	Different levels of acute food insecurity according to IPC/CH
Number of people living in food insecurity due to extreme weather events	Africa	146	2022	mn people	–
Internal displacement caused by natural disasters (selected countries/regions with high rates, example)	Philippines	5.8	2023	mn people	–

Table 1, Continued

Indicator	Region/World	Value	Year	Units	Notes
Internal displacement caused by natural disasters (selected countries/regions with high rates, example)	China	3.6	2023	mn people	–
Internal displacement caused by natural disasters (selected countries/regions with high rates, example)	Bangladesh	2.6	2023	mn people	–
Internal displacement caused by natural disasters (selected countries/regions with high rates, example)	India	2.5	2023	mln people	–
Internal displacement caused by natural disasters (selected countries/regions with high rates, example)	USA	1.8	2023	mln people	–

Source: compiled by the author based on United Nations High Commissioner for Refugees (2023; 2024; 2025), World Bank (2018; 2021), Oxfam America (2022), World Food Programme (2024), Germanwatch (2025)

As presented in Table 1, the number of internally displaced persons due to natural disasters already reaches tens of millions per year, with World Bank forecasts indicating a potential increase to hundreds of millions in the coming decades. These figures demonstrate the urgent need to take measures to both mitigate the effects of climate change and adapt to the inevitable changes, including ensuring the protection of the rights of climate migrants. International Organisation for Migration (2024) emphasised that anthropogenic climate change is markedly exacerbating existing global migration trends and creating fundamentally new, previously unknown forms of forced mass migration that require an immediate response.

World Bank (2018) published forecasts of a significant, unprecedented increase in internal climate migration in the coming 2025-2035, especially in the most vulnerable developing countries that are least prepared for such large-scale challenges. According to official forecasts by the World Bank, by 2050, internal climate migration could reach 143 million people in only three vulnerable regions of the world – sub-Saharan Africa, South Asia, and insecure Latin America – with humanitarian consequences. Notably, the updated, even more alarming World Bank (2021) forecasts directly indicated that the real scale of internal climate migration in the near future could be even more extensive and destructive, especially if urgent, unprecedented measures are not taken to radically reduce global greenhouse gas emissions and effectively adapt to the inevitable consequences of irreversible climate change.

The vulnerable Western Balkans region, which is a prominent transit area for mass migration to the EU, will already face rapidly growing and increasingly tangible migration pressure from the south and east by 2025. Analytical reports by reputable non-governmental organisations (NGOs) such as CARE International (2023), Oxfam America (2022), and Child Rights Resource Centre (2024) unanimously point to a clear increase in the number of desperate climate migrants forced to cross the volatile Western Balkans region in search of asylum and protection in EU countries. The International Crisis Group (2023) in its analytical materials constantly draws the attention of the international community to the real potential destabilisation of the vulnerable Western Balkans region as a result of uncontrolled climate migration and the urgent need to strengthen effective regional cooperation between countries to jointly address this growing problem.

The Organised Crime and Corruption Reporting Project (OCCRP) (2022) is conducting significant investigations into the alarming risks directly related to the flourishing trafficking and brutal exploitation of vulnerable climate migrants in the fragile Western Balkans region, which requires an immediate response. A synthesis of the available empirical evidence confirms the criticality of climate migration as a serious global and regional issue that requires increased, coordinated attention from the European Union and the international community. A thorough study conducted by the United Nations Environment Programme (UNEP) (2022) categorically underlined that the Western Balkan countries are particularly vulnerable to the devastating effects of global climate change, such as prolonged droughts, floods, and large-scale forest fires, which will inevitably lead to a major increase in both internal and external forced migration from the region. Dangerous increases in average temperatures, dramatic changes in seasonal precipitation patterns, and accelerated sea level rise pose further, often insurmountable, challenges to the vulnerable region, which will inevitably increase the already considerable migration pressure on neighbouring European Union countries. Specifically, detailed research by the leading University of Belgrade (Andersen *et al.*, 2025) showed that Serbia, as a key country in the Western Balkans, is already facing rapidly increasing risks of devastating floods and prolonged droughts, which in the near future could lead to major internal displacement of vulnerable populations and further migration to relatively stable EU countries.

An extended analysis of the practical measures taken by the European Union in response to the growing global challenge of climate migration revealed the objective limitations and undesirable fragmentation of existing policy approaches and practical instruments. The European Union has consistently provided the necessary humanitarian aid to the affected regions and vulnerable populations through various financial instruments and mechanisms, including the European Humanitarian Aid Fund and the EU Civil Protection Mechanism. Centre for European Policy Studies (2023) officially allocated major funds, exceeding EUR 2 billion, to provide urgent humanitarian aid around the world, and a great part of these resources was deliberately targeted to respond quickly to the devastating effects of large-scale natural and environmental disasters that directly cause mass climate migration. Table 2 demonstrates the financial efforts of the European Union to respond to the challenges posed by climate change and migration. It covers both humanitarian aid and long-term investments in adaptation, research, and other related policy areas.

Table 2. EU funding, humanitarian aid, and policies related to climate and migration

Indicator	Year	Value	Units/Description	Notes
EU humanitarian aid (total)	2023	>2	EUR bn	
Financing of climate change adaptation programmes	2007-2020	>1	EUR bn	Total funding for the entire period
Financing of climate change adaptation programmes in developing countries	2021-2027	30% of EUR 2.3 tn	EUR bn (approximately EUR 690 bn)	Includes EU budget and NextGenerationEU
EU spending on climate goals (from the EU budget)	2014-2020	216	EUR bn	–
Target of EU spending on climate goals (from the EU budget and NextGenerationEU)	2021-2027	30%	Percentage of the total EU and NextGenerationEU budget	–
Number of climate change adaptation projects	2007-2020	>800	various projects	–
Number of partner countries receiving EU climate support		>70	countries	–
EU contribution to the Green Climate Fund		2.3 (as of 2020)	EUR bn	–
Investing in climate-related research and innovation (Horizon Europe)	2021-2027	35% (of EUR 95.5 bn)	EUR bn (approximately EUR 33.4 bn)	–

Source: compiled by the author

Table 2 shows that the EU is allocating resources to tackle climate change and its impacts, including migration. However, as noted later in the text, the amount of funding and the effectiveness of existing mechanisms continue to be a matter of debate and require further improvement. The European Union is also actively financing various programmes to adapt to the irreversible effects of climate change in numerous partner countries around the world through an extensive network of financial instruments, such as the Global Climate Change Alliance Plus (GCCA+) (n.d.), which aims to increase the resilience of vulnerable regions. Within the framework of its coherent foreign policy, the EU actively supports various international initiatives aimed at comprehensively addressing the interlinked challenges of migration and global climate change, including through regular dialogues and partnerships with key countries in Africa, Asia, and Latin America, which are most vulnerable to climate change. For instance, a significant EU Climate Diplomacy initiative deliberately aims to strengthen international cooperation at all levels in the critical area of global climate change and forced migration, facilitating the exchange of experiences and coordination of actions.

The European Union is also actively involved in numerous influential international forums and conferences, such as the United Nations Framework Convention on Climate Change (1992), where urgent climate migration issues are regularly discussed at a high level and international strategies for a coordinated response to this global challenge are jointly developed. Furthermore, the European Union has consistently and actively supported various international initiatives directly aimed at substantially reducing the risk of natural disasters in developing countries (United Nations Office for Disaster Risk Reduction, 2017), which can contribute to a notable reduction in the scale of forced mass migration caused by devastating environmental disasters in the future (European Union, 2024). However, despite considerable efforts, the real effectiveness of the EU's practical measures in climate migration continues to be limited due to negative factors and systemic shortcomings. The humanitarian aid provided is generally short-term, deliberately aimed at quickly overcoming only the immediate consequences of disasters that have already occurred, rather than developing long-term strategies to comprehensively address the problem of climate migration and its root causes. The available funding for numerous programmes to adapt to the inevitable consequences of climate change, while extensive, is still insufficient to meet the rapidly growing needs of vulnerable developing countries, which are the first to experience the devastating impact of climate change (Kovach *et al.*, 2024).

The absence of a clear, coherent strategy for the European Union's action on climate migration as a separate phenomenon and special effective legal mechanisms to actually protect the rights of climate migrants substantially complicates the development of a truly comprehensive and systematic approach to a long-term solution to this complex global problem. Analytical reports by reputable NGOs such as Amnesty International (2023) consistently criticise the current EU policy for its apparent lack of attention to the urgent protection of the fundamental human rights of vulnerable climate migrants and for the undisguised priority of security aspects of migration control over humanitarian principles and obligations. Specifically, Amnesty International (2024) categorically emphasised that the EU's tough migration policy in general often completely ignored the crucial climate factor as the root cause of forced displacement and deliberately failed to ensure proper, effective protection of the rights of vulnerable climate migrants, which was unacceptable. The European Council on Foreign Relations (ECFR) (2020) pointed out that the EU policy on climate migration was in dire need of substantial coordination between the various EU institutions and all Member States, and required much greater attention to fundamental issues of international justice and the necessary solidarity in complex international cooperation in this new area.

An expanded assessment of the real effectiveness of the EU's policy on the factual protection of the rights of vulnerable climate migrants shows that there are considerable systemic challenges, numerous shortcomings, and evident

gaps that must be addressed urgently. The current EU policy in this area is not comprehensive, systematic, consistent, and strategically oriented enough to address the problem of mass climate migration and protect human rights effectively and for the long term. The fundamental rights of climate migrants, as demonstrated above, are not fully protected within the existing fragmented legal and political system of the European Union, which is unacceptable in the 21st century. The social vulnerability of many climate migrants is still critically high, and their effective access to basic human rights and essential social services remains severely limited due to the lack of a clear legal status and targeted policies. The existing volumes of international humanitarian aid, while extensive, are insufficient to meet the rapidly growing humanitarian needs of vulnerable climate migrants around the world, especially in the most affected regions. The significant and underestimated gender dimension of climate migration requires substantially increased attention from the EU and the development of special, targeted measures of effective protection for particularly vulnerable women and girls as climate migrants, who often face multiple discrimination. A study conducted by UN Women (2023) reiterated that many female climate migrants systematically faced other, often hidden forms of gender discrimination, severe violence, and sexual exploitation during forced migration, which urgently required the development of specific gender-sensitive approaches to effectively protect their fundamental human rights. An independent assessment of the EU's current climate migration policy by the Centre for European Policy Studies (CEPS) (2023) pointed to the urgent need to substantially strengthen the EU's leading role in the overall international effort to comprehensively address the global climate migration challenge and to ensure much greater coherence and synergy between the EU's internal and external policies in this critical area in the future.

A generalised analysis of the EU's current climate migration policy leads to the unequivocal conclusion on the urgent need to substantially strengthen the EU's coordinated efforts to urgently develop a comprehensive, efficient, and strategically balanced policy to effectively respond to this growing global challenge of the 21st century. Based on the in-depth study, the following detailed recommendations are proposed to comprehensively improve the EU's climate migration policy and strengthen the human rights protection of vulnerable climate migrants. It is necessary to accelerate the development of a clear international legal definition of a climate migrant at the EU and global level. Coordinated international efforts should be immediately intensified to reach consensus on an agreed definition of a climate migrant and to accelerate the development of fundamental international legal standards for the effective protection of their human rights. The European Union, as a key global leader, must play a key role in this critical process by initiating international negotiations under the auspices of the United Nations and actively developing a legally binding international convention on the protection of climate migrants. Urgent creation of special legal mechanisms for the effective protection of climate migrants directly within the legal system of the European Union. The practical possibility of substantial adaptation of existing EU legal instruments, such as the updated Council Directive of the Council of the European Union No. 2001/55/EC (2001) on temporary protection, to accommodate the specific needs of climate migrants, or the development of a fundamentally new, separate EU legal instrument specifically aimed at comprehensive protection of the rights of vulnerable climate migrants in the EU, should be considered in detail. It is essential to ensure that climate migrants have real access to fair procedures for granting international asylum, humanitarian visas, and other forms of legal migration to EU countries, avoiding discrimination. Consistent strengthening of international cooperation in the critical area of climate migration at all levels.

The European Union should immediately intensify comprehensive cooperation with key international organisations, such as the UNHCR and IOM, as well as with all countries directly affected by mass climate migration, to jointly develop coordinated international strategies for an effective response to this global problem. It is vital to ensure a fair international distribution of responsibilities among all countries of the world in terms of acceptance, adaptation, and effective protection of the rights of vulnerable climate migrants, based on the principles of solidarity and shared responsibility. Major increase in targeted funding for international programmes of adaptation to the irreversible effects of climate change in developing countries and humanitarian aid programmes directly to climate migrants. The European Union should initiate an extensive increase in targeted financial aid aimed at actively supporting large-scale climate change adaptation programmes in the most vulnerable developing countries, which will greatly reduce the scale of forced climate migration in the dangerous long-term perspective by addressing the root causes. At the same time, it is necessary to significantly increase the volume of urgent humanitarian aid directly to vulnerable climate migrants, especially in remote regions most affected by devastating environmental disasters and climate change. Consistent integration of the fundamental aspect of human rights protection into all EU policy areas that are directly or indirectly related to climate migration.

The protection of fundamental human rights should be a priority in all EU measures and initiatives aimed at comprehensively addressing the complex issue of climate migration. All climate migrants must be guaranteed full access to impartial justice, necessary social services, quality education, and prompt medical care without discrimination. It is necessary to actively combat any manifestations of discrimination, racism, and xenophobia against vulnerable climate migrants in the EU and consistently promote their full social integration into the host society based on equality and mutual respect. Unconditional gender equality and women's empowerment in EU climate migration policy at all levels. It is necessary to systematically factor in the crucial gender aspect of climate migration and urgently develop effective gender-sensitive approaches to the comprehensive protection of the rights of particularly vulnerable women and girls as climate migrants. It is essential to provide them with guaranteed access to specialised programmes of effective protection against gender-based violence and discrimination in all forms, as well as to actively promote their economic independence, social adaptation, and full participation in society.

Discussion

The key conclusion of the study was the significant discrepancy between the political recognition of the problem of climate migration at the level of the European Union and the existing lack of effective legal instruments to address it

effectively. An analysis of EU strategic documents such as the European Green Deal (2019) and the Pact on Migration and Asylum (2024) has shown a growing understanding by EU institutions of the interconnections between climate change and migration processes. However, this political recognition has not yet translated into a clear and comprehensive legal framework to ensure the protection of climate migrants. Existing legal instruments, specifically Council Directive of the Council of the European Union No. 2001/55/EC (2001) on temporary protection and the Convention relating to the Status of Refugees (1951), do not objectively accommodate the specific needs of persons displaced solely due to climate-related factors and environmental degradation. This legal gap creates a major vacuum in the protection of climate migrants, who are left outside the current international and European legal systems. The widespread approach in the EU, which treats climate migration primarily as a humanitarian challenge rather than a human rights issue, exacerbates this problem by preventing the development of long-term and systemic solutions. These conclusions correlate with the research of leading scholars who emphasise the lack of a clear international legal definition of the concept of "climate migrant" and the need to develop a new legal framework to protect this vulnerable population. J. McAdam (2012), in his study on the legal status of climate migrants, emphasised that international law developed in an era when climate migration was not such an evident problem is not sufficiently adapted to modern challenges. Similarly, B. Šedová *et al.* (2021) in their studies of EU migration policy pointed to the fragmented and reactive nature of the EU's response to new migration challenges, including climate migration, emphasising the need for a more strategic and proactive approach.

Statistics from leading international organisations, such as the UNHCR (2023), the IOM (2023; 2024; 2025), and the World Bank (2021), convincingly confirm the growing scale of climate migration as a global and regional trend. The number of internally displaced persons due to environmental disasters reached 9.8 million in 2024 (United Nations High Commissioner for Refugees, 2024), and World Bank forecasts (2021) indicate a potential increase in internal climate migration to 143 million people by 2050 in the most vulnerable regions of the world. These figures illustrate the scale of the challenge and the urgent need for action by the international community, including the EU. G. Vince (2022) emphasised that climate change is a powerful new factor exacerbating existing migration trends and posing unprecedented challenges to the international community. Unlike economic migration, which is often voluntary and regulated, climate migration is mostly forced and unpredictable, requiring the development of special response and protection mechanisms.

Particularly noteworthy is the vulnerability of the Western Balkans, a transit region for migration flows to the EU that is already experiencing increasing climate migration pressures (Oxfam America, 2022; CARE International, 2023; Save the Children, 2024). This regional vulnerability poses extra challenges for EU migration policy and calls for enhanced regional cooperation to effectively manage migration and protect migrants' rights. Analytical reports by NGOs such as CARE International (2023), Oxfam America (2022), Child Rights Resource Centre (2024) unanimously pointed to a clear increase in the number of climate migrants forced to cross the volatile Western Balkans region to seek asylum and protection in EU countries. This trend confirms the predictions of leading experts about the potential destabilisation of vulnerable regions of the world as a result of uncontrolled climate migration. Specifically, analysts of the International Crisis Group (2023) warn of the risks of increased social tension and political instability in the Western Balkans region caused by the growing migration pressure associated with climate change. Research by the OCCRP (2022) indicated an increase in criminal risks associated with human trafficking and exploitation of vulnerable migrants in the region. In contrast to studies focusing on the macroeconomic aspects of migration, these reports emphasised the humanitarian dimension of climate migration and the need to protect the human rights of vulnerable populations in challenging situations. An analysis of the EU's practical measures in the area of climate migration revealed their limited effectiveness and fragmentation. The European Union provides humanitarian aid, funds climate change adaptation programmes, and supports international initiatives (Klymenko, 2024). However, these measures are often short-term, reactive, and not systematic enough to address the problem in the long term. The absence of a clear EU action strategy on climate migration as a separate phenomenon and specific legal mechanisms to protect the rights of climate migrants is a critical gap. NGOs such as Amnesty International (2023; 2024) have consistently criticised EU policies for their lack of attention to the human rights of climate migrants and the priority given to security aspects of migration control. This criticism is echoed by M.J. Uddin (2023), who emphasised the need to move from a response to the effects of climate migration to preventive measures aimed at reducing vulnerability and increasing the adaptive capacity of vulnerable regions. Analysing different countries' policies on environmental migration, E. Piguet (2021) and J. Doering-White *et al.* (2024) pointed to a general tendency towards fragmentation and lack of an integrated approach, emphasising the need to develop more coordinated and systematic strategies at the international level. In contrast to the EU's approach, which focused mainly on humanitarian aid and foreign policy, a series of researchers (van der Vliet & Biermann, 2022; Baldwin & Waters, 2024; Alsina-Pujols, 2025) call for a more comprehensive strategy that would include elements of internal policy, including the adaptation of migration legislation and social policy to the needs of climate migrants.

Additionally, the analysis results were consistent with the findings of Q. Han *et al.* (2024), who highlighted the insufficiency of the international legal framework for the protection of climate migrants and emphasised the need for international cooperation to address this issue. M.C. Waters (2024) also emphasised the significance of preparing host countries for the integration of climate migrants and suggests policy solutions, particularly regarding visa policies, which echoes the need for a stable legal status identified in the present study. J. Freihardt's (2025) empirical findings on the impact of environmental shocks on migration in a study of the Bangladeshi population further confirmed the significance of climate factors as a driver of migration, which was also found in the EU climate migrant survey. The analysis of the current EU policy on climate migration suggests an urgent need to substantially strengthen the coordinated efforts of the European Union to promptly develop a comprehensive, efficient, and strategically sound strategy to effectively respond to this growing global challenge of the

21st century. The findings of the study underlined that the European Union is taking certain steps towards addressing the problem of climate migration, but there remains a significant gap between political recognition of the issue and the existence of real legal and practical mechanisms for its resolution. This observation is aligned with the conclusions of Rajshree *et al.* (2025), who emphasise that despite the evolving discourse on "climate refugees", international legal frameworks still fall short in formally recognising and protecting those displaced by climate-induced events. Their analysis highlights the urgent need to redefine legal categories and obligations under international environmental and humanitarian law to bridge this normative vacuum. Thus, the issue of climate migration continues to represent one of the most pressing and complex challenges of the twenty-first century, necessitating the consolidation of international efforts to develop effective, rights-based, and equitable solutions for vulnerable populations. Further research in this area is essential to deepen the understanding of climate-induced displacement and to inform the development of more coherent and enforceable policy instruments both within the EU and across international legal systems. In contrast to optimistic scenarios that assume that existing migration systems can adapt to new challenges, the findings suggest the need for a radical transformation of the international migration regime to effectively respond to the growing scale of climate migration and ensure the protection of human rights of vulnerable groups.

Conclusions

The European Union demonstrates a growing understanding of the relevance and scale of the climate migration challenge, which is reflected in a series of policy documents and policy initiatives. However, despite the existence of political will and certain practical steps, the EU's policy in this area, as the theoretical study found, continues to be fragmented and insufficiently comprehensive. The key qualitative indicator identified in the study included the lack of a coherent legal framework at the EU level that would clearly define the status of climate migrants and guarantee them adequate protection. The emphasis is often placed on the security aspects of migration flows rather than on humanitarian aspects and protection of the rights of vulnerable groups. This approach can lead to restrictions on climate migrants' access to international protection and increase their stigmatisation. At the same time, the study highlighted the need to move towards a more humanistic approach based on the principles of human rights and international solidarity. The European Union should abandon the perception of climate migration as a security threat and recognise it as a humanitarian challenge that requires adequate legal and policy solutions. Considering the findings, the study helped to formulate a series of practical recommendations for improving the EU's climate migration policy. First of all, it is necessary to develop a clear legal definition of a climate migrant at the EU level and create a special legal mechanism to ensure their protection. This mechanism should accommodate the specific needs of climate migrants and guarantee them access to asylum, basic social services, and opportunities for adaptation in new conditions. Furthermore, the EU should strengthen international cooperation on climate migration, particularly with developing countries that are most vulnerable to the effects of climate change and the key sources of climate migration. A prominent area is to provide financial and technical aid to these countries to implement adaptation measures and reduce the vulnerability of the population to climate disasters.

Further research in this area could focus on an in-depth analysis of the effects of climate migration on various aspects of the lives of host communities and migrants themselves, including social integration, economic adaptation, and psychological well-being. Another notable area involves the study of regional aspects of climate migration within the EU, particularly in countries bordering regions vulnerable to climate change. The issue of gender aspects of climate migration warrants a separate investigation, as women and girls are often the most vulnerable to the effects of climate displacement. A limitation of this study was its focus on European Union policy. Further research could expand the geographical scope to include the policies of other regional groupings and individual states on climate migration, which would provide a more comprehensive picture of global efforts to respond to this challenge and identify best practices and innovative approaches.

Acknowledgements

None.

Funding

The study was not funded.

Conflict of interest

None.

References

[1] Alsina-Pujols, M. (2025). Warming with borders: Forced climate migration and carbon pricing. *Economics Working Paper Series*, 25, article number 397. doi: 10.3929/ethz-b-000718656.

[2] Amnesty International. (2023). *Amnesty International report 2022/23: The state of the world's human rights*. Retrieved from https://reliefweb.int/report/world/amnesty-international-report-202223-state-worlds-human-rights-enar.

[3] Amnesty International. (2024). *Climate-related human rights harm and the right to effective remedy*. Retrieved from https://www.amnesty.org/en/wp-content/uploads/2024/02/IOR4077172024ENGLISH.pdf.

[4] Andersen, Z.J., Badyda, A., Tzivian, L., Dzhambov, A.M., Paunovic, K., Savic, S., Jacquemin, B., & Dragic, N. (2025). Air pollution inequalities in Europe: A deeper understating of challenges in Eastern Europe and pathways forward towards closing the gap between East and West. *Environmental Epidemiology*, 9(3), article number e383. doi: 10.1097/ee9.0000000000000383.

[5] Baldwin, A., & Waters, R. (2024). Calculating 'climate migrants': An emerging topology of power. *Security Dialogue*, 56(1), 21-37. doi: 10.1177/09670106241269714.

[6] Brynzanska, O. (2024). Damage to the environment as a sign of genocide. *Scientific Journal of the National Academy of Internal Affairs*, 29(3), 42-52. doi: 10.56215/naia-herald/3.2024.42.

[7] CARE International. (2023). *The role of youth in food and water systems: The right to food, water and nutrition annual report*. Retrieved from https://www.care.org/wp-content/uploads/2023/10/RFWN-2023-Annual-Report_FINAL.pdf.

[8] Centre for European Policy Studies. (2023). *Annual report 2023*. Retrieved from https://www.ceps.eu/ceps-publications/annual-report-2023/.
[9] Child Rights Resource Centre. (2024). *Children's report 2024*. Retrieved from https://resourcecentre.savethechildren.net/document/childrens-report-2024.
[10] Chotouras, D., Fragkou, R., & Tsadiras, A. (2024). Environmentally induced human displacement and human rights: Bridging legal gaps through a human rights-based approach. *International Human Rights Law Review*, 13(2), 412-441. doi: 10.1163/22131035-13020001.
[11] Convention Relating to the Status of Refugees. (1951, July). Retrieved from https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-relating-status-refugees.
[12] Directive of the Council of the European Union No. 2001/55/EC "On Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts between Member States in Receiving Such Persons and Bearing the Consequences Thereof". (2001, July). Retrieved from https://eur-lex.europa.eu/eli/dir/2001/55/oj/eng.
[13] Directive of the European Parliament and of the Council No. 2008/115/EC "On Common Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals". (2008, December). Retrieved from https://eur-lex.europa.eu/eli/dir/2008/115/oj/eng.
[14] Directive of the European Parliament and of the Council No. 2011/95/EU "On Standards for the Qualification of Third-Country Nationals or Stateless Persons as Beneficiaries of International Protection, for a Uniform Status for Refugees or for Persons Eligible for Subsidiary Protection, and for the Content of the Protection Granted". (2011, December). Retrieved from https://eur-lex.europa.eu/eli/dir/2011/95/oj/eng.
[15] Doering-White, J., De León, A.D., Batista, C.A., & Flynn, K. (2024). Humanitarian aid and the everyday invisibility of climate-related migration from Central America. *Climate and Development*, 17(1). doi: 10.1080/17565529.2024.2312829.
[16] Dutta, S., & Basu, A. (2025). Climate change and human displacement: Towards validation of rights. *Law of Justice Journal*, 38(3), 51-71. doi: 10.5335/rjd.v38i3.16158.
[17] EU Adaptation Strategy. (2021, February). Retrieved from https://climate.ec.europa.eu/eu-action/adaptation-climate-change/eu-adaptation-strategy_en.
[18] European Council on Foreign Relations. (2020). *Migration and climate change: What can European cooperation achieve?* Retrieved from https://ecfr.eu/event/migration-and-climate-change-what-can-european-cooperation-achieve/.
[19] European Council. (2024). *European Council conclusions on EU in the world, resilience, preparedness, crisis prevention and response, migration and other items, 19 December 2024*. Retrieved from https://www.consilium.europa.eu/en/press/press-releases/2024/12/19/european-council-conclusions-on-eu-in-the-world-resilience-preparedness-crisis-prevention-and-response-migration-and-other-items/.
[20] European Green Deal. (2019, December). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52019DC0640.
[21] European Migration Network Inform. (2023). *Displacement and migration related to disasters, climate change and environ- mental degradation*. Retrieved from https://home-affairs.ec.europa.eu/system/files/2023-05/EMN_Inform_climate_related_migration_final_May2023_090523.pdf.
[22] European Parliament. (2022). *The future of climate migration*. Retrieved from https://www.europarl.europa.eu/RegData/etudes/ATAG/2022/729334/EPRS_ATA(2022)729334_EN.pdf.
[23] European Union. (2024). *Towards a climate-neutral Europe*. Retrieved from https://op.europa.eu/webpub/com/general-report-2024/en/chapter4.html.
[24] Freihardt, J. (2025). Environmental shocks and migration among a climate-vulnerable population in Bangladesh. *Population and Environment*, 47, article number 6. doi: 10.1007/s11111-025-00478-7.
[25] Frontex. (2023). *2023 in brief*. Retrieved from https://www.frontex.europa.eu/assets/Publications/General/In_Brief_2023/frontex-_-2023-digital-leaflet.html.
[26] Frontex. (2024). *2024 in brief*. Retrieved from https://www.frontex.europa.eu/2024-in-brief/.
[27] Germanwatch. (2025). *Climate Risk Index 2025*. Retrieved from https://www.germanwatch.org/sites/default/files/2025-02/Climate%20Risk%20Index%202025.pdf.
[28] Global Climate Change Alliance Plus (GCCA+). (n.d.). Retrieved from https://knowledge4policy.ec.europa.eu/projects-activities/global-climate-change-alliance-plus_en.
[29] Han, Q., Kumar, R., & Kumar, A. (2023). Climate change and human migration: Perspectives for environmentally sustainable societies. *Journal of Geochemical Exploration*, 256, article number 107352. doi: 10.1016/j.gexplo.2023.107352.
[30] IDMC. (2025). *Displacement, disasters and climate change*. Retrieved from https://www.internal-displacement.org/focus-areas/Displacement-disasters-and-climate-change/.
[31] International Crisis Group. (2023). *Watch list 2023*. Retrieved from https://www.crisisgroup.org/global/watch-list-2023.
[32] International Organisation for Migration. (2023). *Annual report 2023*. Retrieved from https://www.iom.int/msite/annual-report-2023/.
[33] International Organisation for Migration. (2024). *World migration report 2024*. Retrieved from https://worldmigrationreport.iom.int/msite/wmr-2024-interactive/.
[34] International Organisation for Migration. (2025). *Global appeal 2025*. Retrieved from https://www.iom.int/sites/g/files/tmzbdl486/files/global-appeal/globalappeal2025.pdf.
[35] Junker, K.W., Münster, S., & Shinde, M. (2022). Climate-induced migration: The need for a reparative legal regime. *Environmental Policy and Law*, 52(5-6), 473-485. doi: 10.3233/EPL-219053.

[36] Klymenko, V. (2024). Public administration of environmental safety in Ukraine and EU countries. *Law. Human. Environment*, 15(4), 9-30. doi: 10.31548/law/4.2024.09.
[37] Koskina, A., Georgantas, E., & Plionis, M. (2024). Climate crisis and human migration: The emergent sociolegal parameters of a science-based policymaking. *Frontiers in Political Science*, 6, article number 1468711. doi: 10.3389/fpos.2024.1468711.
[38] Kovach, D., Kullolli, B., Djaparova, S., Mikhnevych, L., & Myskovets, I. (2024). Legal aspects of environmental sustainability and climate change: The role of international and national legislation. *Journal of Environmental Law and Policy*, 4(2), 149-179. doi: 10.33002/jelp040206.
[39] Krasivskyy, O. (2024). Development and evolution of European Union policy. *Democratic Governance*, 17(2), 46-57. doi: 10.56318/dg/2.2024.46.
[40] Mahmood, K.S. (2024). Legal and policy response to climate change in Bangladesh. In M. Uddin (Ed.), *International law, climate change and Bangladesh* (pp. 23-41). Cham: Springer. doi: 10.1007/978-3-031-71297-5_2.
[41] McAdam, J. (2012). *Climate change, forced migration, and international law*. Oxford: Oxford University Press. doi: 10.1093/acprof:oso/9780199587087.001.0001.
[42] Negrón, R., *et al.* (2025). Critical approaches to climate-induced migration research and solutions. *Local Environment*. doi: 10.1080/13549839.2025.2462545.
[43] Organised Crime and Corruption Reporting Project. (2023). *Annual report*. Retrieved from https://www.occrp.org/en/about-us/annual-reports/annual-report-2023/.
[44] Oxfam America. (2022). *Annual report 2022*. Retrieved from https://webassets.oxfamamerica.org/media/documents/2022_Oxfam_America_Annual_Report_2.pdf.
[45] Pact on Migration and Asylum. (2024, May). Retrieved from https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum_en.
[46] Piguet, E. (2021). Linking climate change, environmental degradation, and migration: An update after 10 years. *WIREs Climate Change*, 13(1), article number e746. doi: 10.1002/wcc.746.
[47] Rajshree, Mehta, C., & Luhach, S. (2025). Displaced by climate change: Navigating legal framework for 'climate refugees' in international environmental law. *India Quarterly*, 81(1), 9-24. doi: 10.1177/09749284241307928.
[48] Regulation of the European Parliament and of the Council No. 604/2013 "On Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in One of the Member States by a Third-Country National or a Stateless Person". (2013, June). Retrieved from https://eur-lex.europa.eu/eli/reg/2013/604/oj/eng.
[49] Šedová, B., Čizmaziová, L., & Cook, A. (2021). *A meta-analysis of climate migration literature*. Retrieved from https://d-nb.info/122998836X/34.
[50] Thomas, A., Baptiste, A., Martyr-Koller, R., Pringle, P., & Rhiney, K. (2020). Climate change and small island developing states. *Annual Review of Environment and Resources*, 45(1), 1-27. doi: 10.1146/annurev-environ-012320-083355.
[51] Uddin, M.J. (2023). Climate change, vulnerabilities, and migration: Insights from ecological migrants in Bangladesh. *Journal of Environment & Development*, 33(1), 50-74. doi: 10.1177/10704965231211589.
[52] UN Women. (2023). *Women, peace, and security 2020-2021 annual report*. Retrieved from https://www.unwomen.org/en/digital-library/publications/2023/02/women-peace-and-security-2020-2021-annual-report.
[53] United Nations Environment Programme. (2022). *UNEP in 2022*. Retrieved from https://wedocs.unep.org/bitstream/handle/20.500.11822/41679/Annual_Report_2022.pdf.
[54] United Nations Framework Convention on Climate Change. (1992, May). Retrieved from https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf.
[55] United Nations High Commissioner for Refugees. (2023). *Global trends: Forced displacement in 2023*. Retrieved from https://www.unhcr.org/sites/default/files/2024-06/global-trends-report-2023.pdf.
[56] United Nations High Commissioner for Refugees. (2024). *Mid-year trends*. Retrieved from https://www.unhcr.org/sites/default/files/2024-10/mid-year-trends-report-2024.pdf.
[57] United Nations High Commissioner for Refugees. (2025). *Global appeal*. Retrieved from https://reporting.unhcr.org/global-appeal-2025-executive-summary.
[58] United Nations Office for Disaster Risk Reduction. (2017). *The Sendai framework terminology on disaster risk reduction*. Retrieved from https://www.undrr.org/terminology/disaster-risk-reduction.
[59] United Nations Refugee Agency. (2022). *Climate change, displacement and human rights*. Retrieved from https://www.unhcr.org/sites/default/files/legacy-pdf/6242ea7c4.pdf.
[60] van der Vliet, J., & Biermann, F. (2022). Global governance of climate migrants: A critical evaluation of the global compacts. In S. Behrman & A. Kent (Eds.), *Climate refugees: Global, local and critical approaches* (pp. 60-82). Cambridge: Cambridge University Press. doi: 10.1017/9781108902991.004.
[61] Vince, G. (2022). *Nomad century: How climate migration will reshape our world*. London: Penguin.
[62] Waters, M.C. (2024). Preparing for climate migration and integration: a policy and research agenda. *Journal of Ethnic and Migration Studies*, 51(1), 4-23. doi: 10.1080/1369183x.2024.2438449.
[63] World Bank. (2018). *Groundswell: Preparing for internal climate migration*. Retrieved from https://openknowledge.worldbank.org/bitstream/handle/10986/29461/WBG_ClimateChange_Final.pdf.
[64] World Bank. (2021). *Climate change action plan 2021-2025*. Retrieved from https://www.miga.org/sites/default/files/2021-08/CCAP-2021-25-2.pdf.
[65] World Food Programme. (2024). *Global report on food crises (GRFC) 2024*. Retrieved from https://www.wfp.org/publications/global-report-food-crises-grfc.

Роль Європейського Союзу у вирішенні проблеми міграції, спричиненої зміною клімату, та захисті прав іммігрантів

Йоана Кочі
Магістр
Університет Тирани
1010, пл. Матері Терези, 4, м. Тирана, Албанія
https://orcid.org/0009-0000-9156-6509

Анотація. Метою цього дослідження була всебічна оцінка політики Європейського Союзу щодо кліматичної міграції з погляду її відповідності міжнародним стандартам у сфері прав людини. У роботі застосовано структуровану якісну методологію, що поєднує доктринальний правовий аналіз, порівняльне оцінювання політик і критичне інтерпретування офіційної та неурядової звітності. У дослідженні встановлено, що хоча інституції Європейського Союзу демонструють зростаюче визнання зміни клімату як чинника міграції, залишається суттєвий розрив через відсутність чіткого правового статусу для кліматичних мігрантів у правовій системі ЄС. Існуючі правові інструменти виявилися недостатньо адаптованими до специфічних потреб осіб, переміщених переважно внаслідок екологічних чинників, що створює вакуум у сфері захисту. Аналіз міжнародних звітів підтвердив зростання масштабів проблеми: станом на кінець 2024 року у світі налічувалося 83,4 млн внутрішньо переміщених осіб, з яких 9,8 млн – через природні катастрофи. Практичні заходи Європейського Союзу, хоч і включають гуманітарну допомогу та фінансування адаптаційних програм, часто характеризуються як короткострокові та недостатні для подолання першопричин або забезпечення довготривалого захисту. Встановлено, що домінуючий дискурс Європейського Союзу розглядає кліматичну міграцію переважно як гуманітарну або безпекову проблему, а не як комплексне питання прав людини, що викликає послідовну критику з боку неурядових організацій за пріоритетність контролю кордонів над гуманітарними принципами. Це дискурсивне обрамлення виявлено як ключову перепону для системних правових реформ. На основі порівняльного правового аналізу та огляду інституційної політики сформульовано конкретні рекомендації для переходу до гуманістичної парадигми у політиці Європейського Союзу щодо кліматичної міграції, чим обґрунтовано практичну значущість дослідження

Ключові слова: міжнародний захист; зміни навколишнього середовища; глобальне потепління; внутрішньо переміщені особи; правові норми

UDC 341.231.14
DOI: 10.32518/sals2.2025.177

Соціально-правові студії. 2025. Т. 8, № 2
Social & Legal Studios. 2025. Vol. 8, No. 2

The effectiveness of international human rights protection mechanisms

Olena Dashkovska*
Doctor of Law, Professor
Yaroslav Mudryi National Law University
61024, 77 Hryhorii Skovoroda Str., Kharkiv, Ukraine
https://orcid.org/0000-0003-0145-850X

Olha Yavor
Doctor of Law, Professor
Yaroslav Mudryi National Law University
61024, 77 Hryhorii Skovoroda Str., Kharkiv, Ukraine
https://orcid.org/0000-0002-5461-6498

Tetiana Kyrychenko
PhD in Law, Professor
Kharkiv National University of Internal Affairs
61080, 27 L. Landau Ave., Kharkiv, Ukraine
https://orcid.org/0000-0002-8785-0475

Oleksii Liubchenko
PhD in Law, Associate Professor
Poltava Law Institute of the Yaroslav Mudryi National Law University
36011, 5 Vitalii Hrytsayenko Ave., Poltava, Ukraine
https://orcid.org/0000-0002-8068-5665

Mariia Naumenko
Graduate Student, Lecturer
Kharkiv National University of Internal Affairs
61080, 27 L. Landau Ave., Kharkiv, Ukraine
https://orcid.org/0009-0005-4888-6554

Abstract. The study aimed to comprehensively examine the functioning of the international human rights protection system and identify its strengths and weaknesses. The methodological basis of the study was formed by formal legal, comparative legal, historical and legal, dialectical, systemic and structural-functional methods. The study provided a comprehensive analysis of the regulatory and institutional framework for the functioning of the international human rights protection system based on the study of key international legal acts, case law of international judicial and monitoring bodies, and scientific sources. The study identified the main achievements and problematic aspects in international human rights mechanisms in ensuring effective access to justice, proper investigation of violations and the effectiveness of control procedures. Based on the analysis, the study substantiated the role of the international human rights protection system in ensuring the rule of law and guaranteeing fundamental rights and freedoms of every individual. At the same time, the study proved the need to further improve and strengthen certain institutional and procedural elements of this system to increase its efficiency and ability to withstand new global challenges. The study emphasised the need to unite the efforts of the international community to strengthen the effectiveness of international human rights mechanisms, bring them in line with modern standards and realities, and ensure their full implementation at the level of national legal systems. The study demonstrated that only through coordinated and systematic cooperation

Suggested Citation

Article's History: Received: 11.03.2025 Revised: 18.05.2025 Accepted: 25.06.2025

Dashkovska, O., Yavor, O., Kyrychenko, T., Liubchenko, O., & Naumenko, M. (2025). The effectiveness of international human rights protection mechanisms. *Social & Legal Studios*, 8(2), 177-188. doi: 10.32518/sals2.2025.177.

*Corresponding author

Copyright © The Author(s). This is an open access Article distributed under the terms of the Creative Commons Attribution License 4.0 (https://creativecommons.org/licenses/by/4.0/)

of states, international organisations, and civil society institutions can real progress be made in human dignity and protection of the rights of every person on a global scale

Keywords: rule of law; judicial institutions; monitoring bodies; fundamental freedoms; institutional components; implementation

Introduction

Effective human rights protection is one of the most important issues of our time, especially in the context of global challenges and threats. Despite the existence of an extensive system of international human rights mechanisms led by the United Nations (UN) and regional organisations, its ability to guarantee the strict observance of fundamental rights and freedoms of every individual is subject to considerable debate. The growing number and scale of human rights violations in different regions of the world, difficulties in implementing decisions of international courts, as well as new challenges related to the development of information technology, environmental threats, migration processes and geopolitical transformations, necessitate a thorough analysis of the effectiveness of existing international human rights instruments and the search for ways to improve them.

Recent scholarship provides a multidimensional view of the effectiveness of international human rights mechanisms. A.S. Chilton (2017) experimentally demonstrated that treaties can influence state behaviour, but their impact is conditional on domestic factors. C.S. Alexander and J. Todres (2021) highlight the need for data-driven monitoring to assess implementation gaps, reinforcing the importance of measurable accountability mechanisms. R. McCorquodale and J. Nolan (2021) assess human rights due diligence in business, noting limited enforceability and oversight, an issue that mirrors broader systemic weaknesses. P. Dąbrowska-Kłosińska (2021) stresses how emergencies, such as pandemics, expose the fragility of human rights protections, emphasising the need for institutional resilience. Z. Nampewo *et al.* (2022) argue for integrated efforts to fulfill the right to health, calling for stronger collaboration between states and civil society, an idea aligned with this study's conclusions. M. Douch *et al.* (2022) show that using human rights as conditionality in aid can enhance compliance but risks politicisation. Collectively, these studies reveal both the achievements and structural deficiencies of current mechanisms, supporting the need for institutional reform and international cooperation, as argued in this article. O.S. Kuchyk (2022) concluded that international security organisations must adapt structurally and legally to address modern threats like terrorism, cybercrime, and pandemics, emphasising better coordination and technological modernisation. The study noted the need to expand the mandate and strengthen the coordination of these organisations to effectively counter transnational threats to human rights. T. Landman (2020) concluded that despite increased global attention, progress in combating modern slavery remains limited. While data collection methods have improved, significant challenges persist due to definitional ambiguities, underreporting, and the hidden nature of slavery. The effectiveness of anti-slavery efforts has not substantially improved, primarily because legal frameworks and enforcement mechanisms often fail to keep pace with evolving forms of exploitation. K.A. Mingst *et al.* (2022) identified specific human rights challenges arising from globalisation, including the growing inequality between and within states, the exploitation of migrant labour, and the weakening of state sovereignty in regulating transnational actors. In terms of new technologies, they highlighted threats such as mass surveillance, digital repression, and the misuse of artificial intelligence. Geopolitical shifts, according to the authors, have led to a decline in multilateral cooperation, rising authoritarianism, and weakened consensus on universal human rights norms. To address these challenges, the authors advocate for reforming global institutions by enhancing the authority and independence of UN human rights bodies, ensuring more equitable representation of Global South countries in decision-making, and increasing the enforcement capacity of human rights mechanisms through binding obligations and stronger accountability procedures.

Despite the considerable research on human rights issues, the issue of assessing the effectiveness of international human rights mechanisms remains insufficiently studied. Most studies address the normative and institutional aspects, omitting aside the problems of practical effectiveness and interaction with national systems. There is a lack of comprehensive studies that would offer a holistic vision of ways to reform the international human rights system considering current challenges. The study aimed to comprehensively analyse the effectiveness of international human rights mechanisms and identify areas for their improvement. The objectives of the study were:

- to identify the main problems that reduce the effectiveness of the international human rights protection system in practice;
- to summarise the experience and lessons learned from international human rights institutions;
- to substantiate ways to increase the effectiveness and adaptability of international human rights mechanisms to new challenges.

Materials and methods

The methodological basis of the study of the effectiveness of international human rights protection mechanisms consisted of a set of general scientific and special legal methods. The systemic-structural method was used to analyse the regulatory and institutional framework for the functioning of the international human rights protection system. Comparative legal analysis of the practice of the European Court of Human Rights in the Cases No. 16798/90 "López Ostra v. Spain" (1994), No. 46468/06 "Aleksanyan v. Russia" (2009), No. 5878/08 "Armani Da Silva v. the United Kingdom" (2016), Inter-American Court of Human Rights (IACtHR) in the Cases "Velásquez Rodríguez v. Honduras" (1988), "Barrios Altos v. Peru" (2001), "Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil" (2010), "Gelman v. Uruguay" (2011), "Atala Riffo and daughters v. Chile (Merits, Reparations and Costs)" (2012), Judgment of the African Court on Human and Peoples' Rights (AfCHPR) in the Case No. 003/2016 "Lazaro v. United Republic of Tanzania" (2023) were used to identify common features and differences in the interpretation and application of the

provisions of the relevant regional human rights treaties. These cases were selected for comparative legal analysis because they represent landmark judgements in the jurisprudence of each regional human rights court and address core principles relevant to the interpretation and application of human rights treaties.

The formal-legal method was used for dogmatic analysis of the provisions of International Covenant on Civil and Political Rights (ICCPR) (1966), International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966), Resolution of the United Nations Human Rights Council No. 5/1 (2007) and others. The study also employed statistical data on the number of ratifications of the main international human rights treaties (Office of the UN High Commissioner for Human Rights, 2025a), the number and subject matter of individual complaints to human rights treaty bodies (Centre for Civil and Political Rights, 2023; Office of the UN High Commissioner for Human Rights, 2025b), indicators of the activities of regional human rights courts (Council of Europe, 2023; IACtHR, 2023; AfCHPR, 2023), as well as certain indicators of the functioning of the UN universal human rights mechanisms, including the number of UNHRC special procedures, coverage of states by the Universal Periodic Review, number of recommendations under the review, staff and budget of Office of the UN High Commissioner for Human Rights (OHCHR) (2023).

Results

Regulatory and institutional framework for the functioning of international human rights mechanisms. Alongside universal human rights treaties, regional human rights systems are also in development, incorporating the specific characteristics of the regions concerned. The most effective is the European human rights protection system under the Council of Europe, based on the ECHR (1950) and the activities of the ECtHR. In contrast to UN treaty bodies, ECtHR decisions are binding on participating states and have significantly influenced the evolution of European human rights standards (Cook, 2020; Helfer & Land, 2022). The inter-American system, based on the American Declaration of the Rights and Duties of Man (1948), the American Convention on Human Rights (1969) and the activities of the Inter-American Commission on Human Rights (IACHR) and IACtHR, as well as the African system, based on the ACHPR (1981) and the functioning of the AfCHPR (Moeckli *et al.*, 2022), are less efficient in the context of political, legal, institutional and resource aspects.

The comparatively lower efficiency of the Inter-American and African human rights systems in political, legal, institutional, and resource dimensions has been substantiated by numerous scholars and international assessments. D. Moeckli *et al.* (2022) emphasise that both systems face significant challenges due to limited institutional capacities, underfunding, and political resistance from member states. Politically, some governments in Latin America and Africa have shown reluctance to comply with the judgements of their respective courts, often due to the sensitive nature of the cases, such as those involving accountability for past human rights abuses or systemic discrimination. Legally, both the IACtHR and AfCHPR operate within frameworks that allow states to withdraw recognition of their jurisdiction, thereby undermining the consistency and enforceability of decisions (Van Dijk & Van Hoof, 2023). Institutionally, these courts suffer from restricted mandates, smaller secretariats, and a lack of robust follow-up mechanisms comparable to the Committee of Ministers in the European system. In terms of resources, both systems face chronic underfunding, with budgets that are insufficient to support comprehensive monitoring, outreach, and enforcement efforts (OHCHR, 2023). These structural limitations collectively reduce their ability to deliver timely, consistent, and enforceable human rights protection across their jurisdictions.

Notably, human rights mechanisms have been gradually developing within regional intergovernmental organisations in Asia and the Arab region (Patricheev, 2025). In 2009, under the leadership of the Association of Southeast Asian Nations (ASEAN), the ASEAN Intergovernmental Commission on Human Rights was established, and in 2012, the ASEAN Human Rights Declaration was adopted, which, however, has been criticised for insufficient consideration of universal standards (Mingst *et al.*, 2022). In 2009, the League of Arab States (LAS) established the Arab Human Rights Committee, which is mandated to review periodic reports of member states on their implementation of the Arab Charter on Human Rights (2004). However, such sub-regional mechanisms are still at the initial stage of their development and cannot be considered full-fledged human rights protection systems. These sub-regional mechanisms remain at an early stage due to limited mandates, lack of independent judicial bodies, and weak enforcement mechanisms. The ASEAN Intergovernmental Commission lacks the authority to receive individual complaints or issue binding decisions, reducing its effectiveness. Similarly, the Arab Human Rights Committee operates solely through periodic reporting without mechanisms for adjudication or sanctions. Additionally, both systems suffer from low levels of transparency, political interference, and insufficient alignment with universal human rights standards, which undermines their credibility and functionality as comprehensive protection systems.

Following Table 1, the workload of the regional human rights courts is uneven, with the ECtHR dominating in terms of both the number of applications filed and decisions on the merits. Thus, in the period 2019-2024, the ECtHR received an average of about 42 thousand applications annually, while the IACtHR and AfCHPR received only several applications per year. This is determined by several factors, including greater experience of operation and a higher level of trust in the ECtHR on the part of applicants; a wider range of rights provided for by the ECHR; the provision by ECHR member states of more effective mechanisms for the enforcement of ECtHR judgements at the national level, etc. The above statistics demonstrate that a significant gap in the workload and productivity of regional judicial mechanisms for the protection of human rights in 2019-2024 remains. The ECtHR continues to receive more complaints and issue several times more judgements on the merits than its Inter-American and African counterparts. Although the proportion of judgements finding states in breach of their obligations is high in all three courts (85-94%), the quantitative scope and geography of their activities are not comparable. This asymmetry is explained by both objective factors (the sise of the population under the jurisdiction of the ECtHR, the level of legal culture and awareness of citizens about international protection mechanisms) and institutional characteristics of the courts themselves (budget, staff, procedural rules, etc.). As of 2024, the

population under the jurisdiction of the European Court of Human Rights (ECtHR), which includes the 46 member states of the Council of Europe, exceeds 670 million people (Taran & Hryha, 2024). In contrast, the Inter-American Court of Human Rights (IACtHR) covers 20 member states of the Organisation of American States (OAS) that have accepted its jurisdiction, amounting to approximately 630 million people. However, not all OAS states recognise the jurisdiction of the IACtHR, reducing the de facto protected population to around 420 million. The African Court on Human and Peoples' Rights (AfCHPR), despite the African Union's much larger total population of over 1.4 billion, operates under even more limited jurisdiction: as of 2024, only 9 out of 55 AU member states have made the declaration allowing individuals and NGOs to bring cases directly before the Court, meaning that fewer than 300 million people effectively fall within its accessible jurisdiction. In any case, these data demonstrate the need to take measures to ensure a more even and optimal workload for regional human rights courts to increase the efficiency, accessibility and effectiveness of judicial protection of human rights in all regions of the world.

Table 1. Performance indicators of regional human rights courts (2019-2024)

Court	Applications filed (annual average)	Decisions made on the merits	Violations recognised (% of decisions on the merits)
ECtHR	42.187	8.954	85.3%
IACtHR	36	152	93.4%
AfCHPR	51	138	94.2%

Source: compiled by the authors based on ECtHR (2024), IACtHR (2023), AfCHPR (2023), ECtHR (2024)

Alongside treaty bodies, the UNHRC and OHCHR are key in the international human rights protection system. The UNHRC, which replaced the UN Commission on Human Rights in 2006, is an intergovernmental body of 47 member states responsible for promoting universal respect for and protection of human rights worldwide. It holds regular sessions to discuss a wide range of thematic issues in the field of human rights, initiates international investigations in situations of gross and systematic violations, cooperates with special procedures (special rapporteurs, working groups, independent experts) mandated to monitor and make recommendations on specific categories of rights or countries (Landman, 2020; Ramcharan, 2021).

In 2019-2023, a significant increase in the number of UNHRC special procedures is notable, which indicates that the UN has strengthened monitoring and control over the situation in individual countries (Table 2). Between 2019 and 2023, the increase in the number of United Nations Human Rights Council (UNHRC) special procedures was particularly evident in countries experiencing severe and systemic human rights violations or undergoing political crises. Notably, mandates were expanded or newly established for countries such as Myanmar, Venezuela, Afghanistan, Ethiopia, and Belarus. In Myanmar, following the 2021 military coup and widespread reports of extrajudicial killings and repression of dissent, the UNHRC extended the mandate of the Special Rapporteur on the situation of human rights and intensified fact-finding activities. In Venezuela, deepening political repression, economic collapse, and the targeting of civil society actors led to the creation of an Independent International Fact-Finding Mission in 2019, tasked with investigating serious violations including arbitrary detentions and torture. In Afghanistan, after the Taliban's return to power in 2021, the UNHRC appointed a Special Rapporteur to monitor violations of women's rights, freedom of expression, and reprisals against former government officials and civil society representatives. In Ethiopia, the armed conflict in the Tigray region prompted the establishment of the International Commission of Human Rights Experts on Ethiopia in 2021, focusing on war crimes and crimes against humanity committed by all parties to the conflict. In Belarus, the post-election crackdown in 2020 led to the renewal and expansion of the Special Rapporteur's mandate, focusing on political repression, restrictions on freedom of assembly, and the persecution of opposition figures. These cases reflect the UNHRC's reactive mechanism of expanding special procedures in contexts where international concern over grave or widespread human rights violations has intensified. At the same time, OHCHR's available resources remain limited despite the rapid increase in requests for monitoring human rights violations, providing technical assistance and conducting investigations. For instance, in 2023, the Office received 47% more requests to investigate serious human rights violations compared to 2019, and the number of requests for technical assistance increased by 35%. Despite the increase in the OHCHR budget since the beginning of 2010, the share of funding from the UN regular budget is decreasing, due to the overall reduction in contributions of member states to the UN regular budget and the reallocation of funds to other priority areas of the organisation, which increases the Office's dependence on voluntary contributions from individual donors and may negatively affect the independence of its activities (OHCHR, 2024).

Table 2. Selected indicators of the UN universal human rights mechanisms

Metric	2019	2020	2021	2022	2023
Number of UNHRC thematic special procedures	44	44	45	46	46
Number of UNHRC country-specific special procedures	12	11	12	13	14
Countries covered by the Universal Periodic Review (UPR) (per cycle)	193	193	193	193	193
Recommendations made under the UPR (total)	3.529	4.658	3.905	4.273	2.147
OHCHR staff members	1.419	1.370	1.395	1.488	1.525
OHCHR budget (million USD)	321.5	227.2	379.5	4.52,7	489.1
From the UN regular budget (%)	37.3%	38.8%	35.6%	33.2%	32.5%

Source: compiled by the authors based on OHCHR (2023; 2024)

The above data demonstrate certain positive trends in the activities of the UN statutory human rights mechanisms in 2019-2023 the expansion of the mandates of the UNHRC special procedures and the gradual increase in the OHCHR resource base. However, these developments are still insufficient in the scale of human rights challenges and the growing needs of states for monitoring, technical and advisory support. Although the number of thematic mandates of UNHRC special envoys and working groups has increased to 60, many of them face access restrictions to certain countries and lack funding to effectively carry out their functions (OHCHR, 2024). Despite the OHCHR's budget nearly doubling over the period (from 227.2 to 489.1 million USD), the share of funds from the UN regular budget decreased from 38.8% to 32.5%, increasing the Office's dependence on voluntary contributions from individual donors and undermining its stable functioning.

Thus, despite significant progress in the development of the regulatory and institutional framework, the efficiency of universal human rights mechanisms is still constrained by several systemic problems, including insufficient universality of the treaty framework, fragmentation and lack of coordination between bodies, lack of funding and staff, excessive length and bureaucracy of procedures, selectivity and politicisation of assessments (Masyhar & Emovwodo, 2023). To further strengthen and increase the effectiveness of the international human rights system, comprehensive institutional, procedural and resource measures are needed to enhance its independence, professionalism and focus on the needs of victims of violations.

Issues and challenges in the functioning of the international human rights protection system. The development of the universal and regional human rights protection systems in 1993-2023 was characterised by the creation of new institutional mechanisms and the expansion of their mandates, but their practical effectiveness is constrained by several systemic institutional and functional problems. One of the most acute problems that reduces the effectiveness of the individual complaint mechanism in the UN treaty bodies is the excessive length of time for consideration of cases. Following Table 3, the average time for consideration of an individual communication from registration to final decision is 4 years at the UNHRC, 3.5 years – at CAT, 2.8 years – at CEDAW, etc. This is due to the overload of the committees, lack of resources and bad faith behaviour of states (OHCHR, 2023). Another substantial issue is the selective and politically motivated application of human rights standards by states and international institutions (Nowak, 2021; Smith, 2022). The UNHRC often blocks resolutions on violations in influential countries (the People's Republic of China (PRC), the Russian Federation (RF), Saudi Arabia) and makes politicised decisions regarding the West's "opponents" (the Democratic People's Republic of Korea, Iran, Syria) (Olashyn, 2023; Hryb *et al.*, 2023).

Table 3. Consideration of individual complaints by UN treaty bodies (as of 2024)

Convention body	Complaints registered	Final decisions issued	Recognised violations	Average processing time (years)
UNHRC	4.205	1.615	1.380	4.0
CED	70	29	21	2.5
CERD	68	41	25	2.0
CEDAW	210	75	51	2.8
CAT	1.159	393	211	3.5

Source: compiled by the authors based on Centre for Civil and Political Rights (2024), OHCHR (2025c)

Between 1950 and 2023, global and regional human rights protection systems developed a huge body of case law that significantly influenced the development of international standards in this area. Thanks to the activities of treaty and statutory bodies, in particular the ECtHR and the IACtHR, a solid practice of interpreting and applying the provisions of key international human rights treaties was established. Table 4 shows that the ECtHR and IACtHR case law are characterised by a dynamic and evolutionary approach to the interpretation of the ECHR and ACHPR provisions, respectively, which can be used to adapt the protection of the rights envisaged therein to modern realities. This is manifested, among other things, in the gradual expansion of the scope of certain conventional rights by including new aspects (positive state obligations, procedural requirements, environmental and private law (horizontal) components, etc.) and new categories of media in their content (Sunga, 2021).

Table 4. Separate legal positions of the ECtHR, IACtHR and AfCHPR on the evolutionary interpretation of Convention rights

Judicial institution	Case	Legal position
ECtHR	Aleksanyan v. Russia (2008)	Failure to provide adequate medical care to detainees may constitute a violation of Article 3 of the ECHR (prohibition of torture)
ECtHR	Armani Da Silva v. the United Kingdom (2016)	Article 2 of the ECHR (right to life) provides for the state's obligation to conduct effective investigations into deaths resulting from the use of force by the authorities.
ECtHR	López Ostra v. Spain (1994)	Serious environmental pollution can affect people's well-being and interfere with the enjoyment of their homes, adversely affecting their private and family life, even without a serious threat to their health (Article 8 ECHR)
IACtHR	Atala Riffo and daughters v. Chile (2012)	Sexual orientation and gender identity are categories protected from discrimination under Article 1(1) of the ACHPR

Table 4, Continued

Judicial institution	Case	Legal position
IACtHR	Velásquez Rodríguez v. Honduras (1988)	The Court firmly endorsed an evolutionary (dynamic) interpretation of the American Convention on Human Rights. The Court emphasised that the Convention is a "living instrument" that must be interpreted in light of contemporary values and the evolving standards of human rights protection. The Court reinforced that the Convention evolves over time to remain effective in protecting human rights.
AfCHPR	Lazaro v. United Republic of Tanzania (2023)	The imposition of the mandatory death penalty, omitting the circumstances of the case, is a violation of the right to life and the right to a fair trial (Articles 4 and 7 of the ACHPR).

Source: compiled by the authors based on ECtHR (1994; 2008; 2016), IACtHR (2012), AfCHPR (2023)

The practice of international judicial protection has become a powerful catalyst for improving national legislation and law enforcement in the state's parties to the relevant conventions. Thus, under the influence of the ECtHR's pilot decisions, many ECHR member states (Italy, Poland, Ukraine, Moldova, etc.) have carried out structural and legislative reforms that have eliminated systemic human rights violations caused by shortcomings in the legal system and administrative practice (OHCHR, 2023). Thanks to the decisions of the IACtHR, several Latin American countries have decriminalised defamation, expanded the rights of indigenous peoples, strengthened procedural guarantees for defendants, and enhanced the protection of the rights of women and LGBT communities. The AfCHPR's decisions (2023) contributed to the abolition of the death penalty (Tanzania), the adoption of anti-discrimination legislation (Côte d'Ivoire), the expansion of voting rights (Tanzania, Kenya), and more.

At the same time, the realisation of the potential of regional human rights mechanisms is still constrained by several institutional and procedural problems. These include, in particular:

- overloading of the ECtHR due to an excessive number of individual complaints from certain problematic jurisdictions;
- insufficient use of the ECtHR's pilot judgements and friendly settlement procedure;
- limited jurisdiction (*ratione temporis*) of the IACtHR;
- the possibility of a state's withdrawal from the jurisdiction of the IACtHR and AfCHPR by denouncing optional declarations recognising the competence of courts to receive individual complaints, as exemplified by Venezuela's withdrawal from the IACtHR in 2013 and Rwanda's revocation of its declaration under Article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights (1998) in 2016, both of which significantly limited individual access to justice and undermined the authority of the respective courts (OHCHR, 2023; Van Dijk & Van Hoof, 2023).

The issues of ensuring timely and full enforcement of judgements of regional human rights courts at the national level also remain significant. Even in Europe, where the enforcement mechanisms of ECtHR judgements are the most effective among regional systems, as of 2022, 5,672 cases concerning general measures (structural and systemic problems) were under supervision by the Committee of Ministers of the Council of Europe (Council of Europe, 2023). One of the main reasons for the delay in the implementation of ECtHR judgements by states is the lack of special legislation in many countries that would provide for specific procedures for reviewing cases in exceptional circumstances. For instance, in the post-Soviet states, this problem is particularly noticeable due to the inherited features of legal systems, such as strict centralisation of justice, limited opportunities for review of court decisions after they enter into force, and insufficient implementation of international standards (Pētersone *et al.*, 2021). Moldova, Armenia and Azerbaijan have long lacked clear procedures for reopening proceedings, which has led to systematic delays in the enforcement of ECtHR judgements.

Similar problems hinder the implementation of the decisions of the IACtHR and the AfCHPR, which have additional specific difficulties due to the somewhat different nature of these bodies. Politically motivated reluctance of some states to comply with IACtHR judgements is often expressed through legal obstructions, constitutional arguments, or discretionary political practices aimed at avoiding implementation (Makhambetsaliyev *et al.*, 2024). These tactics are particularly visible in cases involving state violence, high-level corruption, or transitional justice. For example, in case "Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil" (2010), the IACtHR ordered Brazil to investigate and prosecute crimes committed during the military dictatorship, including forced disappearances. However, Brazilian authorities invoked the Law of Brazil No. 6.683 "On the Amnesty". (1979) to justify the non-prosecution of perpetrators, arguing that domestic legislation precluded retroactive criminal liability. Despite the Court's clear ruling that such amnesties violate international human rights obligations, the Brazilian Supreme Court reaffirmed the validity of the Amnesty Law in 2010, effectively blocking compliance. In "Gelman v. Uruguay" (2011), involving enforced disappearance during the Uruguayan dictatorship, the state initially resisted compliance by claiming constitutional constraints and legal uncertainty surrounding the nullification of its own amnesty law. Although Uruguay later adopted partial legislative reforms, these were delayed and politically contested, illustrating how states can invoke legal pluralism and domestic constitutional hierarchy to delay or dilute implementation. Another example is "Barrios Altos v. Peru" (2001), where the IACtHR found Peru's amnesty laws for perpetrators of extrajudicial executions unconstitutional. While initially complied with under democratic governments, subsequent administrations showed reluctance to fully prosecute those involved, citing political instability and reconciliation concerns. These examples demonstrate that states often use legal mechanisms such as amnesty laws, constitutional supremacy arguments, or judicial review procedures, as well as political strategies including selective enforcement, delays in legislative reform, and rhetorical framing of human rights obligations as foreign impositions, to resist compliance with politically sensitive IACtHR rulings.

In turn, among the main problems of the implementation of AfCHPR decisions are: high levels of poverty and social

exclusion in African countries, which significantly complicates access to justice and legal aid for victims of violations; limited financial and human resources of the AfCHPR to comprehensively monitor the implementation of its decisions; underdeveloped infrastructure and lack of awareness of national authorities about the procedures for interaction with the AfCHPR (Moeckli *et al.*, 2022). Among the factors that most reduce the effectiveness of international human rights mechanisms, several key issues are worth noting. Systematic long-term underfunding significantly limits the work of the OHCHR, regional courts and conventional bodies, as their budgets and staffing are extremely insufficient compared to the scope of their tasks. The main reasons for this financial situation are failure of states parties to fulfil their contributions to the budget of international organisations; lack of sustainable funding mechanisms that would be protected from political influence; and low priority of human rights activities compared to other areas of international cooperation. This affects the number and quality of monitoring activities, field missions, the possibility of engaging experts and interaction with victims of violations (OHCHR, 2025c).

Lack of independence and professionalism also remains a significant problem. The procedures for selecting judges, committee members and special procedure mandate holders are still too dependent on political bargaining by states, and the lack of transparency in these processes negatively affects the professionalism and integrity of the appointees. Their selectivity and politicisation significantly undermine the effectiveness of the mechanisms. The adoption of resolutions and decisions on situations in individual countries is often dictated by political motives rather than objectivity (Khamzin *et al.*, 2015). The "double standards" and the practice of "vindictive justice" significantly weaken the legitimacy of human rights institutions (Resolution of the Parliamentary Assembly of the Council of Europe No. 2075, 2015). Fragmentation and lack of coordination also remain pressing challenges. Despite attempts to establish dialogue and cooperation between universal and regional, political and legal, intergovernmental and civil society human rights mechanisms, they still operate in a fragmented and uncoordinated manner. A separate problem is the enforcement of decisions. Even the most advanced and progressive decisions and recommendations of human rights bodies remain "on paper" without effective national mechanisms and procedures for their implementation, both legislative and institutional (European Implementation Network, 2020). Low public awareness and involvement also creates issues to the effective functioning of the system. Most people, including victims of violations, are mostly unaware of the possibilities of international protection and the practice of human rights institutions. Institutions do not sufficiently interact with NGOs, media, and human rights defenders, who could be "broadcasters" of their activities.

Areas for improvement of international human rights protection mechanisms. The current institutional structure of the international human rights protection system, though significantly evolved, remains insufficiently responsive to the procedural, legal, and political challenges it faces. To ensure both legitimacy and effectiveness, reform efforts must be grounded in legal precision, comparative practice, and theoretically sound rationale. The excessive duration of individual complaint reviews, e.g., 4 years on average at the UN Human Rights Committee, necessitates procedural optimisation. It is recommended to amend the Rules of Procedure of the Human Rights Committee (2019) by introducing:

- a new Rule 92(3): "Individual communications shall be considered within 24 months from registration, unless exceptional circumstances justify an extension";
- a revised Rule 96, allowing manifestly inadmissible communications to be dismissed through a simplified written procedure without plenary deliberation.

Such practices already exist in the European Court of Human Rights (ECtHR) under Rule 54A of the Rules of Court (European Court of Human Rights, 2025), allowing a single judge to declare inadmissibility. Empirical research by G. Keller and H. Ulfstein (2012) has shown this procedural streamlining significantly reduces backlog. Also the current politicides selection of treaty body members reduces expertise and diversity. The proposal is to model reform after Resolution of the Parliamentary Assembly of the Council of Europe No. 2009(2014) (2014), which established an Advisory Panel to evaluate candidates for the ECtHR. The UN could adopt a similar mechanism under Resolution Adopted by the General Assembly of UN No. 68/268 (2014), which already provides a reporting framework on treaty body elections. A revised process should require:

- public nomination calls;
- minimum criteria for expertise in international law (e.g., 10 years of relevant experience, peer-reviewed publications);
- regional balance and gender parity quotas, in line with the Addis Ababa Guidelines (Report of the Chairs of the…, 2012).

These reforms align with the norm spiral theory (Risse *et al.*, 1999), which posits that internalisation of human rights norms requires institutional consistency and reduction of the "compliance gap." The discussion on improving international human rights protection mechanisms focuses on the need to ensure both procedural efficiency and institutional legitimacy. The current system faces challenges such as excessive length of proceedings, lack of expertise among members of treaty bodies, and poor compliance with good governance standards. The ECHR's experience suggests that it would be advisable to simplify procedures and introduce tools for preliminary screening of complaints in order to reduce the workload. At the same time, the composition of bodies should be based on transparent selection, clear professional criteria and principles of institutional balance. The proposed reforms are based not only on comparative analysis, but also on conceptual models that emphasise the role of internal consistency of norms for the effective implementation of human rights at the global level.

Discussion

The analysis of the regulatory and institutional framework, practical problems of functioning and areas for improvement of the international human rights protection system provided several important conclusions and generalisations. As evidenced by an analysis of states' participation in core universal human rights treaties, despite fairly high ratification rates for "classic" conventions (ICESCR, ICCPR, Convention on the Elimination of all Forms of Discrimination Against Women, Convention on the Rights of the Child, with over 170 participants), many specialised treaties aimed at protecting the most vulnerable categories (International

Convention on the Protection of the Rights of All..., 2006) have an extremely low level of recognition (from 57 to 70 participants). This trend is generally consistent with the findings of other researchers regarding the fragmentation of the treaty framework and the selective approach of states to participation in human rights treaties (Nowak, 2021; Smith, 2022). At the same time, the data obtained suggest that insufficient participation in individual treaties is a more acute problem than mere formal accession to them.

An analysis of the performance of regional human rights courts has revealed striking disproportions in their workload and capacity: with almost the same proportion of decisions finding violations, the ECtHR receives hundreds of times more complaints and issues ten times more decisions on the merits than the IACtHR and AfCHPR. A similar imbalance was previously noted by other authors. L.R. Helfer and M.K. Land (2022), in a study on the organisational and functional structure and jurisdiction of human rights courts, explained such imbalances by a complex of historical, institutional and procedural factors. However, the results presented prove that even with a significant time lapse and certain reform efforts, this gap does not show any tendency to narrow and therefore requires more decisive and systematic measures by the courts themselves, states and civil society.

The study also revealed significant gaps in the activities of the UN universal conventional and statutory human rights bodies. In particular, the data on the consideration of individual complaints by the committees indicate that this procedure takes an excessive amount of time, which averages 2-4 years. This creates significant obstacles to victims' access to international justice and negatively affects the effectiveness of the relevant mechanisms (Global Alliance of National Human Rights Institutions, 2022). At the same time, some cases demonstrate that even in the face of overload and resource constraints, the conventional bodies can promptly and effectively consider high-profile cases and ensure the real restoration of victims' rights at the national level (the case of Spain).

The analysis of certain performance indicators of the UN statutory human rights bodies has demonstrated some progress in building their normative and institutional capacity, in terms of expanding the mandates of the UNHRC special procedures. At the same time, there is a negative trend towards a decrease in the share of the OHCHR budget covered by regular contributions (from 38.8% to 32.5%) and a corresponding increase in its dependence on voluntary funding from individual donors. These findings are consistent with the conclusions of other researchers regarding the risks to OHCHR's independence and impartiality in the context of chronic underfunding. Such warnings were expressed by P. Dąbrowska-Kłosińska (2021), highlighting threats to the autonomy and professionalism of human rights bodies in the context of budgetary constraints.

The study not only systematised and supplemented theoretical developments on the current state of the international human rights protection system but also formulated several practically oriented recommendations to address the identified shortcomings and gaps. The proposed measures for procedural optimisation of the consideration of individual complaints, strengthening the independence of special procedures, depoliticising the UNHRC decision-making process, and enhancing coordination between international and national human rights mechanisms are consistent with the approach of J. Donnelly and D. Whelan (2020), who emphasised the importance of systematically improving international human rights mechanisms to address the interests of the most vulnerable groups. At the same time, some of the recommendations on establishing compulsory jurisdiction of the conventional bodies as a criterion for membership in the UNHRC, are quite innovative and potentially sensitive for many states, and therefore will require additional advocacy by civil society (Sopelnyk, 2025). At the same time, despite the practical value of the results, they are only partially consistent with the findings of other researchers. While G. Alfredsson and A. Eide (2023) also emphasised the importance of civil society involvement in the implementation of international human rights standards, A. Masyhar and S. Emovwodo (2023) addressed the role of state institutions in this process, omitting non-state actors.

The results partially correlate with the research of T. Landman (2020), emphasising the need to combine quantitative and qualitative methods for a comprehensive assessment of the effectiveness of human rights mechanisms. However, in contrast to T. Landman (2020), who focused mainly on the methodological aspects of measuring the human rights situation, the present study offers specific tools for assessing the institutional capacity of international mechanisms and develops practical recommendations for addressing the identified shortcomings. The findings on regional disparities in the functioning of the international human rights system extend the observations of D. Moeckli *et al.* (2022), who mainly addressed formal institutional differences between regional systems rather than practical aspects of their operation. While authors only stated the structural features of different regional courts, this study demonstrated that these differences cause significant differences in the actual access to international justice for victims of violations and require systemic measures to equalise protection standards.

The proposed directions for improving international human rights mechanisms complement the approach of J. Ife *et al.* (2022), which addressed the substantive elements of reform, leaving procedural and institutional aspects unaddressed. In contrast to the study by J. Ife *et al.* which primarily consider the normative dimension of international human rights protection, the present study proposed a comprehensive approach that includes both the improvement of substantive standards and the reform of procedural and institutional mechanisms for their implementation, with a special emphasis on strengthening the role of civil society in these processes.

Conclusions

The study comprehensively analysed the regulatory and institutional framework, practical problems of functioning and areas for improvement of the international human rights protection system at the present stage. The study established that despite the progressive development of treaty and institutional mechanisms for the protection of human rights at the universal and regional levels, their practical effectiveness is significantly constrained by several systemic factors of a procedural, institutional and implementation nature.

The analysis of the participation of states in the main universal human rights treaties has shown a certain fragmentation of the treaty framework, due to the relatively low level of ratification of the newest specialised conventions despite the rather high rates of accession to the "classical" treaties. The study also revealed significant disproportions in the workload of regional human rights courts: with

almost the same share of judgements recognising violations of state obligations, the ECtHR receives and considers ten times more complaints than the IACtHR and AfCHPR. The study established that the excessive length of consideration of individual communications by UN treaty bodies (2-4 years) significantly impedes victims' access to international justice. Despite some progress in expanding the human rights mandates of the UNHRC special procedures, there is a negative trend towards reducing the share of regular budget funding for the OHCHR, which increases the risk of its dependence on voluntary contributions from individual donors. The study demonstrated that due to the flexible evolutionary interpretation of human rights treaty norms enshrined in the case law of the ECtHR, IACtHR and UN conventional bodies, it is possible to adapt the scope of their protection to modern realities by identifying new normative elements in the content of established rights. The author proved that consistent implementation of these approaches at the national level through legislative and institutional reforms is a powerful catalyst for eliminating systemic violations and establishing effective human rights mechanisms.

Based on the identified shortcomings of the international human rights system, several practically oriented recommendations have been developed to optimise the procedures for consideration of individual complaints, strengthen the independence and professionalism of human rights bodies, universalise the treaty framework and recognise the competence of conventional institutions. The author emphasises the need to consolidate the efforts of states, international organisations and civil society institutions in promoting systemic reform of universal and regional human rights mechanisms based on independence, transparency and sustainable funding. Promising areas for further research include a comparative analysis of the interaction of regional and universal human rights systems, as well as the study of the conditions for the introduction of compulsory jurisdiction of international bodies over individual complaints.

Acknowledgements

None.

Funding

The study was not funded.

Conflict of interest

None.

References

[1] African Charter on Human and Peoples' Rights (ACHPR). (1981, June). Retrieved from https://au.int/en/treaties/african-charter-human-and-peoples-rights.

[2] Alexander, C.S., & Todres, J. (2021). Evaluating the implementation of Human Rights Law: A data analytics research agenda. *University of Pennsylvania Journal of International Law*, 43(1), 1-77.

[3] Alfredsson, G., & Eide, A. (2023). *Universal Declaration of Human Rights: A common standard of achievement*. Leiden: Brill. doi: 10.1163/9789004637542.

[4] American Convention on Human Rights. (1969, November). Retrieved from https://treaties.un.org/doc/Publication/UNTS/Volume%201144/volume-1144-I-17955-English.pdf.

[5] American Declaration of the Rights and Duties of Man. (1948, June). Retrieved from https://digitallibrary.un.org/record/565094?v=pdf.

[6] Arab Charter on Human Rights. (2004, May). Retrieved from https://surl.li/osgkdk.

[7] Centre for Civil and Political Rights (CCPR). (2023). *Annual report 2022*. Retrieved from https://ccprcentre.org/ccprpages/ccpr-centres-annual-report-2022.

[8] Centre for Civil and Political Rights (CCPR). (2024). *Upcoming 2024 state reviews of the Human Rights Committee*. Retrieved from https://ccprcentre.org/ccprpages/upcoming-2024-state-reviews-of-the-human-rights-committee.

[9] Chilton, A.S. (2017). Experimentally testing the effectiveness of human rights treaties. *Chicago Journal of International Law*, 18(1), 164-186.

[10] Cook, R.J. (2020). International human rights and women's reproductive health. In S. Sherwin & B. Parish (Eds.), *Women, medicine, ethics and the law* (pp. 37-50). London: Routledge. doi: 10.4324/9781003073789.

[11] Council of Europe. (2023). *Supervision of the execution of judgements of the European Court of Human Rights 2022 – 16th annual report of the Committee of Ministers*. Retrieved from https://surl.li/iwyoot.

[12] Dąbrowska-Kłosińska, P. (2021). The protection of human rights in pandemics – reflections on the past, present, and future. *German Law Journal*, 22(6), 1028-1038. doi: 10.1017/glj.2021.59.

[13] Donnelly, J., & Whelan, D.J. (2020). *International human rights*. New York: Routledge. doi: 10.4324/9780429266072.

[14] Douch, M., Edwards, H., Landman, T., & Mallick, S. (2022). Aid effectiveness: Human rights as a conditionality measure. *World Development*, 158, article number 105978. doi: 10.1016/j.worlddev.2022.105978.

[15] European Convention on Human Rights (ECHR). (1950, November). Retrieved from https://www.echr.coe.int/documents/convention_eng.pdf.

[16] European Court of Human Rights. (2024). *Statistical reports*. Retrieved from https://www.echr.coe.int/Pages/home.aspx?p=reports&c=.

[17] European Court of Human Rights. (2025). *Rules of court*. Retrieved from https://www.echr.coe.int/documents/d/echr/rules_court_eng.

[18] European Implementation Network. (2020). *EIN handbook about implementation of judgements of the European Court of Human Rights*. Retrieved from https://www.einnetwork.org/ein-handbooks.

[19] General Assembly of the UN. (2012). *Report of the Chairs of the human rights treaty bodies on their twenty-fourth meeting*. Retrieved from https://docs.un.org/en/A/67/222.

[20] Global Alliance of National Human Rights Institutions. (2022). *United Nations*. Retrieved from https://ganhri.org/wp-content/uploads/2022/09/2.-United-Nations.pdf.

[21] Helfer, L.R., & Land, M.K. (2022). The meta oversight board's human rights future. *Cardozo Law Review*, 44(6). doi: 10.2139/ssrn.4197107.
[22] Hryb, A.M., Vladyshevska, V.V., & Dronov, V.Yu. (2023). General principles of international legal protection of human rights. *Analytical and Comparative Jurisprudence*, 3, 405-411. doi: 10.24144/2788-6018.2023.03.73.
[23] Ife, J., Soldatić, K., & Briskman, L. (2022). *Human rights and social work: Towards rights-based practice*. Cambridge: Cambridge University Press. doi: 10.1017/9781108903868.
[24] Inter-American Court of Human Rights. (2024). *Annual report 2024*. Retrieved from https://www.corteidh.or.cr/periodo_de_sesiones.cfm?lang=en#P2024.
[25] International Convention for the Protection of All Persons from Enforced Disappearance. (2006, December). Retrieved from https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced.
[26] International Covenant on Civil and Political Rights. (1966, December). Retrieved from https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights.
[27] International Covenant on Economic, Social and Cultural Rights. (1966, December). Retrieved from https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights.
[28] Judgment of the African Court on Human and Peoples Rights in Cases Nos. 009/2011, and 011/2011 "Tanganyika Law Society and the Legal and Human Rights Centre v. Tanzania". (2013, June). Retrieved from https://opil.ouplaw.com/display/10.1093/law:ihrl/2117achpr11.case.1/law-ihrl-2117achpr11?prd=OPIL.
[29] Judgment of the African Court on Human and Peoples' Rights in the Case No. 003/2016 "Lazaro v. United Republic of Tanzania". (2023, November). Retrieved from https://africanlii.org/akn/aa-au/judgment/afchpr/2023/35/eng@2023-11-07.
[30] Judgment of the European Court of Human Rights in Case No. 16798/90 "López Ostra v. Spain". (1994, December). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57905%22]}.
[31] Judgment of the European Court of Human Rights in Case No. 46468/06 "Aleksanyan v. Russia". (2009, June). Retrieved from https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-90390%22]}.
[32] Judgment of the European Court of Human Rights in Case No. 5878/08 "Armani Da Silva v. the United Kingdom". (2016, March). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22002-10937%22]}.
[33] Judgment of the Inter-American Court of Human Rights in Case "Atala Riffo and Daughters v. Chile (Merits, Reparations and Costs)". (2012, February). Retrieved from https://corteidh.or.cr/docs/casos/articulos/seriec_239_ing.pdf.
[34] Judgment of the Inter-American Court of Human Rights in Case "Barrios Altos v. Peru". (2001, March)., Retrieved from https://www.corteidh.or.cr/docs/casos/articulos/seriec_75_ing.pdf.
[35] Judgment of the Inter-American Court of Human Rights in Case "Gelman v. Uruguay". (2011, February). Retrieved from https://www.corteidh.or.cr/docs/casos/articulos/seriec_221_ing.pdf.
[36] Judgment of the Inter-American Court of Human Rights in Case "Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil". (2010, November). Retrieved from https://www.corteidh.or.cr/docs/casos/articulos/seriec_219_ing.pdf.
[37] Judgment of the Inter-American Court of Human Rights in Case "Velásquez Rodríguez v. Honduras". (1988, July). Retrieved from https://www.corteidh.or.cr/ver_ficha_tecnica.cfm?nId_Ficha=189&lang=en.
[38] Khamzin, A.Sh., Khamzina, Zh.A., & Buribayev, Y.A. (2015). The decent work programme of Kazakhstan: Social and labor rights protection from an institutional aspect of international law. *Journal of East Asia and International Law*, 8(2), 539-540.
[39] Kuchyk, O.S. (2022). Issues of adapting the activities of international security organisations in the face of new challenges to the international security system. *Political Life*, 1, 61-68. doi: 10.31558/2519-2949.2022.1.7.
[40] Landman, T. (2020). Measuring modern slavery: Law, human rights, and new forms of data. *Human Rights Quarterly*, 42(2), 303-331. doi: 10.1353/hrq.2020.0019.
[41] Law of Brazil No. 6.683 "On the Amnesty". (1979, August). Retrieved from https://legal-tools.org/doc/27bd0b-1.
[42] Makhambetsaliyev, D.B., Sagynbekova, G.M., Abdykadyr, U.B., Alimova, E.A., & Smanova, A.B. (2024). Constitutional law-making in the U.S. Supreme Court. *Public Integrity*, 26(4), 473-484. doi: 10.1080/10999922.2023.2282261.
[43] Masyhar, A., & Emovwodo, S.O. (2023). Techno-prevention in counterterrorism: Between countering crime and human rights protection. *Journal of Human Rights, Culture and Legal System*, 3(3), 625-655. doi: 10.53955/jhcls.v3i3.176.
[44] McCorquodale, R., & Nolan, J. (2021). The effectiveness of human rights due diligence for preventing business human rights abuses. *Netherlands International Law Review*, 68, 455-478. doi: 10.1007/s40802-021-00201-x.
[45] Mingst, K.A., Karns, M.P., & Lyon, A.J. (2022). *The United Nations in the XXI century*. New York: Routledge. doi: 10.4324/9781003038269.
[46] Moeckli, D., Shah, S., Sivakumaran, S., & Harris, D.J. (2022). *International human rights law*. Oxford: Oxford University Press. doi: 10.1093/he/9780198860112.001.0001.
[47] Nampewo, Z., Mike, J.H., & Wolff, J. (2022). Respecting, protecting and fulfilling the human right to health. *International Journal for Equity in Health*, 21, article number 36. doi: 10.1186/s12939-022-01634-3.
[48] Nowak, M. (2021). *Introduction to the international human rights regime*. Leiden: Brill. doi: 10.1163/9789004479074.
[49] Office of the United Nations High Commissioner for Human Rights. (2023). *OHCHR reports 2022*. Retrieved from https://www.ohchr.org/en/publications/annual-report/ohchr-report-2022.
[50] Office of the United Nations High Commissioner for Human Rights. (2024). *OHCHR reports 2023*. Retrieved from https://www.ohchr.org/en/publications/annual-report/ohchr-report-2023.
[51] Office of the United Nations High Commissioner for Human Rights. (2025a). *Ratification of 18 International Human Rights Treaties*. Retrieved from https://indicators.ohchr.org/.
[52] Office of the United Nations High Commissioner for Human Rights. (2025b). *Jurisprudence database*. Retrieved from https://juris.ohchr.org/.

[53] Office of the United Nations High Commissioner for Human Rights. (2025c). *Universal Declaration of Human Rights*. Retrieved from https://www.ohchr.org/en/universal-declaration-of-human-rights.
[54] Olashyn, V.V. (2023). Enforcement of court decisions in Ukraine: Efficiency, legal responsibility and international impact. *European Law Science*, 2, 145-149. doi: 10.32782/chern.v2.2023.27.
[55] Patricheev, I. (2025). Legal paternalism's influence on the balancing data protection and fundamental rights. *Law Journal of the National Academy of Internal Affairs*, 15(1), 48-58. doi: 10.63341/naia-chasopis/1.2025.48.
[56] Pētersone, M., Ketners, K., Krieviņš, D., Erins, I., Rakauskiene, O.G., & Eriņa, I. (2021). Network for disease-specific networking strategy to increasing of public value: Latvia's approach. *Lecture Notes in Networks and Systems*, 267, 363-370. doi: 10.1007/978-3-030-80876-1_46.
[57] Protocol to the African Charter on Human and Peoples' Rights (ACHPR) on the Establishment of an African Court on Human and Peoples' Rights (AfCHPR). (1998, June). Retrieved from https://www.refworld.org/legal/constinstr/oau/1998/en/12453.
[58] Ramcharan, B.G. (2021). *The concept and present status of the international protection of human rights: Forty years after the universal declaration*. Leiden: Brill. doi: 10.1163/9789004478312.
[59] Resolution Adopted by the General Assembly of UN No. 68/268 "Strengthening and Enhancing the Effective Functioning of the Human Rights Treaty Body System". (2014, April). Retrieved from https://docs.un.org/en/A/RES/68/268.
[60] Resolution of the Parliamentary Assembly of the Council of Europe No. 2075 "Implementation of Judgements of the European Court of Human Rights". (2015, September). Retrieved from http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=22197&lang=en.
[61] Resolution of the Parliamentary Assembly of the Council of Europe No. 2009(2014) "Reinforcement of the Independence of the European Court of Human Rights". (2014, June). Retrieved from https://pace.coe.int/pdf/c6291cae5d0191551bc3c980edfc579583d3ca8c56648276056957b74a18f683/res.%202009.pdf.
[62] Resolution of the United Nations Human Rights Council No. 5/1 "On Institution-building". (2007, June). Retrieved from https://www.refworld.org/legal/resolution/unhrc/2007/en/70503.
[63] Risse, T., Ropp, S.C., & Sikkink, K. (1999). *The power of human rights. International norms and domestic change*. Cambridge: Cambridge University Press.
[64] Rules of procedure of the Human Rights Committee. (2019, January). Retrieved from https://surli.cc/ycoddg.
[65] Smith, R.K. (2022). *International human rights law*. Oxford: Oxford University Press. doi: 10.1093/he/9780192845382.001.0001.
[66] Sopelnyk, I. (2025). The essence of human rights and the transformation of their protection mechanisms. *Law. Human. Environment*, 16(1), 122-146. doi: 10.31548/law/1.2025.122.
[67] Sunga, L.S. (2021). *Individual responsibility in international law for serious human rights violations*. Leiden: Brill. doi: 10.1163/9789004479845.
[68] Taran, O., & Hryha, M. (2024). Application of international humanitarian law by the European Court of Human Rights. *Scientific Journal of the National Academy of Internal Affairs*, 29(2), 9-17. doi: 10.56215/naia-herald/2.2024.09.
[69] Ulfstein, G., & Keller, H. (2012). *UN Human Rights Treaty Bodies: Law and legitimacy*. Cambridge: Cambridge Univiversity Press.
[70] Van Dijk, P., & Van Hoof, G.J. (2023). *Theory and practice of the European Convention on Human Rights*. Alphen aan den Rijn: Kluwer Law and Taxation Publishers.

Ефективність міжнародних правозахисних механізмів захисту прав людини

Олена Дашковська
Доктор юридичних наук, професор
Національний юридичний університет імені Ярослава Мудрого
61024, вул. Григорія Сковороди, 77, м. Харків, Україна
https://orcid.org/0000-0003-0145-850X

Ольга Явор
Доктор юридичних наук, професор
Національний юридичний університет імені Ярослава Мудрого
61024, вул. Григорія Сковороди, 77, м. Харків, Україна
http://orcid.org/0000-0002-5461-6498

Тетяна Кириченко
Кандидат юридичних наук, професор
Харківський національний університет внутрішніх справ
61080, просп. Л. Ландау, 27, м. Харків, Україна
https://orcid.org/0000-0002-8785-0475

Олексій Любченко
Кандидат юридичних наук, доцент
Полтавський юридичний інститут Національного юридичного університету імені Ярослава Мудрого
36011, просп. Віталія Грицаєнка, 5, м. Полтава, Україна
http://orcid.org/0000-0002-8068-5665

Марія Науменко
Аспірантка, викладачка
Харківський національний університет внутрішніх справ
61080, просп. Л. Ландау, 27, м. Харків, Україна
https://orcid.org/0009-0005-4888-6554

Анотація. Дослідження мало на меті комплексно розглянути функціонування міжнародної системи захисту прав людини та виявити її сильні та слабкі сторони. Методологічну основу дослідження склали формально-правовий, порівняльно-правовий, історико-правовий, діалектичний, системний та структурно-функціональний методи. Дослідження забезпечило комплексний аналіз нормативно-правової та інституційної бази функціонування міжнародної системи захисту прав людини на основі вивчення ключових міжнародно-правових актів, практики міжнародних судових та моніторингових органів, наукових джерел. У дослідженні визначено основні досягнення та проблемні аспекти міжнародних механізмів захисту прав людини у забезпеченні ефективного доступу до правосуддя, належного розслідування порушень та ефективності процедур контролю. На основі аналізу дослідження обґрунтувало роль міжнародної системи захисту прав людини у забезпеченні верховенства права та гарантуванні основоположних прав і свобод кожної людини. Водночас дослідження довело необхідність подальшого вдосконалення та зміцнення певних інституційних та процедурних елементів цієї системи для підвищення її ефективності та здатності протистояти новим глобальним викликам. У дослідженні наголошено на необхідності об'єднання зусиль міжнародної спільноти для посилення ефективності міжнародних механізмів захисту прав людини, приведення їх у відповідність до сучасних стандартів та реалій, а також забезпечення їх повного впровадження на рівні національних правових систем. Дослідження продемонструвало, що лише завдяки скоординованій та систематичній співпраці держав, міжнародних організацій та інститутів громадянського суспільства можна досягти реального прогресу у сфері людської гідності та захисту прав кожної людини у глобальному масштабі

Ключові слова: верховенство права; судові установи; органи моніторингу; основоположні свободи; інституційні компоненти; впровадження

UDC 347.94:341.645
DOI: 10.32518/sals2.2025.189

Соціально-правові студії. 2025. Т. 8, № 2
Social & Legal Studios. 2025. Vol. 8, No. 2

Comparative analysis of disclosure of documents in the AIFC court and English courts: Impact on legal certainty in commercial disputes

Aizhan Satayeva*
Senior Lecturer
Turan-Astana University
010000, 29 Dukenuly Str., Astana, Republic of Kazakhstan
https://orcid.org/0000-0002-1046-2503

Abstract. The aim of this study was to compare the procedures for disclosure of evidence in the Astana International Financial Centre (AIFC) court and the courts of England. The study used historical and comparative approaches, which made it possible to analyse the development of legal analysis methods, comparative research and contextual approaches to assess disclosure of documents practices in court proceedings, including an analysis of international norms such as the United Nations Convention on the Protection of Human Rights and the Hague Convention. The main focus was on the similarities and differences between these systems, as well as how they adapt to international standards. The results showed that the AIFC and English courts actively borrow elements of the English system, including the order of disclosure of evidence and arbitration mechanisms. However, these norms are adapted to national legislation and the requirements of foreign investors, taking into account the specifics of the legal system. At the same time, the English system has a long history and a high degree of specialisation in commercial disputes. The study emphasised that both systems aim for transparency and efficiency in court proceedings. The AIFC courts and the courts of England seek to adopt the best practices of English law, adapting them to local conditions. To improve procedures, it was recommended to take into account the modern needs of international trade and develop specialised methods of working with evidence. The results of the study can be used to improve disclosure of documents practices in judicial systems, in particular in the AIFC and English courts, with the aim of bringing them into line with modern international standards. Recommendations include developing specialised methods of working with evidence and taking into account the modern needs of international trade to improve the efficiency and fairness of court proceedings

Keywords: English courts; international standards; arbitration; rule of law

Introduction

The relevance of this study lies in the need for an in-depth analysis of the legal systems that regulate the disclosure of evidence in international judicial proceedings. The development of international law and the strengthening of cooperation between countries require not only compliance with uniform standards, but also an understanding of the specific features of each national approach in order to ensure the fairness and transparency of judicial proceedings. In this context, the analysis of disclosure of documents procedures in the courts of the Astana International Financial Centre (AIFC) and England takes on particular significance. The AIFC is a modern legal platform aimed at supporting international business and legal activities. It was created with the need for effective and transparent procedures for the disclosure of evidence, adapted to the specifics of international disputes. The system of disclosure of evidence at the AIFC strives for maximum openness and flexibility, which is important for meeting the demands of foreign investors operating in a globalised environment. In turn, the English legal system, with its centuries-old history and highly developed mechanisms for disclosure of evidence, serves as a model for many jurisdictions, including the AIFC (Ketners *et al.*, 2025). Its strict and detailed procedures for disclosure of evidence, applied in commercial and other contentious proceedings, are recognised as among the most effective in the world.

Research conducted by a number of authors significantly complements and deepens the analysis of disclosure of documents in the courts of the AIFC and England. In particular, the works of I. Bantekas (2020) and G. Dimitropoulos (2022) emphasised the importance of unifying legal norms for the development of disclosure of documents processes in international courts, including the AIFC. This research is relevant to the topic, as disclosure of documents in the AIFC is actively adapting to international standards, which in turn contributes to the improvement of judicial practice in Kazakhstan and other Central Asian countries. The work of M. Kenzhaliyev (2024) focused on the prospects for the development of the AIFC as a legal institution, which

Suggested Citation

Article's History: Received: 15.03.2025 Revised: 23.05.2025 Accepted: 25.06.2025

Satayeva, A. (2025). Comparative analysis of disclosure of documents in the AIFC court and English courts: Impact on legal certainty in commercial disputes. *Social & Legal Studios*, 8(2), 189-199. doi: 10.32518/sals2.2025.189.

*Corresponding author

Copyright © The Author(s). This is an open access Article distributed under the terms of the Creative Commons Attribution License 4.0 (https://creativecommons.org/licenses/by/4.0/)

is directly related to changes in the legal landscape of the region and the adaptation of judicial procedures, including the disclosure of evidence, to international standards. This work is relevant to the study as it provides an understanding of the impact of legal and institutional changes on disclosure of documents procedures in the AIFC.

As noted by A.B. Satayeva (2022; 2023), the process of disclosure of evidence in AIFC courts is largely similar to that in English courts, including the obligation to provide key documents before the start of court proceedings. This mechanism allows the parties to objectively assess the prospects of the case, facilitates the settlement of disputes without the need for full court proceedings, and reduces the burden on the courts. The work of M. Kenzhaliev (2023) noted that the AIFC is oriented towards English common law and international standards, which brings it closer to the English system. However, unlike English courts, the AIFC actively integrates the specifics of the regional context. The works of K. Sabirov *et al.* (2019) and S. Valiyeva (2024) emphasised the importance of the AIFC adapting to the needs of international investors, especially in the oil and gas sector, where economic and legal security play a key role. In contrast, the English court system remains more universal, focusing on dispute resolution in all sectors.

The works of A. Thomas and J. Shearman (2024) and B. Yesimkhanova *et al.* (2024) provided an in-depth analysis of the practice of disclosure of evidence in England and the criminal protection of confidentiality in Kazakhstan, which helps to understand the main differences in approaches to data protection and disclosure of evidence in international and local judicial practice. The work of S.L. Karamanian (2022) on the role of international commercial courts in dispute resolution confirmed the importance of the international legal context for the effective regulation of disclosure of documents procedures in the AIFC and other international courts.

The work of Y. Saniyazova *et al.* (2024) draws attention to the role of digital forensics in the disclosure of cybercrimes, which is relevant for the AIFC judicial system in the context of digitalisation and globalisation. A.M. Myrzakhmetova *et al.* (2024) examined the macroeconomic factors influencing the behaviour of parties in court, which allows for an assessment of the economic aspects that may affect the effectiveness of disclosure of documents procedures. These aspects are relevant to the study as they help to identify best practices and adapt them to the needs of the AIFC and other international courts. The results of these studies highlight the importance of the interrelationship between international standards, local legal traditions and modern technological innovations for improving disclosure of documents processes.

Despite significant contributions to the study of the disclosure of evidence in the courts of the AIFC and England, there are several aspects that have not been sufficiently researched. In particular, little attention has been paid to the adaptation of international norms to the specifics of Islamic law in the context of the AIFC, as well as to the impact of new technologies, such as artificial intelligence and digital jurisprudence, on the disclosure of evidence in these jurisdictions. The issue of applying the theory of inevitable disclosure of evidence in AIFC courts also remains understudied. In addition, it is necessary to study in more detail the interaction between the judicial systems of the AIFC and England in matters of privacy protection and the use of biological evidence in international disputes, as well as the impact of macroeconomic factors on the process of disclosure of evidence. Finally, the influence of English case law on AIFC judicial practice has not been sufficiently studied, which represents an important gap for further research in this area.

The aim of the study was to compare the procedures for disclosure of evidence in the AIFC court and the courts of England, identify their characteristics, similarities and differences, and develop recommendations for optimisation. The objectives of the study were:

1) to analyse approaches to disclosure of evidence in the AIFC and English courts, including regulatory requirements and practical aspects;

2) to identify key differences and similarities in disclosure of documents procedures between the AIFC and English courts, with a particular focus on the influence of legal traditions, technological innovations, and the specifics of international commercial standards;

3) to develop recommendations for improving disclosure of documents procedures in both jurisdictions.

Materials and methods

The comparative legal method was used to identify similarities and differences in the legal approaches of the two jurisdictions (AIFC and England). The doctrinal method was used to analyse normative sources. In particular, the provisions of the Code of Civil Procedure of the Republic of Kazakhstan (2015), which establishes the basic rules of disclosure of evidence in court proceedings in the territory of Kazakhstan, and Law of the Republic of Kazakhstan No. 488-V “On Arbitration” (2016), which regulates the resolution of international commercial disputes in accordance with the principles of independence and objectivity. For comparative analysis was used the Civil Procedure Rules of the United Kingdom (1998), the key legal act governing civil proceedings in England, as well as related documents, such as Rules and Practice Directions (1998), which define practical aspects of the application of procedural rules and describe the rules of disclosure and inspection of evidence, as well as Criminal Justice Law of the United Kingdom (1998), governing the admissibility and presentation of evidence in English courts, as well as Court Rules of AIFC (2018), Rules of Procedure and Evidence (2019). In addition, international standards such as the European Convention on Human Rights (1950), which enshrines the right to a fair trial, and the Hague Convention (1961), which regulates international co-operation in judicial proceedings, have been taken into account. These documents have had a significant influence in shaping the procedural rules in both the English and AIFC courts focused on attracting foreign investors and ensuring their legal protection.

The normative-empirical method aimed to investigate how specific legislative norms are implemented in court cases. It is investigated how certain legislative norms are implemented in practice in AIFC and England court cases. This involved analysing court decisions, judgments and other documents, namely: The Prosecutor v. Jean-Pierre Bemba Gombo (2008), ENRC v. SFO Court of Appeal Judgment (2018). This method made it possible to analyse how theoretically prescribed rules are implemented in real court cases and to assess their effectiveness in each jurisdiction. The systems analysis method helped to identify the unique challenges and issues faced by the courts of the AIFC and England in the context of disclosure of documents, and to propose

possible solutions. The method of strategic analysis was used to develop recommendations for improving disclosure of documents procedures in both jurisdictions, taking into account the national characteristics of the legal systems and the needs of global actors, as well as taking into account the use of digital technologies and standardisation of procedures.

Results

Disclosure of evidence is an integral part of the judicial process that ensures fairness and transparency in judicial decision-making. This process involves the submission by a party of all necessary materials and information that confirm or refute the factual circumstances of the case. It is important to note that disclosure of evidence is aimed not only at substantiating one's own claims, but also at ensuring equal access to information for both parties, which contributes to a full and fair consideration of the case. The basic principles of disclosure of documents include transparency, integrity and procedural fairness. Transparency involves the parties' openness in providing all available information that may be relevant to the case. Good faith requires the parties to approach the disclosure of evidence honestly, without deliberate attempts to conceal or misrepresent facts. Procedural fairness concerns the equality of the parties before the court and the opportunity for both parties to fully present their case. In addition, the disclosure of evidence is based on a balance of interests – providing sufficient information to substantiate one's claims or defences without violating the rights and interests of the other party. The use of different types of evidence, such as written documents, electronic data and oral testimony, allows the court to evaluate the situation more fully and comprehensively, making informed judgements.

Procedures for disclosure of evidence in AIFC courts are developed taking into account modern trends in law enforcement and are aimed at ensuring transparency, objectivity and efficiency of the judicial process. The main objective of the development of disclosure of documents procedures is to create a unified system that provides equal opportunities for all participants in the judicial process – both for plaintiffs and defendants. Such a system aims to minimise conflicts, eliminate legal ambiguity and increase confidence in the judicial system, while protecting the rights and interests of each party.

Given the diversity of international norms and national realities, AIFC's disclosure of evidence is based on a balance between the efficiency of the process and respect for the principles of fairness and equity. This allows for a transparent and fair judicial procedure that meets the highest level of legal and ethical standards. The rights and obligations of the parties to disclose evidence in AIFC are regulated by various legislative acts, including the Code of Civil Procedure of the Republic of Kazakhstan, as well as rules of court proceedings approved by specialised judicial bodies. Law of the Republic of Kazakhstan No. 488-V "On Arbitration" (2016) – contains rules regulating the disclosure of evidence in international arbitration disputes, providing participants with certain rights and obligations under international commercial arbitration procedures. International standards of judicial proceedings – including the European Convention on Human Rights and other international treaties, which set out general principles of disclosure of evidence and ensuring a fair trial.

Parties are obliged to produce all necessary documents and evidence that contribute to the substantiation of their claims or defences. It is important to bear in mind that disclosure of evidence is not limited to the presentation of evidence favourable to one party, but requires full and honest disclosure of all available information. The principle of good faith plays a key role in this system, as its observance helps to maintain a high standard of justice and prevents the possibility of deception or concealment of important information. Violation of the principle of good faith in the disclosure of evidence can have negative legal consequences. Judges may refuse to admit evidence that has been disclosed for the purpose of concealing or misrepresenting information. Moreover, such bad faith may affect the course of the litigation and result in the dismissal of claims or the satisfaction of counterclaims of the other party.

Technological and procedural aspects of disclosure of documents in AIFC also play an important role. Court processes in modern conditions are becoming increasingly complex and require the consideration of a large amount of information, which often contains a variety of types of evidence – from traditional written documents to electronic data. Electronic evidence is becoming particularly relevant, especially in cases involving international commerce, financial disputes and arbitrations. The use of technology, such as electronic data management, systematisation of large amounts of information and automation of the evidence analysis process, helps to speed up the litigation process. This allows lawyers and judges to focus on the essence of the case, minimising time spent on processing information. The use of modern technology not only ensures faster processing of information, but also increases the accuracy of evidence analysis. Automating processes such as keyword research, data matching and pattern recognition can reduce the likelihood of errors and improve the quality of litigation. In addition, evidence management systems help minimise the risks of lost or falsified data, which is particularly important in the context of international interactions between parties. These aspects contribute to the creation of a transparent and secure environment for the disclosure of evidence, which is an important factor in ensuring fairness and objectivity in court judgements.

Analysing the use of different types of evidence in AIFC courts demonstrates the diversity of sources of evidence that contribute to a more complete and detailed assessment in a case. In addition to traditional written documents such as contracts, invoices, reports and other official documents, there is a significant focus on electronic evidence. This includes electronic correspondence, files, electronic data and databases, which are becoming particularly significant in the digitalisation of business and globalisation. In modern legal practice, specialised software solutions and methods are widely used to efficiently collect, store and analyse electronic evidence. Among them, Relativity, Nuix, Forensic Toolkit, EnCase, CaseMap, TextMap and Everlaw platforms stand out. These tools analyse large volumes of data, identify duplicates, search, keyword search and report generation, which significantly speeds up the trial preparation process. In addition to software, modern analysis techniques such as machine learning technologies for automatic document classification and pattern detection, predictive coding to speed up sorting and analysis of relevant evidence, and hashing (MD5, SHA-256) to verify the integrity of digital files and confirm their immutability are actively used (Callaghan, 2025). All of these tools and techniques are particularly relevant in jurisdictions with highly regulated

disclosure of documents procedures, such as the AIFC and the English court system. Their use increases the transparency of processes, reduces the influence of the human factor and contributes to speeding up court proceedings, which, in turn, affects the reputational stability of companies and the investment attractiveness of the jurisdiction as a whole.

AIFC courts use all types of evidence – electronic, written and oral – to ensure an objective consideration of cases. This approach helps to gain a deeper understanding of the circumstances of the case and reduce the risk of errors. Integrating different types of evidence makes the process more transparent and fair, and promotes quality decision-making. Disclosure of documents procedures in the English courts play a key role in ensuring that trials are transparent and fair. The main stages include preparation, sharing and analysing evidence. At the initial stage, parties are required to provide each other with all available information, including documents, electronic data and witness statements. This allows both parties to understand each other's positions and better prepare for the proceedings. During the document exchange process, each party provides materials that will be used in court: contracts, financial records, correspondence, and digital files. This stage helps the parties and the court to gain a full understanding of the case.

Before the hearing, the parties may request testimony from witnesses and experts. The court assesses the reliability and relevance of such evidence. In today's environment, electronic data such as correspondence, communications and databases are becoming an important part of litigation, especially in business or intellectual property cases. They enable the provision of compelling evidence and enhance the transparency of litigation. The mechanism of disclosure of evidence is also regulated by various legal rules and jurisprudence, which contributes to the harmonisation and unification of the process. The Civil Procedure Rules of the United Kingdom are the main set of rules governing civil proceedings in England and Wales. These rules set clear standards for the disclosure of evidence, including requirements for the process of exchanging documents and other evidence, as well as procedures for the various stages of litigation. They aim to ensure a fair and consistent approach to the evidential process in court. Rules and Practice Directions are supplementary directives developed by the High Court and the Court of Appeal to clarify and refine the application of the Civil Procedure Rules of the United Kingdom. These Directions provide practical guidance and standards to help parties and lawyers to better navigate the process of disclosing evidence and to identify the correct procedures for handling it. Rules and Practice Directions represent a specialised aspect of disclosure of documents governed by the Civil Procedure Rules. This process concerns the exchange of written documents and other forms of evidence between the parties. The duty to disclose documents requires the parties to provide all relevant information that may affect the outcome of the case.

Criminal Justice Law of the United Kingdom is the legal framework governing the rules of admissibility – admissibility of evidence. These rules set out what evidence can be admitted into evidence by the court and what evidence cannot be used. Judges play a key role in co-ordinating disclosure of documents procedures, controlling the process of information sharing and preventing abuse by the parties. The disclosure of evidence procedure in the AIFC Courts (2018) is governed by the Court Rules, in particular Part 28, and the Rules and Practice Directions, which provide the court and parties with flexible tools to manage the disclosure process effectively. In The Prosecutor v. Jean-Pierre Bemba Gombo (2008) the court did apply the disclosure of evidence procedure by strictly establishing a disclosure system for the parties and setting out a timetable for the production of evidence. This was an important element in ensuring fairness and transparency in the process, which helps both parties to prepare their position and effectively defend their interests. The court set strict deadlines for each party to minimise delays and speed up the process.

The application of the disclosure procedure in international courts, such as the International Criminal Court, also affects the reputation and credibility of the judicial system. In this case, the court in the International Criminal Court system was guided by rules that are consistent with international standards for disclosure of evidence, including the Civil Procedure Rules of the United Kingdom. These rules required the parties to disclose all relevant evidence, including that which may be against their interests, thus making the process more transparent.

The openness of the disclosure procedure has a significant impact on the investment attractiveness of a jurisdiction. When the legal system demonstrates predictability, equal access to information and respect for adversarial principles, investors perceive such an environment as stable and reliable. The existence of a transparent procedure for disclosure of evidence sends a signal that a jurisdiction can handle disputes fairly, which is particularly important in cross-border cases where one of the parties may be a foreign investor. Companies operating in jurisdictions with well-designed disclosure procedures feel more secure in the event of litigation.

In ENRC v. SFO Court of Appeal Judgment (2018), UK, the court considered the disclosure of evidence as part of a corruption investigation. The company ENRC attempted to withhold internal documents by invoking legal privilege. However, the court rejected this argument and ordered the company to disclose the documents, as they were deemed essential to the investigation. The court referred to Part 31 of the Civil Procedure Rules of the United Kingdom and applied the principle that privilege should not extend to documents relating to potential offences or breaches of the law. This case illustrates how disclosure procedures can be used to ensure full transparency in investigations, particularly when serious allegations of offences such as corruption are involved. It also emphasises the importance of following disclosure procedures in order to protect the interests of the parties and to maintain the rule of law and public confidence in the judicial system.

As in the UK and other judicial systems, the AIFC (2018) has clear rules that govern disclosure procedures. For example, in the case of Saneg v. Asadel Capital Ltd the court applied Part 28.1 of the AIFC Court Rules, which sets out the duty to disclose all evidence relevant to the resolution of the dispute. This case demonstrated how important the disclosure process is to the transparency and efficiency of proceedings. Such decisions, based on the standards applied in international jurisdictions, help to build confidence in the AIFC court system and confirm its compliance with international standards. The speed of dispute resolution directly depends on the quality of disclosure: timely disclosure of evidence allows courts and parties to move swiftly to the merits, avoiding delays in procedures due to hidden

documents or procedural appeals. AIFC practice in particular emphasises the use of electronic case management platforms, which helps to speed up document flow and reduce administrative burdens. Thus, an efficient application of disclosure procedures, in line with international standards and adapted to the digital age, increases confidence in the judiciary, strengthens investment attractiveness, but requires a balancing act between openness and cost control. The AIFC courts, following the English tradition and guided by case law, are gradually building up their own corpus of judgements that reinforce the credibility of this new but ambitious legal jurisdiction. The key differences from the disclosure of documents procedures in the AIFC courts lie in the different approaches to process and regulation. In the AIFC, disclosure of documents procedures are based on modern international standards and aim to ensure transparency and efficiency of the judicial process. Here, the focus is on harmonising the disclosure of documents process, which contributes to the creation of a harmonised legal system that complies with international requirements.

In contrast, in the English court system, the process of disclosure of evidence is governed by the Civil Procedure Rules of the United Kingdom, which set out clear rules and procedures for the exchange of evidence between the parties. These rules cover both written documents and electronic evidence, as well as oral evidence. The English system emphasises case law and strict adherence to the discovery process, which largely defines the boundaries of the admissibility of evidence and its use in legal proceedings. The main difference lies in the approach to process – in England there is a strong emphasis on detail and rigour in the enforcement of rules, which favours case law that influences the subsequent application of the law. At the same time, AIFC seeks to unify and harmonise processes to create a balanced legal system that can work effectively in international financial disputes (Table 1).

Table 1. Comparative analysis of disclosure of evidence in AIFC and English courts

Criterion	AIFC	England
Regulation	Laws and rules of court proceedings aimed at harmonising the disclosure of evidence, taking into account international standards	Civil Procedure Rules of United Kingdom, case law and court directives governing the disclosure of evidence
Types of evidence	Includes written, electronic and oral evidence, with an emphasis on transparency and equality of arms.	Includes written documents, electronic data and oral testimony, with detailed adherence to the disclosure of documents process
Principles of disclosure	Uniformity, transparency, observance of good faith, prevention of evasion of disclosure	Strict regulation, case law and avoidance of abuse of the disclosure of documents process
Technological aspects	Use of modern technology to analyse large volumes of information	Innovative approaches for handling electronic and oral evidence in court cases
Disclosure of documents process	Unified process in line with international standards and governed by various regulations	Detailed adherence to procedures, with due regard to jurisprudence and precedents
Purpose of disclosure of documents	Ensuring fairness, transparency and equal access to justice	Improved accuracy of analysis and minimisation of errors in the evidentiary process

Source: created by the author based on the Civil Procedure Rules of United Kingdom (1998), Code of Civil Procedure of the Republic of Kazakhstan (2015), Law of the Republic of Kazakhstan No. 488-V "On Arbitration" (2016)

Thus, although the AIFC and English courts take different approaches to disclosure of evidence, both systems endeavours to ensure that trials are transparent, fair and efficient. The AIFC focuses on unification of processes with an international focus, while England emphasises strict regulation and case law, thus ensuring a high degree of detail in the disclosure of documents process. Similarities and differences between the disclosure of documents procedures in the AIFC and England can be identified through analysing various aspects, including technological approaches and the influence of case law. Both judicial institutions seek to harmonise disclosure of documents processes in order to improve the transparency and fairness of court proceedings. In the AIFC, this aims to comply with international standards, while in England it aims to comply with strict regulations based on the Civil Procedure Rules of the United Kingdom and judicial precedents. Technological aspects are important in both systems. AIFC makes extensive use of artificial intelligence and automation to process large amounts of information, which helps speed up the process and improve the accuracy of analyses. Similarly, England utilises modern technology to manage disclosure of documents processes, including document automation and electronic data management. Both disclosure of documents systems honours the principle of good faith, requiring full and honest disclosure of all available evidence, regardless of its benefit to either party. This promotes a level playing field for those involved in the process.

The English system relies much more heavily on case law, where each judgement of the court serves as a benchmark for future cases. Case law in England has a significant influence on the discovery process, creating strict regulations and stringent procedural requirements. In contrast, the AIFC is focused on creating a harmonised process that takes into account international standards and builds on recent developments in law enforcement. In England, the disclosure of documents process is more structured and subject to strict rules and guidelines, which allows a high level of detail to be maintained. In the AIFC, processes are more flexible, with greater ability to adapt to international and national developments. AIFC places greater emphasis on harmonisation and the creation of common standards to ensure a global approach to disclosure of documents. Whereas in England the focus is on compliance with localised legal rules and jurisprudence, resulting in more detailed regulation. Thus, despite the general trends towards harmonisation and the use of modern technology, the differences in approaches to disclosure of documents between AIFC and England reflect the specificity of legal systems and cultural approaches to justice.

The influence of international law on the disclosure of evidence plays an important role in shaping procedures in both jurisdictions – AIFC and England. International standards provide a basis for unification and harmonisation of approaches to disclosure of evidence, ensuring that legal processes are consistent with international norms and recommendations. Within the AIFC, disclosure of documents processes aims to comply with international standards such as the UNIDROIT Principles of International Commercial Contracts (2016), the Hague Convention (1961) and other international agreements governing commercial and financial disputes. These standards contribute to the creation of harmonised procedures that take into account the interests of both local and international participants. The AIFC implements mechanisms to facilitate the harmonisation of national law with international norms, which contributes to a transparent and efficient system of disclosure of documents. The English judicial system also makes extensive use of international standards such as the European Convention on Human Rights and European Union principles. However, the English system is more orientated towards adapting international norms to local legal realities through jurisprudence and regulations such as the Civil Procedure Rules of the United Kingdom. Case law plays a key role in interpreting international standards in the national system of disclosure of documents.

In both systems, international standards play a key role in simplifying and standardising disclosure of documents procedures. In the AIFC courts, the emphasis is on developing a harmonised approach that harmonises with international requirements while minimally affecting existing national rules. This strategy preserves the flexibility of the system and accommodates the particularities of international commercial law, making it convenient for participants in global disputes. In contrast, the English legal system integrates international standards through a complex mechanism based on legal precedents and detailed regulations. This process requires careful thought and often results in a more rigorous framework for the disclosure of evidence, in keeping with the traditions of Anglo-Saxon legal culture. Both jurisdictions make extensive use of modern technology to improve the efficiency of disclosure of documents procedures. Tools such as artificial intelligence, automation of data processing and digitalisation of documents help speed up processes, reduce costs and ensure better compliance with international standards.

Despite the common goals of creating transparent and universal disclosure of documents procedures, the approaches to realising them differ significantly. The AIFC emphasises adaptability and minimising the impact of national differences, while England maintains the rigour and stability of its system through reliance on precedent and statutory regulation. These differences reflect the unique characteristics of each legal system and its ability to adapt to the contemporary challenges of international law. Disclosure of documents procedures play a key role in court proceedings, contributing to the fairness and transparency of the process. However, with international co-operation and differences in legal systems, certain problems and challenges arise. The AIFC and England represent two unique jurisdictions, each facing different challenges in ensuring effective disclosure of evidence (Table 2).

Table 2. Problems and challenges of disclosure of documents in the AIFC and England

Challenges	AIFC	England
Limited integration of international standards	Establishment of harmonised procedures in line with international requirements. Implementing international norms often requires adaptation to local legal culture	England actively utilises international standards, but more sophisticated adaptation through judicial precedents and regulations is required
Technological barriers	The introduction of modern technologies, such as process automation and the use of artificial intelligence, at the stage of disclosure of documents faces certain difficulties due to the lack of uniform standards	Sustained adoption of innovative technologies is possible due to the rigour of the legal framework and clear procedures
Transparency issues	Difficulty in harmonising procedures for disclosure of evidence, which may reduce transparency and the perception of fairness to the parties	In England, the current system of disclosure of evidence has a high degree of transparency due to strong regulation and case law
Problems with electronic evidence	The need for standards for the secure and efficient handling of electronic evidence poses some challenges due to the inadequacy of the regulatory framework	The English system makes extensive use of electronic evidence, but there is a risk of inadmissibility of some types of digital evidence

Source: created by the author based on B. Alina and Z.-U. Malik (2022)

Disclosure of documents procedures in the AIFC and England face a number of challenges related to differences in legal systems, use of technology and compliance with international standards. In AIFC, the emphasis is on creating a harmonised system that complies with international requirements while remaining flexible and adaptable to the specificities of international commercial disputes. In England, on the other hand, the implementation of international norms is carried out through strict legal regulation and case law, which ensures sustainability and structured processes. These differences create certain difficulties in harmonising approaches to the disclosure of evidence. For example, inconsistent procedures between jurisdictions can make it difficult for parties to international disputes to interact and reduce the transparency of processes. In addition, the rapid development of technologies such as artificial intelligence and automation raises challenges related to the lack of uniform standards for their use, as well as issues of data protection and admissibility in court. Particular attention needs to be paid to the use of digital evidence, which is becoming an important tool in modern litigation. However, their use requires careful verification for authenticity, reliability and admissibility. In some cases, this may be complicated by the lack of universal procedures for processing and analysing such evidence. The lack of transparency in some aspects of disclosure of documents procedures is also a problem. This may be due to a lack of detailed rules or a lack of a regulatory framework, which increases the risk of errors and unjustified decisions.

To overcome these challenges, it is important to develop standards that harmonise international requirements with national specificities. Such standards will help parties to disputes to interact on an equal footing, ensuring fairness and transparency in litigation. The introduction of modern technologies, such as artificial intelligence, can significantly speed up and simplify the process of disclosure of documents. However, in order to successfully implement these solutions, it is necessary to develop and implement mechanisms that guarantee data security, reliability and compliance with the legislative norms of specific jurisdictions. This will improve the accuracy and efficiency of the judiciary in the face of globalisation and increasingly complex legal processes. Modern legal frameworks must be flexible in order to adapt quickly to new challenges, such as electronic evidence and its use in legal proceedings. The development of technology creates new challenges that require careful consideration of aspects such as the protection of confidential information, transparency and control over disclosure of documents processes. Legal rules should ensure equal access to justice and fairness for each party to the proceedings.

Ensuring transparency and fairness in disclosure of documents procedures is a key factor in enhancing confidence in the judiciary, especially in the context of globalisation of legal processes and the integration of national judicial practices into the international legal space. Modern courts are faced with the need not only to resolve disputes fairly and objectively, but also to demonstrate transparency at all stages of case proceedings, including parties' access to relevant evidence. The development of practical recommendations and reliance on case law contribute to the creation of a sustainable and effective legal environment where the rights of all litigants are protected and procedural actions are predictable and logically justified. A particularly important element is the alignment of national procedures with international standards, thereby harmonising approaches and facilitating the participation of foreign parties. For example, the International Criminal Court has developed Rules of Procedure and Evidence, which ensure uniformity in approaches to the disclosure of evidence and serve as a model for other jurisdictions. Modern technology makes a significant contribution to the efficiency of disclosure procedures. The use of electronic evidence management systems (e.g., Relativity, Nuix, Everlaw platforms) not only speeds up the analysis of large amounts of information, but also reduces the parties' costs for lawyers, storage and checking of documents. In the English court system, such electronic platforms have become a standard part of the disclosure procedure, allowing for automated sorting, classification and identification of documents, which is particularly relevant in commercial and cross-border disputes. In addition, regular review and updating of legislation in line with current realities, including digitalisation, the growth of information, the need to protect personal data and cybersecurity, is an important prerequisite for enhancing trust. Only with a comprehensive approach – including institutional reforms, technological solutions and international co-operation – can the disclosure of documents procedure become truly transparent, efficient and fair.

Discussion

This study identified key similarities and differences in the disclosure of documents processes of the AIFC and English courts. Despite the differences in historical and institutional approaches, both systems are based on the principles of the rule of law, transparency and ensuring legal certainty. Importantly, recent developments in the legal regulation of disclosure of evidence in the AIFC courts, aimed at borrowing best practice from the English system, play a key role in ensuring efficient litigation. This approach helps to reduce the number of disputes reaching court and facilitates the early resolution of cases. Key aspects of disclosure of documents are analysed, including the mandatory production of key documents, procedural transparency and standards of party integrity. This includes investigations into key categorisation criteria such as completeness of evidence provided, compliance with procedural deadlines, and ensuring equality of arms between parties in accessing documents.

The AIFC, following the best practices of the British judicial system, has adapted the principles of disclosure of documents in line with modern international standards (Otynshiyeva *et al.*, 2019). In particular, the AIFC actively applies the disclosure system, which facilitates faster resolution of disputes, increasing the transparency and efficiency of the judicial process (Makhambetsaliyev *et al.*, 2024). This is due to the fact that AIFC rules are largely borrowed from English practice, which helps to increase the confidence of international investors and parties to commercial transactions. Studies such as the works of H.W. Yeung *et al.* (2018) and L.C. Alcolea (2022), confirm that AIFC jurisprudence is largely synchronised with English law, allowing for effective dispute resolution in an international and interstate environment.

Both courts actively utilise international commercial arbitration as one of the main avenues of dispute resolution. Studies by R. Marhaba and Z. Sairambaeva (2024), and H. Ortner and M. Hackl (2024) emphasise that arbitration is becoming an integral part of court systems focused on international disputes. In the AIFC and English courts, the arbitration process provides flexibility, confidentiality and speedy resolution of commercial conflicts. This is particularly important in the context of globalisation and the increasing number of cross-border transactions.

The debate on the application of disclosure in both jurisdictions also touches on aspects related to the parties' costs of lawyers and evidence gathering. In the case of the AIFC, as in England, complying with disclosure proceedings is associated with high financial costs, but due to the more expeditious processes in the AIFC, the timeframe for finalising proceedings can be shortened, reducing overall legal costs. This creates further incentives for companies and investors to consider the AIFC as an efficient and transparent jurisdiction for dispute resolution. Contemporary studies such as the works of R. Frankel *et al.* (2021), highlight that the introduction of new technologies, including machine learning and disclosure automation, can significantly speed up and simplify disclosure of documents processes. These technological innovations used in the AIFC and English court systems are helping to reduce the time and resources required to complete the disclosure process. For example, the use of digital platforms and tools to process and analyse large amounts of data can significantly improve the efficiency of litigation, which is particularly important for international disputes with large volumes of information (Permatasari *et al.*, 2025). However, despite technological advances, there remain reputational risks associated with a lack of transparency in the disclosure process. For example, if one party fails to fully disclose key evidence or uses data manipulation, this

can affect the outcome of a case and reduce the credibility of a jurisdiction. Works such as the studies by Y. Kim *et al.* (2020) and Z. Liu *et al.* (2021), emphasise that disclosure processes in different jurisdictions can be vulnerable to manipulation, resulting in reputational losses for both litigants and the judicial system itself.

A study by H. Ortner and M. Hackl (2024) shows that arbitration is also heavily utilised in both jurisdictions as a method of dispute resolution, giving parties additional opportunities to resolve disputes confidentially with less time and resources. In AIFC and England, arbitration processes are flexible and orientated towards international disputes, making them attractive to foreign investors. Importantly, disclosure is also an important element in such processes, allowing parties to agree in advance on the exchange of evidence, which facilitates faster dispute resolution (Horislavska, 2025). Firstly, the study by J. Chaisse and G. Dimitropoulos (2021) on the impact of international economic norms on the development of a special economic zone emphasises the importance of creating a legal infrastructure that complies with international standards. This is directly related to the activities of the AIFC, which, as shown in the study by N. Zambrana-Tévar (2019), focuses on the English legal system and international practices borrowed from financial centres such as London. This desire to synchronise with international norms contributes to the investment attractiveness of the AIFC, as investors accustomed to the standards of Western jurisdictions can confidently use this jurisdiction to resolve disputes.

The findings presented in the study by C. Norval *et al.* (2022) are consistent with this result: the authors highlight that the introduction of digital technologies, including artificial intelligence and machine learning systems, contributes to optimising the process of evidence discovery. In particular, the automation of data retrieval, classification and verification allows to reduce the time of material processing, minimise the probability of errors and reduce the parties' legal costs (Kamyshanskyi, 2025). Thus, the position of C. Norval *et al.* confirms the conclusion that the digitalisation of disclosure is an important factor in increasing transparency and accountability in modern court systems. Nevertheless, despite numerous technological improvements, reputational risks associated with unauthorised or incomplete disclosure of evidence remain. As studies by T.D. Lyon *et al.* (2020) and C. Roux *et al.* (2022), the need to revisit the principles of forensic science and develop more effective methods of disclosure of documents is becoming urgent to improve disclosure processes in forensic practice. These studies emphasise how important it is to consider technological and legal aspects to improve current disclosure procedures.

Regarding the practical relevance of disclosure of documents for investment attractiveness, it can be noted that clear and transparent disclosure of documents procedures have a positive impact on a jurisdiction's reputation. For example, the transparent disclosure processes followed by the AIFC attract international investors as they are confident that their cases will be dealt with on the basis of clear and fair procedures. In turn, any irregularities in the disclosure process, such as non-compliance or delays, can damage the reputation of both the company and the jurisdiction itself.

In summary, despite similar elements in their approaches to disclosure, the AIFC and English systems demonstrate differences that are driven by historical context and the integration of new technologies. AIFC borrows best practices from the English system, but adapts them to the specifics of the region, which allows the jurisdiction to develop in the context of globalisation and increasing international economic ties.

Conclusions

An analysis of disclosure of documents procedures in the courts of the AIFC and England revealed both common features and significant differences in approaches, which are determined by their legal traditions, institutional structure and level of technological maturity. Both systems aim to ensure fairness, transparency and procedural equality of the parties, but the methods used to achieve these goals are shaped by different legal philosophies.

The AIFC courts are characterised by their focus on flexibility and adaptation to the requirements of the international commercial environment. One of the key features of the system is the desire to unify procedural standards, taking into account Anglo-American case law and international norms, which creates attractive conditions for the resolution of cross-border disputes. In addition, there is active implementation of digital solutions, including systems for automatic search and analysis of evidence, which increases efficiency and reduces the likelihood of errors when processing large amounts of information.

In the English system of disclosure of evidence, the emphasis has traditionally been on strict procedural rules and a high level of formalisation. This is due to the historically established structure of common law, where stability and consistency of judicial practice take precedence over procedural flexibility. This approach ensures predictability and legal stability, but in some cases slows down the introduction of technological innovations and limits the variability of procedures when new challenges arise related to the digitalisation and transformation of judicial processes.

Both jurisdictions are currently showing a trend towards modernisation and integration of innovative tools for working with evidence, such as artificial intelligence, machine learning, and automated data search and sorting systems. This opens up new opportunities to increase transparency, optimise time costs, and reduce errors in judicial processes. In particular, Big Data analytics technologies make it possible to model court scenarios, speed up the filtering of evidence, and automate the comparison of information with legal norms, which can significantly affect the quality of decisions made.

At the same time, the results of the study suggest that the full implementation of new digital tools requires the resolution of a number of regulatory and ethical issues, including personal data protection, cybersecurity, and procedural safeguards for all participants in the proceedings. Further harmonisation of legal norms and technical standards appears necessary to ensure the stability and predictability of disclosure of documents in cross-border jurisdictions. Future research could focus on an in-depth comparative analysis of the effectiveness of digital technologies in the disclosure of evidence, as well as the impact of legal differences on the cross-border recognition of court decisions between the AIFC and English courts.

Acknowledgements

None.

Funding

The study was not funded.

Conflict of interest

None.

References

[1] AIFC. (2018). *AIFC court rules 2018*. Retrieved from https://court.aifc.kz/uploads/3.-legislation-aifc-court-rules-2018.pdf.

[2] Alcolea, L.C. (2022). The rise of the international commercial court: A threat to the rule of law? *Journal of International Dispute Settlement*, 13(3), 413-442. doi: 10.1093/jnlids/idac022.

[3] Alina, B., & Malik, Z.-U. (2022). The establishment of the court of Astana international financial center (AIFC) in the wake of its precursors. *Journal of Legal Studies*, 29(43), 19-41. doi: 10.2478/jles-2022-0002.

[4] Bantekas, I. (2020). The rise of transnational commercial courts: The Astana international financial centre court. *Pace International Law Review*, 33(1). doi: 10.58948/2331-3536.1403.

[5] Callaghan, P. (2025). *Why hash values are crucial in digital evidence authentication*. Retrieved from https://blog.pagefreezer.com/importance-hash-values-evidence-collection-digital-forensics.

[6] Chaisse, J., & Dimitropoulos, G. (2021). Special economic zones in international economic law: Towards unilateral economic law. *Journal of International Economic Law*, 24(2), 229-257. doi: 10.1093/jiel/jgab025.

[7] Civil Procedure Rules of United Kingdom. (1998, December). Retrieved from https://www.legislation.gov.uk/uksi/1998/3132/contents/made.

[8] Code of Civil Procedure of the Republic of Kazakhstan. (2015, October). Retrieved from https://online.zakon.kz/Document/?doc_id=34329053.

[9] Criminal Justice Law of United Kingdom. (1998, December). Retrieved from https://www.jerseylaw.je/laws/current/l_42_1998.

[10] Decision of the International Criminal Court in Case "The Prosecutor v. Jean-Pierre Bemba Gombo". (2008, August). Retrieved from https://www.icc-cpi.int/court-record/icc-01/05-01/08-55.

[11] Dimitropoulos, G. (2022). The design of international commercial courts. In S. Brekoulakis & G. Dimitropoulos (Eds.), *International commercial courts: The future of transnational adjudication* (pp. 251-277). Cambridge: Cambridge University Press. doi: 10.1017/9781009023122.013.

[12] ENRC v. SFO Court of Appeal Judgment. (2018). Retrieved from https://www.hfw.com/insights/enrc-v-sfo-court-of-appeal-judgment-september-2018/.

[13] European Convention on Human Rights. (1950, November). Retrieved from https://www.echr.coe.int/documents/d/echr/convention_ENG.

[14] Frankel, R., Jennings, J., & Lee, J. (2021). Disclosure sentiment: Machine learning vs. dictionary methods. *Management Science*, 68(7), 4755-5555. doi: 10.1287/mnsc.2021.4156.

[15] Hague Convention. (1961, October). Retrieved from https://www.hcch.net/en/instruments/conventions/full-text/?cid=41.

[16] Horislavska, I. (2025). Alternative consumer protection methods in the context of civil law recodification. *Law. Human. Environment*, 16(1), 90-104. doi: 10.31548/law/1.2025.90.

[17] Kamyshanskyi, V. (2025). Interoperability of CBDCs: Optimising Cross-Border Settlements through the lens of national and international regulation. *Scientific Journal of the National Academy of Internal Affairs*, 30(1), 34-44. doi: 10.63341/naia-herald/1.2025.34.

[18] Karamanian, S.L. (2022). International commercial courts, dispute resolution and the rule of law. In S. Brekoulakis & G. Dimitropoulos (Eds.), *International commercial courts: The future of transnational adjudication* (pp. 515-535). Cambridge: Cambridge University Press. doi: 10.1017/9781009023122.025.

[19] Kenzhaliev, M.Z. (2023). Legal regulation of the Islamic finances: Comparative analysis of the legal framework of the republic of Kazakhstan, "Astana" international financial centre and United Kingdom. *Bulletin of the Institute of Legislation and Legal Information of the Republic of Kazakhstan*, 4(75), 241-249. doi: 10.52026/2788-5291_2023_75_4_241.

[20] Kenzhaliyev, M. (2024). Perspectives of the court of the Astana international financial centre: Potential to transform the Central Asian legal landscape. *Asian Journal of Comparative Law*, 19(1), 160-179. doi: 10.1017/asjcl.2023.37.

[21] Ketners, K., Jargalsaikhan, Z., Miller, A., Miliienko, O., & Malkhasyan, L. (2025). Evaluation of effective anti-corruption strategies in state institutions. *Ceridap*, 1, 93-118. doi: 10.13130/2723-9195/2025-1-48.

[22] Kim, Y., Su, L., Wang, Z., & Wu, H. (2020). The effect of trade secrets law on stock price synchronicity: Evidence from the inevitable disclosure doctrine. *The Accounting Review*, 96(1), 325-348. doi: 10.2308/tar-2017-0425.

[23] Law of the Republic of Kazakhstan No. 488-V "On Arbitration". (2016, April). Retrieved from https://adilet.zan.kz/rus/docs/Z040000023 .

[24] Liu, Z., Wong, T.J., Yi, Y., & Zhang, T. (2021). Authoritarian transparency: China's missing cases in court disclosure. *Journal of Comparative Economics*, 50(1), 221-239. doi: 10.1016/j.jce.2021.09.001.

[25] Lyon, T.D., Williams, S., & Stolzenberg, S.N. (2020). Understanding expert testimony on child sexual abuse denial after New Jersey v. J.L.G.: Ground truth, disclosure suspicion bias, and disclosure substantiation bias. *Behavioral Sciences & the Law*, 38(6), 630-647. doi: 10.1002/bsl.2490.

[26] Makhambetsaliyev, D.B., Sagynbekova, G.M., Abdykadyr, U.B., Alimova, E.A., & Smanova, A.B. (2024). Constitutional law-making in the U.S. Supreme Court. *Public Integrity*, 26(4), 473-484. doi: 10.1080/10999922.2023.2282261.

[27] Marhaba, R., & Sairambaeva, Z. (2024). Legal mechanisms of functioning of the AIFC arbitration system. *Journal of Actual Problems of Jurisprudence*, 110(2), 173-181. doi: 10.26577/japj2024-110-b-016.

[28] Myrzakhmetova, A.M., Panzabekova, A.Z., Khalitova, M.M., & Smagulova, A.S. (2024). The analysis of modern macroeconomic environment in Kazakhstan: The influence of macroeconomic environment on economic behaviour. *Bulletin of "Turan" University*, 1, 69-83. doi: 10.46914/1562-2959-2024-1-1-69-83.

[29] Norval, C., Cornelius, K., Cobbe, J., & Singh, J. (2022). Disclosure by design: Designing information disclosures to support meaningful transparency and accountability. In *FAccT 22: Proceedings of the 2022 ACM conference on fairness, accountability, and transparency* (pp. 679-690). New York: Association for Computing Machinery. doi: 10.1145/3531146.3533133.

[30] Ortner, H., & Hackl, M. (2024). Rule of law and international commercial arbitration. *Zeitschrift für Europarechtliche Studien*, 27(4), 486-516. doi: 10.5771/1435-439x-2024-4-486.

[31] Otynshiyeva, A.A., Ibrayeva, A.S., Castellino, J., Baimakhanova, D.M., & Baikenzheyev, A.S. (2019). International and legal aspects of citizenship on the basis of analysis of the legislation in Kazakhstan and Great Britain. *International Journal of Public Law and Policy*, 6(2), 138-154. doi: 10.1504/IJPLAP.2019.097539.

[32] Permatasari, B.K., Widhiyanti, H.N., & Widyanti, Y.E. (2025). Validity of digital agreements and the legal relations of the parties in affiliate marketing. *Law Journal of the National Academy of Internal Affairs*, 15(1), 59-71. doi: 10.63341/naia-chasopis/1.2025.59.

[33] Roux, C., Bucht, R., Crispino, F., De Forest, P., Lennard, C., Margot, P., Miranda, M.D., NicDaeid, N., Ribaux, O., Ross, A., & Willis, S. (2022). The Sydney declaration – revisiting the essence of forensic science through its fundamental principles. *Forensic Science International*, 332, article number 111182. doi: 10.1016/j.forsciint.2022.111182.

[34] Rules and Practice Directions. (1998, December). Retrieved from https://www.justice.gov.uk/courts/procedure-rules/civil/rules.

[35] Rules of Procedure and Evidence. (2019). Retrieved from https://www.icc-cpi.int/sites/default/files/Publications/Rules-of-Procedure-and-Evidence.pdf.

[36] Sabirov, K., Konussova, V., & Alenov, M. (2019). Between freedom of contract and the principle of good faith: An inside view on the reform of private law of Kazakhstan. *JANUS NET E-Journal of International Relation*, 2(10), 141-151. doi: 10.26619//1647-7251.10.2.10.

[37] Saniyazova, Y., Mediyev, R., Saitova, E., Utegenova, G., & Kzylkhojayeva, A. (2024). Advancing forensic science in Kazakhstan: The emergence and impact of digital forensics in cybercrime investigation. *Law, State & Telecommunications Review*, 16(2), 48-68. doi: 10.26512/lstr.v16i2.49190.

[38] Satayeva, A. (2023). Disclosure in civil proceedings in the UK and Kazakhstan: Comparative analysis. *Statute Law Review*, 44(3), article number hmad010. doi: 10.1093/slr/hmad010.

[39] Satayeva, A.B. (2022). Pre-action protocol in civil proceedings in England and Kazakhstan: A comparative analysis. *Bulletin of Institute of Legislation and Legal Information of the Republic of Kazakhstan*, 4, 268-275. doi: 10.52026/2788-5291_2022_71_4_268.

[40] Thomas, A., & Shearman, J. (2024). *Disclosure in England and Wales: To discover, or to disclose?* Retrieved from https://www.gtlaw-ediscoverywatch.com/2024/11/disclosure-in-england-and-wales-to-discover-or-to-disclose/.

[41] UNIDROIT Principles of International Commercial Contracts. (2016). Retrieved from https://www.unidroit.org/wp-content/uploads/2021/06/Unidroit-Principles-2016-Russian-bl.pdf.

[42] Valiyeva, S. (2024). On the court and international arbitration at the Astana international financial center for foreign investors in the oil and gas industry. *SSRN*. doi: 10.2139/ssrn.4916664.

[43] Yesimkhanova, B., Zhetpisov, K., Erbolatov, E., Olzhabaev, Kh., & Azhibayeva, K. (2024). Criminal protection of secrecy: Kazakhstan and some European countries. *Rivista di Studi Sulla Sostenibilita'*, 14(2), 277-303. doi: 10.3280/riss2024-002016.

[44] Yeung, H.W., Bekmurzayeva, Z., Huang, X., & Suleimenova, D. (2018). Institutional development and the Astana International Financial Centre. *SSRN*. doi: 10.2139/ssrn.3300104.

[45] Zambrana-Tévar, N. (2019). The court of the Astana International Financial Center in the wake of its predecessors. *Erasmus Law Review*, 12(1), 122-135. doi: 10.5553/elr.000125.

Порівняльний аналіз розкриття документів у суді МФЦА та англійських судах: вплив на правову визначеність у комерційних спорах

Айжан Сатаєва
Старший викладач
Університет Туран-Астана
010000, вул. Дукенули, 29, м. Астана, Республіка Казахстан
https://orcid.org/0000-0002-1046-2503

Анотація. Метою цього дослідження було порівняння процедур розкриття доказів у суді Міжнародного фінансового центру Астани та судах Англії. У дослідженні використовувалися історичний та порівняльний підходи, що дозволило проаналізувати розвиток методів правового аналізу, порівняльних досліджень та контекстуальних підходів для оцінки практики розкриття документів у судових процесах, включаючи аналіз міжнародних норм, таких як Конвенція Організації Об'єднаних Націй про захист прав людини та Гаазька конвенція. Основна увага приділялась подібностям та відмінностям між цими системами, а також тому, як вони адаптуються до міжнародних стандартів. Результати показали, що суди Міжнародного фінансового центру Астани та Англії активно запозичують елементи англійської системи, включаючи порядок розкриття доказів та арбітражні механізми. Однак ці норми адаптовані до національного законодавства та вимог іноземних інвесторів з урахуванням специфіки правової системи. Водночас англійська система має довгу історію та високий ступінь спеціалізації в комерційних спорах. У дослідженні наголошено, що обидві системи прагнуть прозорості та ефективності в судових процесах. Суди Міжнародного фінансового центру Астани та суди Англії прагнуть запровадити найкращі практики англійського права, адаптуючи їх до місцевих умов. Для вдосконалення процедур рекомендується враховувати сучасні потреби міжнародної торгівлі та розробляти спеціалізовані методи роботи з доказами. Результати дослідження можуть бути використані для покращення практики розкриття документів у судових системах, зокрема в судах Міжнародного фінансового центру Астани та англійських судах, з метою приведення їх у відповідність до сучасних міжнародних стандартів. Рекомендації включають розробку спеціалізованих методів роботи з доказами та врахування сучасних потреб міжнародної торгівлі для підвищення ефективності та справедливості судових процесів

Ключові слова: англійські суди; міжнародні стандарти; арбітраж; верховенство права

UDC 343.9
DOI: 10.32518/sals2.2025.200

Соціально-правові студії. 2025. Т. 8, № 2
Social & Legal Studios. 2025. Vol. 8, No. 2

Institutional risks of organised crime in the gambling business: Structure, mechanisms of influence, and threats to the national security of Ukraine in wartime context based on the analysis of case studies

Zoriana Toporetska*
Doctor of Law, Associate Professor
National Academy of the Security Service of Ukraine
03066, 22 M. Maksymovycha Str., Kyiv, Ukraine
https://orcid.org/0000-0002-2441-4852

Mykola Pohoretskyi
Doctor of Law, Professor
Taras Shevchenko National University of Kyiv
01601, 60 Volodymyrska Str, Kyiv, Ukraine
https://orcid.org/0000-0003-0936-0929

Volodymyr Vazhynskyi
Doctor of Law, Associate Professor
Open International University of Human Development "Ukraine"
03115, 23 Lvivska Str., Kyiv, Ukraine
https://orcid.org/00000-0003-4081-2954

Grigorii Denysenko
PhD in Law, Senior Research Officer
National Academy of the Security Service of Ukraine
03066, 22 M. Maksymovycha Str., Kyiv, Ukraine
https://orcid.org/0000-0003-4132-8195

Mykola Pohoretskyi
PhD in Law, Senior Research Officer
National Academy of the Security Service of Ukraine
03066, 22 M. Maksymovycha Str., Kyiv, Ukraine
https://orcid.org/0000-0003-2888-0911

Abstract. Organised crime operating in the gambling business (both legal and illegal) started exploiting it to finance enemy activities in Ukraine during the war, as well as recruiting agents to commit crimes against state security, which necessitated the investigation of the key risks posed by such organised crime and formulation of proposals to reduce it. The purpose of this study was to identify institutional vulnerabilities related to the penetration of organised crime into the gambling business in Ukraine, analyse its structural features and mechanisms of operation, and assess the threats it poses to national security in the context of armed conflict. The study employed a comprehensive interdisciplinary approach using the perspectives of legal, sociological, and security sciences, using comparative legal analysis, historical-legal method, and legal modelling. Application of these methods helped to identify the social risks of the gambling business, particularly the spread of gambling addiction among vulnerable segments of the population, which, in conditions of stress and economic

Suggested Citation

Article's History: Received: 12.03.2025 Revised: 20.05.2025 Accepted: 25.06.2025

Toporetska, Z., Pohoretskyi, M., Vazhynskyi, V., Denysenko, G., & Pohoretskyi, M. (2025). Institutional risks of organised crime in the gambling business: Structure, mechanisms of influence, and threats to the national security of Ukraine in wartime context based on the analysis of case studies. *Social & Legal Studios*, 8(2), 200-213. doi: 10.32518/sals2.2025.200.

*Corresponding author

Copyright © The Author(s). This is an open access Article distributed under the terms of the Creative Commons Attribution License 4.0 (https://creativecommons.org/licenses/by/4.0/)

instability, contributes to the involvement of players in criminal activity. Normalisation of gambling, financial difficulties, and the lack of adequate state protection transform the player from a victim into a potential instrument of criminal influence on state security. The study identified key mechanisms of political, corrupt, economic, and security influence of criminal groups. Based on the findings obtained, concrete recommendations were made to minimise institutional risks: automation of processes in the gambling business, improved protection of players, expanded access for law enforcement agencies to information systems, and active use of digital technologies in financial investigations. The conclusions were aimed at improving the effectiveness of the fight against organised crime and strengthening Ukraine's national security in the wartime context

Keywords: crime structure; protection of players' rights; state security; crimes against the state; operational-search countermeasures; crime prevention; crime investigation

Introduction

For a long time, gambling in Ukraine was prohibited and recognised as a crime, which was usually organised on a professional basis by organised criminal groups and criminal organisations, which became their profession. But in 2020, after the permission of the gambling business in Ukraine with adoption Law of Ukraine No. 768-IX (2020), the structure of organised crime also transformed. Legalisation of gambling created opportunities for the development of the legal industry, but at the same time opened more channels for money laundering, financing illegal activities, and destabilising the internal security of the state. In the conditions of a full-scale war, since 2022, organised crime in Ukraine has been increasing its influence in strategically significant areas of the economy, in the gambling business. In 2025, the impact of organised crime on legal gambling markets is still understudied, especially in the context of threats to national security during war. Studying the structure of organised crime and the mechanism of its activity is necessary to develop effective countermeasures, and therefore there is a need for a comprehensive analysis of the structure of criminal networks, the mechanisms of their activities, and the assessment of the institutional risks they pose to the state.

The issue of organised crime and its influence on various spheres of economic activity, on the gambling business, is studied in Ukrainian scientific literature by specialists from various fields of knowledge, including criminal law, criminal procedure, operational-detective activities, criminology, forensics, state security, etc. All these studies became the basis for the present scientific study. O.S. Dotsenko (2021) emphasised the cross-border nature of organised crime, noting that it poses a real threat to the state and society, which is manifested in intrusion into politics, economics, social, security, banking, financial and credit, law enforcement, privatisation, investment, natural resources, and other vital spheres of the state, creating shadow criminal schemes in them, establishing control over customs authorities, interfering in the development of market relations, and blocking effective reforming processes in the state.

After the start of the full-scale invasion of Ukraine by the enemy and the introduction of the legal regime of martial law, many Ukrainian scientists considered the issue of countering organised crime in wartime. T.V. Melnychuk (2023) analysed the level of organised crime in Ukraine under martial law in various markets. M.A. Dzhelilova (2023) identified additional criminogenic factors of organised crime under martial law: a series of legislative changes and the introduction of tax benefits in terms of customs clearance of a wide range of goods (consumer, excise, for military needs, etc.), the active import of thousands of tonnes of humanitarian aid into the territory of Ukraine; the inconsistency of the legislators and the dispersion of state control in this area contributed to a significant intensification of the organised crime, involving public officers and officials in illegal activities, the establishment of entire schemes of work and communication, etc. A.V. Movchan and T.I. Sozansky (2023) considered the characteristics of modern organised crime, noting that its structure is characterised by a network environment, where relations between criminals are volatile, systemic, and profit-oriented, while crime itself poses a direct threat to the national security of Ukraine in conditions of military aggression, as it is exploited by the special services of foreign states, primarily the aggressor country, as a tool to destabilise the situation in Ukraine. According to I.G. Bogatyrev (2024), under the legal regime of martial law, the very criminological characteristics of organised crime change – its structure, dynamics, geography. Within its ranks are patriotic criminals pursuing self-serving interests, including recruitment of servicemen after our victory into the ranks of organised criminal groups; free access to illegal weapons; participation of former law enforcement officers and military personnel; illegal export of men trying to circumvent mobilisation, etc. In terms of the gambling business, in this case organised crime is usually built not on patriotism, but on supporting the enemy's policies and views.

However, in Ukraine there are currently no studies that would investigate the structure and functioning of organised crime in the gambling business and its use of the legal gambling business to commit crimes against the state. Based on the analysis of publications of Ukrainian researchers, organised crime in the gambling business is a complex phenomenon with a high level of adaptability to changes in socio-economic conditions, requiring an interdisciplinary approach for effective counteraction and making the study of this issue is extremely relevant. The purpose of this study was to identify institutional risks associated with the activities of organised crime in the gambling business of Ukraine, analyse its structural features, mechanisms of influence, and assess threats to national security in conditions of armed conflict. According to the set purpose, the following research tasks were defined:

1) to analyse the structure and methods of functioning of criminal groups in the gambling sector;

2) to investigate the social risks of the gambling business as a prerequisite for using players in criminal activities against the state;

3) to identify the principal mechanisms of the impact of organised crime on national security and assess the specifics of threats in the context of a full-scale war in Ukraine, and to formulate recommendations for minimising institutional risks and strengthening state security.

Materials and methods

Within the framework of this study, a comprehensive interdisciplinary approach was employed, based on a combination of methods of legal, sociological, and security sciences for a comprehensive analysis of the institutional risks of organised crime in the gambling business and their impact on the national security of Ukraine in wartime. The study was based on open data from the Unified Report on Criminal Offences for January-December and judicial reporting of the courts of first and appellate instance (Judicial Authority of Ukraine, 2022a; 2022b; 2024a; 2024b) for 2022-2024, which helped to assess the scale of crime in the field of illegal gambling and the effectiveness of criminal law measures to combat this crime. The study examined the materials of criminal proceedings available in the Unified Register of Court Decisions, which included rulings, resolutions, and sentences of courts for 2021-2025, relating to transnational organised crime in the field of gambling. The search for cases was carried out by the names of gambling organisers, the names of payment services and banks, which were subject to sanctions for ties with the aggressor state when receiving and transferring payments in the gambling business, as well as by the names of titles (Chairman and members) of the Commission for the Regulation of Gambling and Lotteries. The study examined a total of 6 court cases. Review of such court documents contributed to the study of the structure of organised crime in the gambling business during the war. Undeniably, some criminal proceedings may still be at the stage of pre-trial investigation and cannot be examined due to the secrecy of the investigation; upon their transfer to the trial stage, they may become promising objects of further scientific research.

The method of system analysis was employed to identify the interrelations between organised crime, economic stability, and the overall security situation of the state. This approach allowed viewing the gambling sector not in isolation, but within the broader socio-economic and criminological context, uncovering the mechanisms through which gambling may be exploited for money laundering and other illicit activities that threaten national security. The comparative legal method served as the basis for analysing the legislation of the European Union member states on gambling regulation and mechanisms for combating its criminalisation. This enabled the identification of both best practices and systemic weaknesses in foreign jurisdictions that can inform improvements in Ukraine's legal and institutional framework. The historical legal method was employed to trace the stages of development in Ukraine's legal regulation of the gambling business, considering legislative trends, socio-political changes, and governmental responses to the challenges of illegal gambling and its connection to organised crime. This method allowed for the recognition of the evolution and patterns of regulatory transformations. The modelling method was used to construct predictive scenarios concerning the potential influence of organised crime on national security under martial law. This involved simulating possible developments based on varying levels of regulatory oversight and identifying key vulnerabilities in the gambling sector. The inductive method was crucial in formulating the final conclusions and recommendations. By generalising the results of theoretical research, legal analysis, empirical data, and practical experience in combating organised crime, the study produced grounded scientific insights and actionable proposals for enhancing Ukraine's national security mechanisms in wartime conditions.

Results

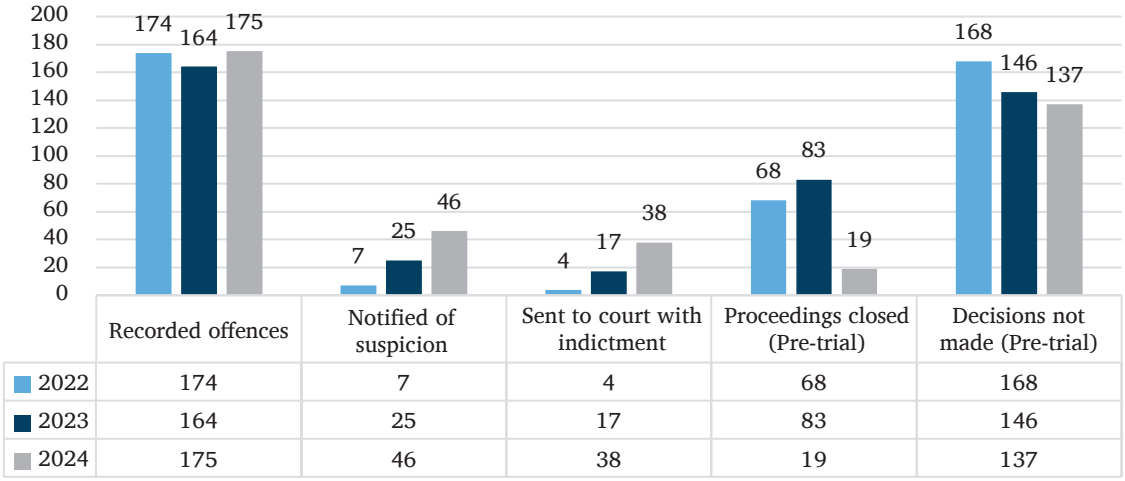
Structure and methods of functioning of criminal groups in the gambling sector. The gambling business, due to its specifics – high turnover of funds, partial latency of operations, complexity of control over financial flows – creates favourable conditions for criminal groups. Thus, the turnover of the legal gambling business market in Ukraine shows stable growth. The total turnover in this area in 2022 amounted to UAH 14 billion, in 2023 it increased to UAH 207 billion, in 2024 it slightly decreased to UAH 159.1 billion (almost USD 4 billion). At the same time, official tax revenues from the legal gambling market show constant growth, which makes the market attractive for investors. It is extremely difficult to estimate the turnover of the illegal gambling market. In 2024 alone, according to the Ministry of Digital Affairs of Ukraine, 118 mobile applications of illegal casinos were blocked: 92 in the AppStore and 26 in the Play Market. Furthermore, 4,460 online casino sites were removed by order of the State Special Communications Service of Ukraine (Press Office of the Ministry of Digital Transformation, 2025). However, it is exceedingly difficult to fight organised crime online because a new site appears in place of a closed one (Polinkova, 2025).

According to the General Prosecutor Office (2022), in 2022, only 174 criminal offences under Article 203-2 of the Criminal Code of Ukraine (2001) were recorded and only 7 persons were notified of suspicion. At the same time, only 4 cases were sent to court with an indictment. 68 proceedings were closed, and 168 decisions were not made. In 2022, there were 184 cases in court proceedings, 43 were received in the reporting period, 29 cases were considered, of which 14 resulted in a verdict (15 people were convicted), 1 was returned to the prosecutor, 7 were closed, and 155 cases remained unconsidered (Judicial Authority of Ukraine, 2022a). According to the Court of Appeal (Judicial Authority of Ukraine, 2022b), in 2022, the courts of appeal reviewed 4 cases under Article 203-2 of the Criminal Code of Ukraine (2001) and the court decisions were changed in all 4, 3 in connection with a significant violation of the Code of Criminal Procedure of Ukraine (2012).

In 2023, 164 criminal offences were recorded, 25 people were notified of suspicion (Fig. 1). At the same time, only 17 cases were transferred to the court with an indictment. In 83 cases, the proceedings were closed, and in 146 cases, a decision was not made. In 2023, 208 cases were filed with the courts, 52 were received in the reporting period, 31 cases were considered, 19 were sentenced (24 persons were convicted), 2 were returned to the prosecutor, 8 were closed, 177 cases were left unconsidered. In 2023, the courts of appeal reviewed 15 decisions of the courts of first instance, 10 were left unchanged (Pohoretskyi & Toporetska, 2024).

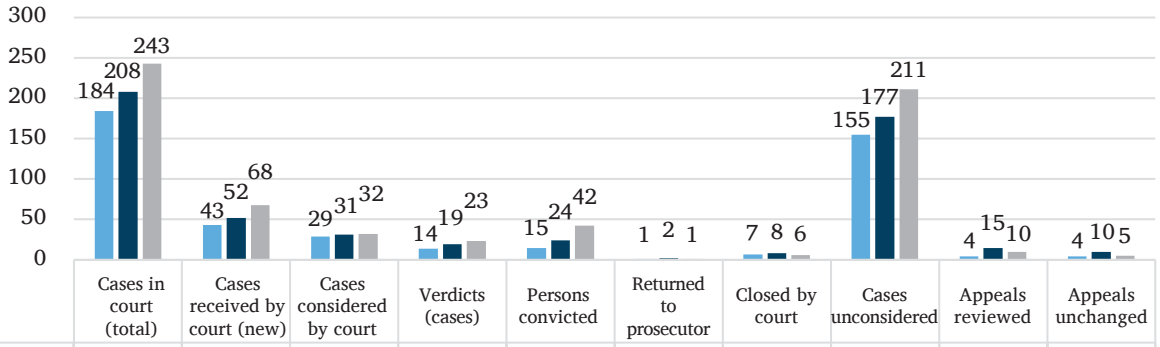
According to the Unified Report on Criminal Offences for January-December 2024 (2024), in 2024, only 175 criminal offences under Article 203-2 of the Criminal Code of Ukraine (2001) were recorded and 46 persons were notified of suspicion. At the same time, only 38 cases were sent to court with an indictment. 19 proceedings were closed, and 137 decisions were not made. In 2024, the courts had 243 cases filed (Fig. 2), 68 were received in the reporting period, 32 cases were considered, 23 were sentenced

(42 persons were convicted, including 13 persons in the organised group), 1 case was returned to the prosecutor, 6 were closed, 211 cases were left unconsidered (Judicial Authority of Ukraine, 2024a). In 2024, the courts of appeal reviewed 10 decisions of the courts of first instance, 5 were left unchanged (Judicial Authority of Ukraine, 2024b).



	Recorded offences	Notified of suspicion	Sent to court with indictment	Proceedings closed (Pre-trial)	Decisions not made (Pre-trial)
2022	174	7	4	68	168
2023	164	25	17	83	146
2024	175	46	38	19	137

Figure 1. Criminal offences under Article 203-2 of the Criminal Code of Ukraine (pre-trial)
Source: developed by the authors of this study based on data Judicial Authority of Ukraine (2022a; 2022b; 2024a; 2024b)



	Cases in court (total)	Cases received by court (new)	Cases considered by court	Verdicts (cases)	Persons convicted	Returned to prosecutor	Closed by court	Cases unconsidered	Appeals reviewed	Appeals unchanged
2022	184	43	29	14	15	1	7	155	4	4
2023	208	52	31	19	24	2	8	177	15	10
2024	243	68	32	23	42	1	6	211	10	5

Figure 2. Criminal offences under Article 203-2 of the Criminal Code of Ukraine (trial)
Source: developed by the authors of this study based on data Judicial Authority of Ukraine (2022a; 2022b; 2024a; 2024b)

At the same time, the volumes of the legal gambling market are much smaller. Thus, as of 2024, only 19 online casinos, 3 bookmakers, and 2 poker operators were legally operating in Ukraine. As for the land-based market, it was represented by 4 casino licences and 13 slot machine halls (Pohoretskyi *et al.*, 2024). Organised crime in this area manifests itself in several key forms: laundering of funds obtained through criminal means through legal gambling establishments; corrupt influence on state authorities and control bodies to avoid inspections and sanctions; creation of illegal gambling establishments, the activities of which are disguised as legal structures; financing criminal activities, including the provision of illegal armed groups (Shevchuk & Voluiko, 2025).

A feature of the functioning of organised crime in the field of gambling is the combination of legal and illegal elements. Criminal groups often own both legal licence establishments and shadow networks, which enables them to minimise the risks of detection and diversify sources of income as much as possible. Furthermore, the gambling business is used to establish control over other sectors of the economy through investment, lending, and bribery of officials. In wartime, these processes become especially dangerous, since financial flows can be directed to support destructive forces working to undermine the statehood of Ukraine (Melnychuk, 2023).

With the beginning of the full-scale invasion of the enemy into the territory of Ukraine, organised criminal groups that worked in the gambling business continued to actively support the enemy, providing constant financing for the aggressor state, recruiting agents among gamblers who had financial problems due to excessive gambling or suffered from gambling addiction. The financial support of the enemy through the gambling business has become so large-scale that it has grown into the bribery of officials, the development of a complex criminal organisation that has penetrated the highest offices, the bribery and recruitment of new agents among top officials of Ukraine, the development of corruption, and the commission of crimes against the

foundations of the national security of Ukraine, which led to the highest reaction in the state, which was reflected in a series of decisions of the National Security and Defence Council of Ukraine on the application of special economic (restrictive) sanctions to many legal organisers of gambling in the form of cancellation of licences due to their ties with the aggressor country (Decree of the President of Ukraine No. 145/2023, 2023). Most of the personal sanctions concern citizens of the Russian Federation who are associated with the gambling business. This list includes Ukrainian organisers, namely, Parimatch, Pokermatch.UA, Pointloto, Leo Financial Company, Your Betting Company. Additionally, this list also includes citizens of Cyprus, Armenia, Great Britain, Poland, Turkey, and the Netherlands. Among the legal entities are also Russian bookmaking companies, lottery organisers, racetracks, investment and entertainment companies: Sportbet, Betcity, Matchbet, Bookmaker's Office Pari, Marathon, BC Olimp.

Having analysed a series of materials, it can be said that the members of the criminal organisation included people who controlled state bodies and top officials, banks, payment systems, organisers of the gambling business, and therefore had full access to all information on the gambling market and could significantly influence decision-making in this area and massively withdraw funds to support the aggressor state. At the same time, the criminal organisation cooperated with other people who united in organised criminal groups. The criminal organisation had close ties with citizens of the aggressor state.

As for citizens of the aggressor state who created this criminal organisation, a special pre-trial investigation was initiated under Article 255 of the Criminal Code of Ukraine (2001) (creation, leadership of a criminal community or criminal organisation, as well as participation in it) (Decision of the Investigating Judge of the Holosiivskyi District Court of Kyiv in Case No. 752/13094/22, 2023). The organisational structure and key roles of such an organisation were already established by law enforcement agencies. Specifically, this organisation included individuals who were responsible for searching for individuals to implement a criminal plan to commit particularly serious crimes in the field of gambling using web resources; monitoring the actions of other members of the criminal organisation; providing instructions to other members of the criminal organisation in order to ensure the conspiracy of the criminal organisation's activities; insuring (including financial) the activities of other members of the criminal organisation; carrying out marketing activities (purchase of advertising); ensuring technical maintenance of the web resource for the provision of gambling services; cashing in funds received from the activities of the web resource for the provision of gambling services from players; verifying web resource users; approving the withdrawal of funds; creating a legal entity to subsequently obtain a licence from the Commission for Regulation of Gambling and Lotteries (CGRL) for a web resource for the provision of gambling services; searching for a person to be appointed as the director of the specified legal entity and much more.

The created criminal organisation had the following characteristics: stability and cohesion of its composition; development and coordination of plans and methods of committing crimes related to conducting and providing access to gambling in an electronic (virtual) casino; the presence of certain rules of conduct; agreement and readiness to commit crimes by all members of the criminal organisation at any time; "specialisation" of the criminal activity of the participants of the criminal organisation, which was expressed in the commission of intentional actions aimed at conducting and providing access to gambling in an electronic (virtual) casino; stability of the members of the criminal organisation, which was expressed in the duration of their actions during the period no later than August 2018 to October 2022 and detailed organisation of the functioning of the criminal organisation; distribution by the organisers of funds received from criminal activity among all its participants; the unification of criminal actions by a single plan with the distribution of functions of each of the participants of the criminal organisation, aimed at achieving a single criminal goal; a clear hierarchy consisting in the subordination of the participants of the organisation to specific individuals. Current activities were provided, and all instructions were given using the group in Telegram messenger. The criminal organisation had several areas of influence, which are discussed below. In 2025, the Chairman of the CGRL was served with a suspicion under Article 111-2 of the Criminal Code of Ukraine (2001) "Aiding an aggressor state" and a preventive measure of detention without the right to post bail was applied to him (Decision of the Investigating Judge of the Pecherskyi District Court of Kyiv in Case No. 757/1209/25-к, 2025). One of the members of the CGRL was also detained on suspicion of aiding an aggressor state for a long time and did not take measures to cancel the licence of the enterprise to carry out gambling activities on the Internet.

Furthermore, the materials of various criminal proceedings contain data on the involvement of the head and members of the CGRL in other crimes precisely as part of an organised criminal group, e.g., criminal proceedings No. 1-кс/761/30286/2024 established the facts of preparing an organised group consisting of officials of the central executive body to obtain illegal benefits. According to the arguments set out in the application and the testimonies provided, the Chairman and members of the Commission for the Regulation of Gambling and Lotteries (hereinafter referred to as the Commission for the Regulation of Gambling and Lotteries), together with the First Deputy Chairman of the Advisory and Expert Council of the Commission for the Regulation of Gambling and Lotteries, as well as the First Deputy Chairman of the Board of the Public Joint-Stock Company of the Joint-Stock Commercial Bank "Industrialbank" and other persons, were preparing to receive an unlawful benefit in the form of money in a particularly large amount from licence applicants for making a decision on licensing of activities in the field of organising and conducting gambling and bookmaking. The investigating judge of the Supreme Court in another criminal case concerning employees of banks and payment systems issued a permit for conducting covert investigative actions in the form of surveillance of a person in public places or of persons with whom that person was in contact, using video recording, photography, special technical surveillance equipment; -audio, -video surveillance of a person (Decision of the Investigating Judge of the Shevchenkivskyi District Court of Kyiv in Case No. 761/45836/24, 2024).

Another criminal proceeding established that the head and members of CGRL deliberately ignored the information of the SBU and issued and then delayed the issue of revoking

the licence of the organiser of gambling, which was controlled by the aggressor state, which enabled the organised criminal group to create a full-fledged criminal technology. Thus, in criminal proceedings No. 620240000000000286, in Case No. 1-кс-272/25 (2025), a criminal scheme in the field of gambling business was organised by three citizens of the Russian Federation through three citizens of Ukraine and was aimed at functioning both on the territory of Ukraine and on the territory of the Russian Federation. Furthermore, the organised system of gambling of the brand involved the use of financial instruments of the Russian Federation. The receipt of monetary remuneration on the territory of Ukraine provided for the further use of material resources in the economic sphere, namely, the profit of business entities of the Russian Federation and the payment of relevant taxes to the budget of the Russian Federation, which finances the aggressive war against the state of Ukraine. Furthermore, the mechanism of the Pin-Up web resource, developed by citizens of the Russian Federation and implemented with the assistance of the Chairman of the CRGL and a member of the CRGL by citizens of Ukraine, provided for the voluntary collection and use of information about servicemen of the Armed Forces of Ukraine, other military formations created following the requirements of the current legislation of Ukraine, law enforcement officers, and other military personnel, which during a full-scale war with the aggressor state had negative consequences for the combat capability of the Armed Forces of Ukraine.

A member of the CGRL was detained and a preventive measure in the form of detention was applied to him, as the investigation established that he controlled a separate payment system, using which he facilitated the withdrawal of funds from the gambling business in favour of representatives of the aggressor state through a series of fictitious transactions (Decision of the Investigating Judge of the Shevchenkivskyi District Court of Kyiv in Case No. 761/45836/24, 2024).

A criminal mechanism operated on the territory of Ukraine, involving, among others, citizens of the Russian Federation and Ukraine, aimed at performing financial transactions both in the temporarily occupied territories and in the controlled territory of Ukraine, and, among other things, financially supported the illegal gambling business and the further legalisation (laundering) of funds received from the above-mentioned activities. Replenishment of gaming accounts on illegal websites was possible using virtual assets through transfers to electronic wallets, “p2p” transfers to electronic payment instruments issued by Ukrainian banks, as well as through electronic wallets of the Internet payment services “Settlepay”, “Binance Pay” (Decision of the Investigating Judge of the Lychakivskyi District Court of Lviv in Case No. 463/36/24, 2024).

In 2023, Leo Financial Company LLC, a payment organisation within the international payment system LEO and co-owned by the former co-owner of Ibox Bank (which was liquidated by the National Bank on 7 March 2023 due to violations of financial monitoring when servicing companies in the sports poker and e-sports fields), was also sanctioned for its ties with the aggressor state (Pylypiv, 2023). However, the use of payment systems will cease because, on 3 January 2025, the President of Ukraine signed the Law of Ukraine No. 4116-IX “On Amendments to Certain Legislative Acts of Ukraine in Order to Combat Gambling Addiction (Gambling Disorder) and Improving the State Regulation of Activities Regarding the Organisation and Conduct of Gambling and Lotteries” (2024). The said Law prohibits the use of any payment services and stipulates that all payments in the gambling business must be made through bank accounts or cash desks of land-based gambling establishments.

Back in 2023, several gambling organisers were sanctioned for ties with the aggressor state and their licences were revoked. These were LLC “Your Betting Company” (brand 1XBET); LLC “Pointloto” (brand Pointloto1); LLC “Play Fan Investment” (brand Fan Sport); LLC “Pokermatch.UA” (brand PokerMatch); LLC “Parimatch” (brand Parimatch) (Decree of the President of Ukraine No. 145/2023, 2023). Furthermore, there are illegal websites operating in Ukraine that are associated with previously sanctioned companies. They continue to financially support the aggressor state and collect data on Ukrainian players to recruit them to commit crimes against Ukraine, including high treason, terrorist acts, etc.

Thus, within the framework of the investigation of the activities of a commercial structure, the connections of one online casino with representatives of the Russian Federation and Russian capital, as well as with entities subject to sanctions in Ukraine, were confirmed. As a result of the illegal operation of this online casino on the territory of Ukraine, information about clients was collected. Thus, the aggressor state had at its disposal personal data and information about the location of clients, including servicemen of the Armed Forces of Ukraine and other military formations (Decision of the Investigating Judge of the Pecherskyi District Court of Kyiv in Case No. 1-кс-272/25, 2025).

It was established that Ukrainian citizens, in collusion with Russian citizens, developed a criminal plan involving the creation of business entities in Ukraine to generate profit, some of which was then redistributed. As a result, funds were taken out of Ukraine and personal data about users of the specified business entities’ services was collected. This data subsequently fell into the possession of Russian citizens close to the top leadership of the aggressor state. The data of the State Financial Monitoring Service of Ukraine was of great importance for establishing these facts, particularly the summarised materials of State Financial Monitoring Service No. 0332/2024/DSK. According to these materials, PERSON_4 had the characteristics of a nominal manager and the financial transactions carried out with the participation of LLC “Ukr Game Technology” were aimed at legalising (laundering) proceeds from crime (Decision of the Investigating Judge of the Pecherskyi District Court of Kyiv in Case No. 1-кс-272/25, 2025). The procedural form of such documents was established through investigative action and a review of documents, for which a corresponding review protocol was drafted.

To establish the facts of the collection and transfer of personal data of players, a complex of forensic examinations was conducted. Following comprehensive technical and forensic examinations, it was established that the website operating in the territory of the Russian Federation was created using the same software as that used by LLC “UKR GAME TECHNOLOGY”. As a result of a comprehensive forensic examination of electronic communications and a computer-technical examination, a procedure for registering a user of the services of the pin-up.ua site was established, as well as information received and stored by the specified resource, including personal data and location. A military examination established that using the online casino “PIN-UP”

services on the website by Ukrainian Armed Forces servicemen, other military personnel formed pursuant to Ukrainian legislation, law enforcement officers, and other military personnel led to the deployment of Defence Forces structural units during the performance of assigned tasks under martial law in Ukraine (Decision of the Investigating Judge of the Pecherskyi District Court of Kyiv in Case No. 1-кс-272/25, 2025).

The above procedural actions helped to establish that during the registration and identification of players, a complex of personal data was collected. Specifically, a new user (client) was registered on the website using either a mobile phone number or an email address. The account was then activated (confirmed) via an SMS message and/or email. To register on the website and use its services, the following user data was required: mobile phone number; email address; surname, first name, and (if available) patronymic; date of birth; series (if available) and number of the identification document, date of issue and the authority that issued it; citizenship (for non-residents); place of residence or place of stay (for residents) / place of residence or place of temporary stay in Ukraine (for non-residents); individual taxpayer card registration number, or passport number of a Ukrainian citizen, if a note was made about the refusal to accept the registration number of the taxpayer card; unique record number in the Unified State Demographic Register (if available). In addition to the information provided by the user during registration, the website stored information about the computer configuration, including the properties and parameters of the software and network. This included the platform (desktop/browser version or mobile application based on iOS or Android OS); IP address used for login/access, which allowed the user's approximate location to be determined (city and country); access date and time in the dd.mm.yyyy format; online status. In terms of the military personnel who played gambling games on this website (Decision of the Investigating Judge of the Pecherskyi District Court of Kyiv in Case No. 1-кс-272/25, 2025), this allowed obtaining not only their personal data and location, but also the location and place of deployment of Armed Forces of Ukraine personnel, as well as those of other military formations formed pursuant to the requirements of Ukrainian legislation, law enforcement officers, and other military personnel.

Social risks of the gambling business as a prerequisite for players being involved in criminal activity. Gambling is not a classic type of economic activity, because, as D.O. Getmantsev (2008) fairly noted, it is built on human vices (persistent negative moral quality, spiritual defect). Improper organisation of the gambling market and insufficient tools for protecting society carry high social risks associated with gambling addiction. This is a mental illness consisting of a persistent, episodic or periodic loss of control over gambling behaviour. It results in a preoccupation with gambling over other areas of life and leads to significant distress or impairment in personal, family, social, educational, occupational or other important areas of functioning (ICD-10…, 2010). The WHO indicates that certain groups are at an increased risk of developing a gambling addiction. People going through major life events such as separation, retirement, injury or bereavement may be at increased risk. Social stressors such as poverty, discrimination and other adverse conditions also increase the risk. Intense online and sports-related gambling advertising also poses the risk of normalising gambling for children and young people (WHO. Gambling, 2024).

Society, with its values, usually shapes a player's gaming behaviour. The influence of people in a person's social network can normalise behaviour and, for those in high-risk networks, normalise the harm associated with gambling (Russell *et al.*, 2018). However, such measures are only effective for people living in normal environments, free from constant exposure to negative factors. The conditions of war, however, lead to constant stress and a desire to escape reality, which increases the risk of gaming addiction. As gaming addiction is a diagnosed and treatable mental illness, it cannot simply be fought. It is estimated that about 1.2% of the world's adult population suffers from gaming addiction. With an estimated global adult population of 65%, that equates to approximately 63.1 million people worldwide, surpassing the total population of Ukraine (Denysenko, 2024).

Since 2021, Ukraine has had a Register of persons with restricted access to gambling establishments and participation in gambling. Being entered into the Register means that a person will not be able to play online gambling games or enter a land-based gambling establishment. This is an effective way of preventing gambling addiction. Players can enter the Register either by submitting an application themselves or by a court decision based on an application submitted by their relatives. In 2024, over 9,000 players were entered into the register, and as of 1 January 2025, it contained information on 11,593 people. Of the entries in 2024, 9,250 were based on self-restriction applications (i.e., the player's own decision), while only 139 were based on applications from relatives (CGRL, 2025). This suggests that the number of players noticing problems with their gambling behaviour has increased sharply since the beginning of the war in Ukraine.

Severe gaming addiction can have negative social consequences for those around the player, who may experience problems in family relationships, at work and with friends and colleagues due to debts and other health issues. As a result, gaming addiction can become a social problem. Gaming addiction is diagnosed when a person experiences a constant or episodic loss of control over the time spent playing or overspending on the game for more than 12 months. According to a 2023 survey of Ukrainian players, 94% of pathological players reported an inability to resist the desire to play, and 83% of this group had considered stealing money to continue playing. Among pathological players, 85.0% play to earn money. All of the pathological gamblers surveyed experienced continuous gambling for more than five hours. Most of them played almost every day (79.2%) and lost significant amounts in a day, including more than half of their monthly income (36.8%), 25-50% of their income (19.8%) and 10-25% of their income (20.8%). 95% of such gamblers noticed that they lost more money or spent more time than they had planned (Toporetska *et al.*, 2024a). This leads to an increase in family poverty because increased gambling expenses result in an inability to purchase basic goods and services, causing debt.

The negative consequences of gambling are widely acknowledged to extend far beyond individual financial loss. Problem gambling is often associated with the breakdown of interpersonal relationships, including family breakdown, and an increased incidence of domestic violence. It can lead to extensive financial distress and social stigmatisation and may even push individuals to commit property-related

crimes such as theft or fraud. Furthermore, problem gambling frequently results in the neglect of parental and family responsibilities, which adversely affects the welfare of children and the stability of household dynamics. Of particular concern is the intergenerational impact: children raised in households where one or both parents have a gambling problem are statistically more likely to gamble themselves and are at an increased risk of developing gambling-related issues or addiction later in life. These patterns highlight the broader societal implications of gambling harm and emphasise the urgent need for comprehensive preventive and regulatory measures.

Gambling can also increase the risk of mental health problems and suicide. For instance, a Swedish study estimated that individuals with a gambling disorder are 15 times more likely to die by suicide than those in the general population (Karlsson *et al.*, 2018). In the state of Victoria, Australia, at least 4.2% of suicides were related to gambling (Rintoul *et al.*, 2023). A study in Australia showed that gamblers who concealed their problem gambling were significantly more likely to commit suicide (Rintoul *et al.*, 2023). The harm caused by legacy gambling reduces over time, with the greatest reduction occurring in the early years. On average, the harm caused by legacy gambling diminishes within 4 years (Rockloff *et al.*, 2022). Moreover, a gambling addiction affects not only the gambler, but also their environment. Therefore, harm is caused to people who do not gamble. Studies show that one gambler is responsible for at least six non-gamblers (Goodwin *et al.*, 2017). New research by N.A. Dowling *et al.* (2025) showed that problem gambling harms an average of six other people, who suffer an average of seven types of harm. Many of these types of harm persist after the problem is resolved, resulting in a reduced quality of life. Studies have consistently identified harm in several areas, with emotional and relationship harm being the most prevalent, followed by financial and health-related harm.

At the same time, people with certain real-life problems suffer more, and so they seek justice through gambling, using it as a means of achieving the desired results that they believe they deserve but are unable or unwilling to achieve by conventional means (Callan *et al.*, 2008). For example, they do not want to work but want to earn money easily. The desire for easy money and the inability to control behaviour based on gambling leads to the recruitment of gamblers to commit crimes against the state. This is facilitated by the fact that the state neither protects players nor recognises those with gambling addiction as victims of criminal gambling activities. Consequently, players cannot file lawsuits in civil proceedings or be recognised as victims in criminal proceedings, nor can they demand compensation from organisers for health damage caused by gambling or financial losses resulting from excessive gambling participation (Nestor & Pohoretskyi, 2024). From the standpoint of Ukrainian legislation, a gambler is considered an offender, although a person with a gambling addiction should be protected by the state.

Exploiting gamblers to commit crimes against the state. Upon receiving sensitive information, gambling organisers cooperating with the aggressor state analyse data from gamblers' personal accounts. When they detect signs of problematic or pathological gambling, they recruit these players to commit crimes in Ukraine that destabilise the state. The key signs of gambling problems include a loss of control over playing time and money spent on gambling. Having received such information, the gambling organiser understands that such a player can easily be recruited to commit crimes in exchange for a reward, which they can then spend on gambling. Thus, gambling addiction has long been recognised as a mental illness that leaves players extremely vulnerable to outside influences. In Ukraine, one man stole from 27 churches to fund his gambling habit. Another man fraudulently took possession of a military man's wife's money, assuring her that her husband was alive and promising to help free him from captivity. He committed this crime due to his addictions to drugs and online gambling (In Kryvyi Rih…, 2025). In Kyiv, a woman posing as a volunteer collected money supposedly for a medical battalion and spent it on gambling (Zholondievska, 2025).

In 2024, mass recruitment began to set fire to military vehicles. Most people were recruited by the Russians via Telegram groups, which Ukrainians used to look for ways to make money quickly. The recruits were mainly young people, as well as people with alcohol, gambling, or drug addictions (Myasishchev & Raievskyi, 2024). They were punished under Article 114-1 of the Criminal Code of Ukraine (2001) for obstructing the lawful activities of the Armed Forces of Ukraine and other military formations, while their addiction was not recognised as a mitigating circumstance. In 2025, the widespread explosion and arson of commercial and entertainment buildings is also being carried out by drug addicts and gamblers. These actions are classified differently: one is considered high treason and obstruction of the activities of the Armed Forces of Ukraine, while the other is considered a terrorist act. Thus, on 11 May 2024, information was entered into the Unified Register of Pre-Trial Investigations based on Part 1 of Article 258 of the Criminal Code of Ukraine (2001) concerning the commission of a terrorist act by unknown individuals, namely setting fire to the Shevchenko Commercial and Entertainment Centre in Zaporizhzhia. In the Poltava region, a woman who played in an online casino in search of easy money was recruited by agents from the Russian Federation and given the task of planting explosives near an Armed Forces of Ukraine or police administrative building. She made an explosive device and disguised it as a kettle. According to the plan devised by her handlers, she was supposed to die alongside potential victims, but the SSU prevented this terrorist act (Mohylevets, 2025).

These examples demonstrate the systemic interdependence between gaming addiction and vulnerability to external influences, particularly criminal or subversive recruitment. As a psycho-emotional disorder, gambling addiction transforms a person into an object with reduced critical thinking skills, an increased propensity for risk-taking, and greater dependence on external stimuli. This makes them susceptible to being used as a tool for destructive activity. In this context, the gambling industry, particularly when associated with foreign influences, is not only an economic or moral threat, but also a conduit for latent hybrid aggression. Criminal acts committed by individuals with a gambling addiction can range from fraud to terrorism, indicating their widespread use in subversive activities. However, law enforcement does not currently recognise gambling addiction as a mitigating circumstance. This necessitates rethinking the limits of individual responsibility and how society is protected in the context of hybrid warfare.

Key mechanisms of the influence of organised crime on national security and the specifics of threats to national security in the context of a full-scale war in Ukraine. Based on the above, the following key mechanisms through which organised crime impacts Ukraine's national security were identified: political, corruption, economic, and security impacts. Firstly, organised crime managed to influence the adoption of certain political decisions that shaped state policy in various areas by having access to category A civil servants. Through bribery, blackmail, or violence, they tried to indirectly influence other top officials who made decisions in the state in various areas. Such activity creates additional internal conflicts during the war, thereby weakening the country's defence capability.

Bribery of category, a civil servants gave criminals access to state secrets or information with limited access, as well as influenced their decision-making within the implementation of state gambling policy. Gambling also facilitated the laundering of corrupt officials' funds. In the case of the CGRL, this related to the personal data of players on the Register of Persons Restricted from Access to Gambling Establishments and Participation in Gambling. The CGRL's decisions regarding the issuance of licences to companies with ties to the aggressor state, the delay in cancelling such licences, and the delay in submitting information on the application of personal restrictive economic measures (sanctions) for cooperation with the aggressor state were also influenced. At the same time, corrupt officials' cooperation with organised crime undermines citizens' trust in the authorities, thereby undermining the country's national security.

Even in peacetime, gambling was a highly risky activity in terms of the state's economic security, as it was always associated with tax evasion, the legalisation of ill-gotten gains, smuggling, and the shadow economy, all of which undermine the state's economic stability. The impact on payment services and banks, and their involvement in criminal schemes, meant that extensive funds could be turned over without paying taxes or being subject to financial monitoring. Access to banking secrecy and information about players' financial status makes them vulnerable, enabling organised crime to recruit those with financial problems to commit crimes against the state in exchange for a reward. In wartime, when Ukraine is in dire need of financial resources and is completely dependent on foreign aid, budget losses arising from organised crime further weaken the economy, affecting the ability to finance the Armed Forces of Ukraine, purchase weapons and necessary equipment, and meet other military needs.

Ultimately, the aim of organised crime's activities within the gambling business is to destabilise the situation within the country by recruiting gamblers to commit terrorist acts and treason, as well as inciting others to commit offences that encroach on public security, such as arson and sabotage. Gambling winnings are also used to finance espionage and subversive activities by agents of a foreign state. Furthermore, withdrawing funds abroad to finance the aggressor country not only weakens Ukraine's economy, but also strengthens the enemy because these funds are used to purchase weapons and military and intelligence equipment for the aggressor state. This strengthens the aggressor and therefore affects Ukraine's external security.

Recommendations for minimising institutional risks and strengthening state security. Resolution of the Cabinet of Ministers of Ukraine No. 850-r (2022) approved the Action Plan for the Implementation of the Strategy for Combating Organised Crime (hereinafter referred to as the Plan). The Plan's main tasks include forming an effective system of institutional support for fighting organised crime, including delimiting and specifying the powers of bodies that combat serious and/or organised crime to eliminate duplication of competence, and introducing mechanisms for coordinating and interacting with such bodies effectively. It also lists many other significant tasks that should generally improve international cooperation and coordination between law enforcement agencies within the country, as well as increasing the effectiveness of the fight against organised crime. However, considering the specifics of organised crime in the gambling industry and its threat to state security, the Plan proposes concrete institutional mechanisms to combat organised crime in this area and ensure national security.

1. Automation of risk assessment processes in the gambling industry. To minimise the influence of politics, corruption, and the economy, it is essential to automate as many risk assessment processes as possible, such as issuing and cancelling licences, exercising state control over gambling business organisers' activities, and monitoring the turnover of funds. The first step is to implement the State Online Monitoring System, which was scheduled for launch in Ukraine in 2022 but has yet to be developed and implemented. This system is essential for controlling financial transactions in the market and improving tax administration. Additionally, corruption ties between the government and organised crime were primarily established when resolving issues relating to the issuance or postponement of decisions to cancel licences. Therefore, it is crucial to implement automated processes for verifying applicants before granting licences, as well as periodic automated checks of organisers to ensure compliance with legal requirements and licence conditions.

2. Protection of gamblers**.** Under current Ukrainian legislation, gamblers involved in illegal gambling are considered offenders and are subject to administrative liability, which has an extremely negative impact on them. Therefore, this liability should be abolished (Nestor & Pohoretskyi, 2024). Accordingly, gamblers are not recognised as victims in criminal proceedings on illegal gambling, and the harm caused to them is not established. As gambling can lead to gambling addiction, which is a mental illness, it is necessary to improve criminal legislation to include the harm caused to players as a qualifying feature of this crime. Special legislation in the field of gambling also must be improved to implement effective mechanisms for protecting the rights of gamblers to play safely, rather than merely declarative ones. This would involve implementing not only the principles of responsible gambling, but also active programmes for tracking players' gaming behaviour to identify signs of problematic or pathological behaviour and prevent the development of gambling addiction' (Toporetska *et al.*, 2024).

3. Provision of law enforcement agencies with access to information from automated systems in the field of state regulation of the gambling industry. Currently, legislation states that only the tax service has access to the State Online Monitoring System (SOMS) for the purpose of controlling tax payments (Yevsieiev, 2023). In addition to SOMS, it is necessary to grant the Bureau of Economic Security of Ukraine, which has the authority to investigate economic crimes, and the Security Service of Ukraine, which conducts analytical activities and identifies risks of criminal offences against

the state, access to all registers (including documents that served as the basis for issuing and revoking licences).

4. Reform of pre-trial investigation of crimes in the gambling business: introduction of financial investigation tools and expansion of digital technologies in the investigation of crimes. Financial investigation tools enable the rapid analysis of financial information and the establishment of economic links between multiple entities in a chain. This allows the structure of organised crime to be identified and its financing channels to be blocked quickly (Vazhynskyi, 2024). Using artificial intelligence to search and analyse open information on a specific entity significantly expedites the analytical activities of operational units, enabling them to identify information that can be used to further investigate members of organised criminal groups and criminal organisations in the gambling business. It also helps to identify their connections with the aggressor state. Additionally, machine learning algorithms can analyse large amounts of information, identify patterns of criminal activity, predict investigative vectors, and even identify potential criminals. This substantially accelerates the investigative process and enables prompt procedural and tactical decisions to be made in the pre-trial investigation of crimes. The active implementation of automated monitoring systems for risky transactions and suspicious business structures increases the potential for stopping criminal activity through operational and investigative activities.

Discussion

The above analysis and recommendations complemented a series of earlier studies. Thus, O.S. Dotsenko (2021), even before the full-scale invasion of Ukraine, made quite relevant conclusions on the danger of organised crime for all spheres of the state, including state security, but her study did not contain examples of organised crime using its capabilities in favour of the aggressor state, because at that time there were no such examples. T.V. Melnychuk (2023) analysed the level of organised crime in Ukraine under martial law in various illegal markets, focusing on smuggling under the guise of humanitarian aid, grain smuggling, illegal export of men of draft age abroad, etc., but left the legal gambling market out of her focus, as well as the work of organised crime for the enemy. M.A. Dzhelilova (2023) identified additional criminogenic factors of organised crime under martial law, which were considered when analysing the effects of organised crime in the gambling business on state security. A.V. Movchan and T.I. Sozansky (2023) made quite reasonable conclusions that organised crime in wartime poses a direct threat to state security precisely due to its exploitation by the aggressor state to destabilise the situation in Ukraine. This allowed the researchers to formulate their conclusions regarding the methods and possibilities of exploiting gamblers to assist the aggressor state and commit terrorist acts on the territory of Ukraine.

I.G. Bogatyrev's (2024) conclusions regarding the general forensic characteristics of organised crime in wartime are significant. However, the author's claim that participants in such groups are so-called patriotic criminals who commit crimes against the aggressor state on a patriotic basis seems debatable. The present study showed that organised crime mainly operates for economic reasons (the desire to enrich itself), rather than for ideological reasons such as patriotism. In fact, the opposite is true: organised crime often supports the political views of the enemy.

H.V. Shevchuk and O.M. Voluiko (2025) investigated the administrative approach to preventing organised crime, proposing several conclusions and practical recommendations regarding the need to develop a national strategy for administrative crime prevention, and the introduction of a unified system of preliminary control of business entities. The researchers' conclusions became valuable for the present study, which detailed ways to reduce the effects of organised crime on the gambling business and state security. Rather than using the criminal-legal mechanism to bring them to criminal responsibility, this study proposed using administrative legal methods and mechanisms to improve the work of state bodies and institutions. This will significantly complicate or even eliminate the gaps that currently enable organised crime to exploit legal and illegal gambling businesses to undermine state security.

A separate block should be allocated to studies relating to the harm caused by gambling to society and players. This is because an understanding of the vulnerability of gamblers enables organised crime to exploit them, which poses a threat to state security. A.M.T. Russell *et al.* (2018) concluded that a healthy social environment enables players to change their behaviour and make the game safer. However, such conclusions must be considered in a different light. After all, no society is completely healthy. Even if one manages to reduce their urge to play, this does not mean that they can immediately avoid any harm from gambling. Another study by M. Rockloff *et al.* (2022) showed that it takes an average of four years to reduce gambling-related harm by half, with different types of harm (economic, mental health, family relationships, friendships, academic performance, etc.) taking different periods of time. A scientific study conducted in Ukraine by Z.M. Toporetska *et al.* (2024) confirmed the diversity and depth of the negative consequences of gambling addiction for players, as well as the additional military risks (e.g., stress, insufficient sleep, fear, and a lack of stability and planning ability) that increase players' vulnerability to recruitment by a foreign state.

A series of studies by A. Karlsson *et al.* (2018), M. Rockloff *et al.* (2022), A. Rintoul *et al.* (2023) proved that pathological gamblers are more likely to commit suicide. This indicates serious mental health issues and suggests that organised crime exploits the vulnerability of gamblers by recruiting them to commit crimes against the state, often resulting in the perpetrator's elimination. Of particular interest are the studies by B.C. Goodwin *et al.* (2017) and N.A. Dowling *et al.* (2025), which demonstrated the social connections of gamblers and proved that gambling addiction spreads to six non-gambling individuals in their social circle. These findings are significant in showing the potential influence of organised crime through gamblers on other individuals and the potential for indirect recruitment through the gambling business.

Conclusions

The following conclusions were drawn based on the conducted analysis. Criminal groups operating in the gambling business had a clear hierarchical structure, stable composition, well-thought-out conspiracy system, and specialised functions among participants. Their primary goal was to profit by organising illegal gambling and financing the aggressor state. Controlling state bodies, banking institutions, and payment services enabled criminals to manipulate

Ukraine's gambling market, evade oversight, and launder funds flowing to the enemy state. The activities of civil servants, particularly individual CGRL officials, contributed to the development of the criminal network through bribery, deliberately delaying licence cancellation procedures and aiding the aggressor. Financial institutions and payment services played a key role in schemes to mask payments and ensured the financial flows of criminal activity. Sanctions against several banks and payment companies were imposed in response to these offences. The organisers of gambling cooperated closely with citizens of the aggressor state, enabling them to finance the war and collect sensitive information about Ukrainian citizens, particularly military personnel. Collecting personal data through online casinos became an additional tool for undermining Ukraine's security, as well as for recruiting individuals with a gambling addiction to commit crimes against the state. Criminals exploited gambling addiction as a means of exerting influence over vulnerable groups in society, leading to the recruitment of individuals for sabotage and terrorist activities.

The social risks associated with gambling pose a significant threat to societal well-being, primarily due to the growing prevalence of gambling addiction, which is now widely recognised as a serious mental health condition. This condition can lead to the gradual degradation of an individual's personality, the erosion of family and social relationships, financial instability, and an increased probability of engaging in criminal and antisocial behaviour. Vulnerability is particularly acute among marginalised social or economic groups and is exacerbated during national crises such as armed conflict or economic collapse. In such contexts, individuals are more susceptible to manipulative advertising, social influence and unresolved psychological trauma, all of which increase the probability of developing pathological gambling behaviour. Furthermore, the systemic lack of legal recognition of problem gamblers as victims of addiction results in their exclusion from social protection mechanisms and psychological support systems. Without legal safeguards and targeted interventions, these individuals are vulnerable not only to further personal decline, but also to exploitation by unscrupulous individuals within the gambling industry. Some gambling organisers intentionally exploit the psychological and financial vulnerability of addicted players, drawing them into illegal activities such as money laundering, fraud, and other forms of organised crime. The intersection of addiction, legal neglect, and criminal manipulation highlights the urgent need for comprehensive regulatory reform that prioritises public health, social justice, and human dignity.

Based on the analysis of the influence of organised crime on national security in conditions of full-scale war in Ukraine, the following conclusions can be drawn: the political, corrupt, economic, and security influences of organised crime significantly weaken the state's defence capabilities, destabilise the internal situation, and facilitate the implementation of the aggressor state's interests. Corruption within government agencies, coupled with undue influence over key decisions related to the gambling industry, has resulted in the leakage of sensitive information, the manipulation of licence issuance, and the laundering of criminal proceeds. Economic pressure in the form of illegal gambling schemes, tax evasion, and shadow financial flows undermines the stability of the state budget, reducing financial opportunities for the army and defence sector. Security threats manifest themselves through the exploitation of gambling addiction to recruit citizens to commit terrorist acts, sabotage, and espionage, as well as by financing the enemy's subversive activities.

Institutional reforms are necessary steps to minimise risks and strengthen state security. These reforms include automating processes in the gambling business, protecting the rights of players, expanding law enforcement access to data, and introducing financial and digital investigation tools. Therefore, combatting illegal gambling and strengthening control over financial flows are crucial tasks for safeguarding Ukraine's national security amid ongoing aggression.

Acknowledgements

None.

Funding

The study was not funded.

Conflict of interest

None.

References

[1] Bogatyrev, I.G. (2024). Organised crime in Ukraine in the 21st century: New challenges. *Legal Scientific Electronic Journal*, 7, 556-558. doi: 10.32782/2524-0374/2024-7/132.

[2] Callan, M.J., Ellard, J.H., Will Shead, N., & Hodgins, D.C. (2008). Gambling as a search for justice: Examining the role of personal relative deprivation in gambling urges and gambling behavior. *Personality and Social Psychology Bulletin*, 34(11), 1514-1529. doi: 10.1177/0146167208322956.

[3] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.

[4] Criminal Procedure Code of Ukraine. (2012, November). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.

[5] Decision of the Investigating Judge of the High Anti-Corruption Court in Case No. 1-кс/991/4071/21. (2021, June). Retrieved from https://reyestr.court.gov.ua/Review/101389890.

[6] Decision of the Investigating Judge of the Holosiivskyi District Court of Kyiv in Case No. 752/13094/22. (2023, April). Retrieved from https://reyestr.court.gov.ua/Review/111490587.

[7] Decision of the Investigating Judge of the Lychakivskyi District Court of Lviv in Case No. 463/36/24. (2024, February). Retrieved from https://reyestr.court.gov.ua/Review/117014154.

[8] Decision of the Investigating Judge of the Pecherskyi District Court of Kyiv in Case No. 757/431/25-к. (2025, January). Retrieved from https://reyestr.court.gov.ua/Review/124696534.

[9] Decision of the Investigating Judge of the Pecherskyi District Court of Kyiv in Case No. 1-кс-272/25. (2025, January). Retrieved from https://reyestr.court.gov.ua/Review/124727899.

[10] Decision of the Investigating Judge of the Pecherskyi District Court of Kyiv in Case No. 757/1209/25-к. (2025, January). Retrieved from https://youcontrol.com.ua/ru/catalog/court-document/125023445/.

[11] Decision of the Investigating Judge of the Shevchenkivskyi District Court of Kyiv in Case No. 761/45836/24. (2024, December). Retrieved from https://reyestr.court.gov.ua/Review/124047703.
[12] Decree of the President of Ukraine No. 145/2023 "On the Decision of the National Security and Defence Council of Ukraine of March 10, 2023 "On the Application and Amendments to Personal Special Economic and Other Restrictive Measures (Sanctions)". (2023, March). Retrieved from https://www.president.gov.ua/documents/1452023-46085.
[13] Denysenko, O. (2024). Legal principles for ensuring the implementation of the principle of fighting gambling addiction (ludomania) in Ukraine. *Baltic Journal of Legal and Social Sciences*, 4, 34-39. doi: 10.30525/2592-8813-2024-4-4.
[14] Dotsenko, O.S. (2021). The current state of organised crime and counteraction to it in Ukraine. *Dnipro Scientific Journal of Public Administration, Psychology, and Law*, 2, 35-40. doi: doi: 10.51547/ppp.dp.ua/2021.2.6.
[15] Dowling, N.A., Hawker, C.O., Merkouris, S.S., Rodda, S.N., & Hodgins, D.C. (2025). Addressing gambling harm to affected others: A scoping review (Part I: Prevalence, socio-demographic profiles, gambling profiles, and harm). *Clinical Psychology Review*, 116, article number 102542. doi: 10.1016/j.cpr.2025.102542.
[16] Dzhelilova, M.A. (2023). Causes and conditions of organised crime in martial law: Regional aspect. *South Ukrainian Legal Journal*, 2, 8-13. doi: 10.32850/sulj.2023.2.2.
[17] General Prosecutor Office. (2022). *Unified report on criminal offences for January-December 2022*. Retrieved from https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2.
[18] Getmantsev, D.O. (2008) *Gambling in Ukraine and abroad. An essay on the modern theory of legal regulation of games for money*. Kyiv: SEEM Print.
[19] Goodwin, B.C., Browne, M., Rockloff, M., & Rose, J. (2017). A typical problem gambler affects six others. *International Gambling Studies*, 17(2), 276-89. doi: 10.1080/14459795.2017.1331252.
[20] ICD-10 Version: 2010. (2010). Retrieved from https://icd.who.int/browse10/2010/en#/F63.0.
[21] In Kryvyi Rih, a military man swindled over UAH 1 million from the wife of a missing defender – how the court punished him. (2025). Retrieved from https://sud.ua/uk/news/ukraine/322226-v-krivom-roge-voennyy-vyduril-bolee-1-mln-grn-u-zheny-propavshego-zaschitnika-kak-ego-nakazal-sud.
[22] Judicial Authority of Ukraine. (2022a). *No. 1-k Report of the courts of first instance on the consideration of the materials of the criminal proceedings*. Retrieved from https://court.gov.ua/inshe/sudova_statystyka/zvit_dsau_2022.
[23] Judicial Authority of Ukraine. (2022b). *No. 2-k Report of the courts of appeal on the consideration of appeals in criminal proceedings*. Retrieved from https://court.gov.ua/inshe/sudova_statystyka/zvit_dsau_2022.
[24] Judicial Authority of Ukraine. (2024a). *No. 1-k Report of the courts of first instance on the consideration of the materials of the criminal proceedings*. Retrieved from https://court.gov.ua/inshe/sudova_statystyka/zvit_dsau_2024.
[25] Judicial Authority of Ukraine. (2024b). *No. 2-k Report of the courts of appeal on the consideration of appeals in criminal proceedings*. Retrieved from https://court.gov.ua/inshe/sudova_statystyka/zvit_dsau_2024.
[26] Karlsson, A., & Håkansson, A. (2018). Gambling disorder, increased mortality, suicidality, and associated comorbidity: A longitudinal nationwide register study. *Journal of Behavioral Addictions*, 7(4), 1091-1099. doi: 10.1556/2006.7.2018.11.
[27] CGRL. (2025). *In 2024, over 9,000 people were restricted from accessing gambling establishments and/or participating in gambling*. Retrieved from https://www.gc.gov.ua/ua/Informatsiini-povidomlennia/35945.html.
[28] Law of Ukraine No. 4116-IX "On Amendments to Certain Legislative Acts of Ukraine in Order to Combat Gambling Addiction (Gambling Addiction) and Improve State Regulation of Activities Related to the Organisation and Conduct of Gambling and Lotteries". (2024, December). Retrieved from https://zakon.rada.gov.ua/laws/show/4116-20#Text.
[29] Law of Ukraine No. 768-IX "On State Regulation of Activities Related to the Organisation and Conduct of Gambling". (2020, July). Retrieved from https://zakon.rada.gov.ua/laws/show/768-20#Text.
[30] Melnychuk, T.V. (2023). Organised crime and illegal markets in the context of the Russian war in Ukraine. *Legal Scientific Electronic Journal*, 3, 405-411. doi: 10.32782/2524-0374/2023-3/94.
[31] Mohylevets, A. (2025). *SBU prevented a series of terrorist attacks in the Poltava region – an unemployed resident of the region is suspected*. Retrieved from https://babel.ua/en/news/116924-sbu-prevented-a-series-of-terrorist-attacks-in-the-poltava-region-an-unemployed-resident-of-the-region-is-suspected.
[32] Movchan, A.V., & Sozanskyi, T.I. (2023). Characteristic signs of modern organised crime according to the results of the SOCTA survey. *Scientific Bulletin of the Lviv State University of Internal Affairs*, 1, 49-56. doi: 10.32782/2311-8040/2023-1-7.
[33] Myasishchev, O., & Raievskyi, D. (2024). *For the third month in a row, military vehicles have been set on fire in Ukraine. To do this, the Russians find teenagers, debtors, and addicts, promising them $1,000 each. How the "easy money" scheme works*. Retrieved from https://surl.lu/ewnads.
[34] Nestor, N.V., & Pohoretskyi, M.M. (2024). Problems of protecting the rights of a player in illegal gambling during criminal proceedings under Article 203-2 of the Criminal Code of Ukraine. *Forensics and Forensic Examination*, 69, 279-290. doi: 10.33994/kndise.2024.69.23.
[35] Pohoretskyi, M.A., & Toporetska, Z.M. (2024). Problems of legal regulation of gambling business and lotteries in Ukraine and their impact on proving illegal activities in organising and conducting gambling and lotteries (Article 203-2 of the Criminal Code of Ukraine). *Analytical and Comparative Law*, 3-4, 625-631. doi: 10.17721/2413-5372.2023.3-4/196-204.
[36] Polinkova, V. (2025). *Illegal online casinos in Ukraine: A shadow market that threatens society*. Retrieved from https://fact-news.com.ua/nelegalni-onlayn-kazino-v-ukraini-tinoviy-rinok-scho-zagrozhue-suspilstvu/.
[37] Press Office of the Ministry of Digital Transformation. (2025). *4,500+ illegal online casinos blocked in 2024*. Retrieved from https://thedigital.gov.ua/news/4-500-nelegalnikh-onlayn-kazino-zablokuvali-u-2024-rotsi.
[38] Pylypiv, I. (2023). *The payment system from the IBOX bank orbit has been sanctioned by the National Security and Defence Council*. Retrieved from https://epravda.com.ua/news/2023/03/11/697926/.

[39] Resolution of Cabinet of Ministers of Ukraine No. 850-r. "On Approval of the Action Plan for the Implementation of the Strategy to Combat Organised Crime". (2022, September). Retrieved from https://zakon.rada.gov.ua/laws/show/850-2022-%D1%80#Text.

[40] Rintoul, A., Dwyer J., Millar, C., Bugeja, L., & Nguyen, H. (2023). Gambling-related suicide in Victoria, Australia: A population-based cross-sectional study. *The Lancet Regional Health – Western Pacific*, 41, article number 100903.

[41] Rockloff, M., Browne, M., Russell, A.M., Hing, N., Armstrong, T., & Greer, N. (2022). Legacy gambling harms: What are they and how long do they last? *Journal of Behavioral Addictions*, 11(4), 1002-1011. doi: 10.1556/2006.2022.00073.

[42] Russell, A.M.T., Langham, E., & Hing, N. (2018). Social influences normalize gambling-related harm among higher risk gamblers. *Journal of Behavioral Addictions*, 7(4), 1100-1111. doi: 10.1556/2006.7.2018.139.

[43] Shevchuk, H.V., & Voluiko, O.M. (2025). Administrative approach to preventing organised crime: European experience and prospects for Ukraine. *Electronic Scientific Publication "Analytical and Comparative Jurisprudence"*, 3(2), 314-320. doi: 10.24144/2788-6018.2025.03.2.50.

[44] Toporetska, Z.M., Aimedov, K.V., Sinitska, T.V., & Oliynyk, O.P. (2024a). Socio-psychological portrait of a pathological gambler as a prerequisite for preventing gambling addiction (gambling disorder). *Medical Perspectives*, 29(1), 143-150. doi: 10.26641/2307-0404.2024.1.301141.

[45] Unified report on criminal offences for January-December 2024. (2024). Retrieved from https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2.

[46] Vazhynskyi, V.M. (2024). Organisation and tactics of pre-trial investigation of criminal offenses committed in the sphere of activities of institutional investors. *Subcarpathian Law Herald*, 2(55), 122-127. doi: 10.32782/pyuv.v2.2024.24.

[47] WHO. Gambling. (2024). Retrieved from https://www.who.int/news-room/fact-sheets/detail/gambling.

[48] Yevsieiev, D.I. (2023). Problematic issues of tax administration in the gambling business. *Bulletin of Criminal Procedure*, 3-4, 271-277. doi: 10.17721/2413-5372.2023.3-4/271-277.

[49] Zholondievska, I. (2025). *Gambling and travel: Kyiv police opened a case against a former volunteer*. Retrieved from https://suspilne.media/kyiv/835835-azartni-igri-ta-podorozi-policia-kieva-porusila-spravu-sodo-kolisnoi-volonterki/.

Інституційні ризики організованої злочинності в гральному бізнесі: структура, механізми впливу та загрози національній безпеці України в умовах війни на основі аналізу матеріалів практики

Зоряна Топорецька
Доктор юридичних наук, доцент
Національна академія Служби безпеки України
03066, вул. М. Максимовича, 22, м. Київ, Україна
https://orcid.org/0000-0002-2441-4852
Микола Погорецький
Доктор юридичних наук, професор
Київський національний університет імені Тараса Шевченка
03066, вул. Володимирська, 60, м. Київ, Україна
https://orcid.org/0000-0003-0936-0929
Володимир Важинський
Доктор юридичних наук, доцент
Відкритий міжнародний університет розвитку людини «Україна»
03115, вул. Львівська, 23, м. Київ, Україна
https://orcid.org/00000-0003-4081-2954
Григорій Денисенко
Доктор філософії в галузі права, старший дослідник
Національна академія Служби безпеки України
03066, вул. М. Максимовича, 22, м. Київ, Україна
https://orcid.org/0000-0003-4132-8195
Микола Погорецький
Кандидат юридичних наук, старший дослідник
Національна академія Служби безпеки України
03066, вул. М. Максимовича, 22, м. Київ, Україна
https://orcid.org/0000-0003-2888-0911

Анотація. Організована злочинність, яка діє у сфері грального бізнесу (легального та нелегального), в умовах війни в Україні, почала за його допомогою фінансувати діяльність ворога, використовувати можливості грального бізнесу для вербування агентів для вчинення злочинів проти державної безпеки, що обумовило актуальність дослідження основних ризиків такої організованої злочинності та формулювання пропозицій по їх зниженню. Метою даного дослідження було виявлення інституційних вразливостей, пов'язаних із проникненням організованої злочинності у сферу грального бізнесу України, аналіз її структурних особливостей та механізмів функціонування, а також оцінка загроз, які вона становить для національної безпеки в умовах збройного конфлікту. У дослідженні застосовано комплексний міждисциплінарний підхід з використанням оптики правових, соціологічних та безпекових наук, з використанням порівняльно-правового аналізу, історико-правового методу та правового моделювання. Застосування методів дозволило окреслити соціальні ризики грального бізнесу, зокрема поширення ігрової залежності серед вразливих верств населення, що в умовах стресу та економічної нестабільності сприяє залученню гравців до злочинної діяльності. Нормалізація азартних ігор, фінансові труднощі та відсутність належного державного захисту перетворюють гравця з жертви на потенційний інструмент злочинного впливу на державну безпеку. Були встановлені основні механізми політичного, корупційного, економічного та безпекового впливу злочинних угруповань. На основі отриманих результатів були запропоновані конкретні рекомендації щодо мінімізації інституційних ризиків: автоматизація процесів в гральному бізнесі, поліпшення захисту гравців, розширення доступу правоохоронців до інформаційних систем та активне використання цифрових технологій у фінансових розслідуваннях. Отримані висновки спрямовані на підвищення ефективності боротьби з організованою злочинністю та зміцнення державної безпеки України в умовах війни

Ключові слова: структура злочинності; захист прав гравців; державна безпека; злочини проти держави; оперативно-розшукова протидія; попередження злочинів; розслідування злочинів

UDC 349.442.237.337
DOI: 10.32518/sals2.2025.214

Соціально-правові студії. 2025. Т. 8, № 2
Social & Legal Studios. 2025. Vol. 8, No. 2

Issues of personal subsidiary farm legal status in Kazakhstan in the context of entrepreneurship development

Aigerim Ozenbayeva
PhD, Associate Professor
Central Asian Innovation University
160000, 80A Baitursynov Str., Shymkent, Republic of Kazakhstan
https://orcid.org/0000-0002-0703-3599

Zhanna Akshatayeva*
PhD in Law, Associate Professor
Shymkent University
160000, 6 Zhibek Zholy Str., Shymkent, Republic of Kazakhstan
https://orcid.org/0000-0002-8389-0461

Lazzat Yerkinbayeva
Doctor of Law, Professor
Taraz University named after M.Kh. Dulati
080012, 7 Suleymenov Str., Taraz, Republic of Kazakhstan
https://orcid.org/0000-0002-1958-9535

Gulzagira Zharylkapova
Master of Sciences, Senior Lecturer
Shymkent University
160000, 6 Zhibek Zholy Str., Shymkent, Republic of Kazakhstan
https://orcid.org/0009-0006-9488-6528

Marlen Algaziyev
Junior Researcher
Central Asian Innovation University
160000, 80A Baitursynov Str., Shymkent, Republic of Kazakhstan
https://orcid.org/0009-0003-6778-4225

Abstract. The study aimed to analyse the existing legal mechanisms regulating the activities of private households in Kazakhstan. The research methodology was based on a systematic and comparative approach, based on a structural analysis of the agricultural sector and legal diagnostics of the status of private households, including tax and land aspects. The main results of the study demonstrated that Kazakhstan does not have an independent legislative act regulating the activities of private subsidiary farms, which results in marginalisation organisations being rendered a semi-legal status. In the Republic of Kazakhstan, out of a total of 223,6501 small and medium-sized enterprises, 279,967 are farms, while personal subsidiary farms account for far more than 1636,200. Despite accounting for about 41.5% of agricultural output and employing more than 3.5 million people, private households are not recognised as business entities, are not taxed and do not receive adequate state support. The status of private subsidiary farms is regulated in a fragmented manner, primarily by land legislation (specifically, Article 100 of the Land Code of the Republic of Kazakhstan), while the tax, economic, and social components remain outside the legal framework. A comparison with international experience has shown that in the US, China and Turkey, family farms and private subsidiary farms are officially recognised as forms of agribusiness and receive comprehensive support: financial, educational, infrastructure and institutional. These countries

Suggested Citation **Article's History**: Received: 27.02.2025 Revised: 17.05.2025 Accepted: 25.06.2025

Ozenbayeva, A., Akshatayeva, Zh., Yerkinbayeva, L., Zharylkapova, G., & Algaziyev, M. (2025). Issues of personal subsidiary farm legal status in Kazakhstan in the context of entrepreneurship development. *Social & Legal Studios*, 8(2), 214-225. doi: 10.32518/sals2.2025.214.

*Corresponding author

Copyright © The Author(s). This is an open access Article distributed under the terms of the Creative Commons Attribution License 4.0 (https://creativecommons.org/licenses/by/4.0/)

have developed specialised legislation, subsidy programmes, loans, agricultural insurance and tax incentives. In contrast, in Kazakhstan, the focus is on large agricultural holdings, while small farms lack resources and legal protection

Keywords: agricultural sector; food security; state support; cooperation; land use

Introduction

The relevance of sustainable development of household plots (HP) is due to their significant role in ensuring food security, employment of the rural population and maintaining social stability in rural areas. In the context of growing attention to small forms of agrarian entrepreneurship, especially in countries with a high share of rural population and a vulnerable agricultural structure, such as the Republic of Kazakhstan, there is a growing need to revise approaches to the legal regulation of private household plots.

The problem of small and medium-sized enterprises in Kazakhstan is the lack of full legal status, which significantly limits access to government support programmes, financial instruments and official sales channels. Despite the significant contribution to the agrarian economy, the development of small and medium-sized enterprises is constrained by fragmented regulations, legal uncertainty and institutional underestimation of their potential (Olendiy *et al.*, 2023). In this context, the task of reforming the regulatory framework of the Republic of Kazakhstan in terms of taxation, regulation of land rights, recognition of private households as business entities and development of state support mechanisms becomes urgent.

The issues of legal regulation of household plots and their role in the sustainable development of rural areas were addressed by many studies. D. Bekezhanov *et al.* (2024), addressing rural law, analysed the legal mechanisms limiting the development of farms and emphasised the need to simplify registration and accounting procedures to enhance their participation in the economic life of the country. They also highlighted the importance of revising land legislation in the context of improving access to land for household plots. M. Donner *et al.* (2020), studying the problems of legal regulation of small businesses in the agricultural sector, concluded that the existing tax incentives and subsidies are not sufficiently transparent, which makes it difficult to use them effectively. The study proposed to introduce more flexible and affordable forms of state support focused on their real needs.

T. Widiyono and M.Z.K. Khan (2023) determined that legal uncertainty over land ownership and products from HPs remained a major problem. The study proposed the creation of specialised legal acts that would protect the interests of owners and facilitate the process of concluding contracts with public and private entities. The topic of environmental sustainability in the context of legal regulation of household plots was also addressed by T.J. Tseng *et al.* (2020) in a study on the impact of environmental standards on the activities of household plots. They concluded that the existing regulations do not address the specifics of small farms, which leads to their excessive burden and reduced entrepreneurial activity.

E. Kuandykova *et al.* (2023), in a study on the role of legal norms in the development of agribusiness, argued that there is a mismatch between current state support programmes and the real capabilities of household plots, which hinders their development. The study proposed changes in government policy aimed at reducing administrative barriers and creating more attractive conditions for investment in this area. Analysing the legal aspects of small farms, A.M. Kapała (2022) noted that one of the main problems is the lack of an integrated support system that would combine financial, legal and advisory services for household plots. The study proposed the creation of a single window for obtaining all the necessary information and assistance for farmers and owners of household plots.

The topic of legal barriers to small agribusinesses was also addressed by R. Brenya *et al.* (2022), believing that it was necessary to introduce legal mechanisms that would not only protect the interests of household plots owners but also stimulate the involvement in the agricultural market. The study addressed the simplification of the certification procedures for products manufactured in household plots. A.K. Kussainova *et al.* (2022), who studied the problem of legal regulation in agriculture, focused on the need to create a flexible taxation system. The study proposed a differentiated approach to taxation, which could stimulate small businesses.

A. Gulati *et al.* (2020), analysing agricultural reforms, confirmed that legal regulation of farms should prioritise the minimisation of administrative obstacles and increase the efficiency of land use. The study emphasised that state support should not only subsidise but also create conditions for the development of cooperation and joint activities of household plot owners. D. Olawuyi (2019) demonstrated that the legal problems of sustainable development can be solved through the introduction of digital technologies and the development of an electronic registration and control system. The study raised the issue of legal and technological barriers to the integration of farms into the electronic agricultural market system, which, following the study, could significantly improve the transparency and efficiency of farms.

Despite considerable attention to the legal regulation of household plots, the issues of integration of private households into the business environment, incorporating the specifics, and legal aspects of environmental sustainability of such plots in the context of sustainable development, as well as mechanisms for overcoming legal barriers to the participation of household plots in market relations remain insufficiently researched. In addition, the literature shows fragmentation of approaches to the analysis of comprehensive incentives for private households as entities capable of performing simultaneous social, economic and environmental functions in the development of the agricultural sector. This study aimed to examine the legal status, economic role and institutional features of the functioning of household plots in the Republic of Kazakhstan. The objectives of the study were to analyse the legal and regulatory framework for household plots in Kazakhstan; to study the conditions and factors of economic development of household plots; and to compare legislative and institutional approaches to supporting small-scale agriculture in the United States, China and Turkey.

Materials and methods

The study employed a comprehensive comparative legal and socio-economic approach to analyse the regulatory framework. Firstly, the legal acts regulating the activities of household plots in Kazakhstan were studied. The key

document is the Land Code of the Republic of Kazakhstan (2003), in particular Article 100, which defines private subsidiary plots as activities of citizens to meet personal needs on land plots located in rural and suburban settlements. The study also used the provisions of the Tax Code of the Republic of Kazakhstan (2017), in particular Article 330, which exempts private households from tax registration under certain conditions. The Entrepreneurial Code of the Republic of Kazakhstan (2015) was analysed, the provisions of which were used to assess the degree of legal uncertainty in the recognition of private household plots as business entities. In addition, the Law of the Republic of Kazakhstan No. 47-IV LRK "On Pastures" (2017) was analysed, which revealed limited opportunities for household plots to access pastureland. The Resolution of the Government of the Republic of Kazakhstan No. 985 "On the Draft Law of the Republic of Kazakhstan "On Personal Subsidiary Farming" (2021) was also analysed to assess its provisions to eliminate legal uncertainty regarding the status of private households. The study used official data provided by the Bureau of National Statistics (2025). The data for the period 2019-2024 was used, covering quantitative and qualitative indicators of the functioning of household plots. In particular, the analysis included statistical data on the number of household plots, the volume of gross agricultural products produced by them, and the structure of production by type of product (crop production, livestock production, and services).

The United States of America, the People's Republic of China and the Republic of Turkey were included in the study as representatives of examples of different approaches to government support for small-scale agriculture. The choice was made to cover a wide range of agricultural policy models: from a market economy with a developed subsidy system (USA), to a centralised approach with reforms in rural land use (China), and a mixed model with active participation of cooperatives and state support programmes (Turkey). In the United States, the legislation related to the Farm Bill (2024), a multifunctional federal document revised every five years, was used. Data from the U.S. Department of Agriculture (2024) were used, including statistics on the number of family farms, tax incentives and training programmes. To analyse the Chinese model, the provisions of the Law of the People's Republic of China "On Land Administration" (1986) and the Law of the People's Republic of China "On Farmers' Professional Cooperatives" (2006) were studied. The Household Responsibility System (n.d.), which has been the basis of China's agricultural policy since 1980 and has ensured long-term access to land for families, was analysed. The Turkish experience was studied based on the Law of Turkey No. 3083 (1984), the Law of the Turkey "On Cooperatives" (2004) and the Agricultural Law (2006). State support measures, such as fertiliser and machinery subsidies, insurance, credit and promotion of cooperative forms of farming were considered. Statistical data from the Turkish Statistical Institute (n.d.) were used to analyse the structure and number of farms, as well as to identify their role in the country's agricultural system. A comparative analysis of the structure, role and mechanisms of state support for private farms in the four countries was conducted.

Results

As of 2025, the legal system of the Republic of Kazakhstan does not have an independent legislative act regulating the activities of household plots. The concept of "household plots" was introduced into national legislation with the adoption of the Land Code of the Republic of Kazakhstan (2003). According to Article 100 of the aforementioned Code, private subsidiary farming is defined as an activity of citizens aimed at satisfying personal needs, conducted on land plots located in rural and suburban settlements. The land provided for household plots is classified as residential or agricultural land and is subject to use strictly following the designated purpose.

The legal existence of HPs is based solely on land legislation, while other aspects, including legal capacity, economic activity, taxation and access to state support, remain outside the scope of legal regulation. The Land Code of the Republic of Kazakhstan (2003) regulates only the procedure for the provision and use of land plots, without defining the comprehensive legal status of entities operating within the framework of household plot farming. In the State of the Nation Address (2021), the President of the Republic of Kazakhstan Kassym-Jomart Tokayev instructed the Government to determine the legal status of private rural farms as soon as possible and to consolidate measures of state support for them in a separate law "On Personal Subsidiary Farming". Despite the preparation of the relevant draft law, in 2022 it was withdrawn from the Majilis without consideration (Association of Farmers of Kazakhstan, n.d.). This was due to the need to finalise certain provisions caused by disagreements between relevant government agencies and insufficiently developed support mechanisms for HP. The absence of a single regulatory act creates uncertainty in the legal status of HP, limits the ability to integrate into the economy and prevents effective legal incentives for this form of farming.

Following Article 180(1)(9) of the Entrepreneurial Code of the Republic of Kazakhstan (2015), citizens running a household plot without state registration as individual entrepreneurs can sell products produced in the household plot at markets and fairs. However, such production is not officially recognised as entrepreneurial activity, and therefore, individuals running household plots are not subject to registration as entrepreneurs and are not required to pay taxes on income from such activities. According to Article 330(2) of the Tax Code of the Republic of Kazakhstan (2017), an individual engaged in private household activities is not considered a taxpayer if the income from the household is recorded in the household book and there are no facts of concealment of income or provision of false information.

According to Article 6 of the Entrepreneurial Code of the Republic of Kazakhstan (2015), entrepreneurial activity is defined as an activity carried out at one's own risk, aimed at systematically generating income from the use of property, sale of goods, performance of work or provision of services. A duly registered farm operates as a legal entity or individual entrepreneur employs hired labour, may participate in subsidy, credit and export programmes and is required to maintain accounting and tax records.

In contrast, household plots, as defined in Article 100 of the Land Code of the Republic of Kazakhstan (2003), are activities of individuals conducted on homestead or field plots solely to meet personal needs without the right to hire labour, without mandatory registration and tax reporting (within the limits of the norms established by Article 330 of the Tax Code of the Republic of Kazakhstan (2017)). Thus, private household plots are not business entities, are not

subject to mandatory registration with the judiciary and do not have access to most forms of state support intended for business. Household plots as a legally recognised form of non-business activity emerged mainly in post-Soviet countries due to the historical legacy of collectivisation and subsequent land privatisation, when the state provided citizens with small plots for economic use without turning them into businesses. This model ensured food self-sufficiency of families but did not require them to register as business entities, which preserved the legal continuity and social function of household plots in a transitional economy.

Such a legal structure does not reflect the real economic role of household plots and does not contribute to the decrease of the semi-shadow economy. In 2023, household plots produced approximately 70-80% of all meat and milk in Kazakhstan, ensuring food security and employment for a significant part of the rural population (Personal subsidiary farms..., 2025). In 2024, the production of cattle meat in slaughter weight totalled about 430 thousand tonnes, which is 7.5% higher than in 2023. The bulk of the written-off livestock was accounted for by household plots, which underlined the importance of the agricultural economy (Kosenko, 2025). As of 1 March 2025, 46.4% of cattle, 40.9% of sheep, 65.9% of goats, 37.8% of pigs, and 15.5% of poultry were kept in households (Bureau of National Statistics, 2025). This also indicates the significant role of household plots in providing livestock products to the country.

The coexistence of two forms of agrarian activity in the legal field of the Republic of Kazakhstan – household plots and farms – in the absence of a legislative distinction caused several legal conflicts and significant socio-economic consequences. Household plots can systematically produce commodity products that are sold through resellers on the market, which is inherently entrepreneurial. This causes legal uncertainty, in which a citizen who is engaged in business is not obliged to register, but also does not receive the relevant rights (access to concessional lending, subsidies, small business support programmes, etc.) At the same time, the absence of a legal boundary between household plots and entrepreneurship creates risks of criminal or administrative prosecution if a citizen exceeds the limits permitted for household plots.

The existence of "shadow" production of agricultural products, including meat, milk, vegetables and fruits, leads to a decrease in the transparency of the agricultural market. In Kazakhstan, there is already a growing trend in the volume of meat sold outside the system of taxation and veterinary control (Gray meat market..., 2025). This creates uncompetitive conditions for legal farmers, who are forced to comply with sanitary standards, pay taxes and invest in infrastructure. This situation contributes to demotivating official registration, especially in the context of weak institutional support. Most household plot owners, despite working as entrepreneurs, do not pay social contributions, which in the long run results in the absence of pensions, health insurance and other social guarantees. The state, in turn, loses its tax base, as the income of such farms remains outside statistical and fiscal control. This is confirmed by the discussions in the Parliament of the Republic of Kazakhstan on the scale of unregistered activities in the agricultural sector (Personal subsidiary farms..., 2025). The existing legal framework provides ways to deliberately disguise full-fledged commercial activities as household plots, which can be used to avoid taxes, inspections and labour obligations. Such abuses distort statistics, hamper agricultural planning and undermine trust in state institutions.

The absence of differentiated legal regulation of household plots and farms, especially in the context of their economic functions, requires a comprehensive review of legislation aimed at creating a transparent and fair model for regulating small-scale agricultural production. This will help to legalise the informal sector, expand the tax base, ensure social protection of the rural population and improve the national food security. The inclusion of household plots in the sphere of entrepreneurship will require amendments to the Tax Code to provide for special taxation regimes aimed at small businesses. In addition, the provisions of the Entrepreneurial Code of the Republic of Kazakhstan (2015) should be adjusted by adding a special article to the Code, which would establish the household plot as a separate type of individual entrepreneurship, incorporating the peculiarities of family labour, unstable income and seasonality of activities.

Comprehensive reform may also affect the Land Code of the Republic of Kazakhstan (2003): it will be necessary to establish a separate procedure for the provision and redistribution of plots for household plots, to guarantee sustainable access to pasture resources, and to regulate the procedure for the rational use of such plots. In this regard, there is a need to revise the Law of the Republic of Kazakhstan No. 47-IV LRK "On Pastures" (2017), which regulates relations related to the use of pastureland. In its current version, the law primarily targets farms and legal entities, while household plots do not have priority access to pastures and are often forced to use the land informally. To ensure the sustainable development of household plots, it is necessary to introduce changes that provide a mechanism for simplified and guaranteed provision of pastures for the needs of household plots, especially in rural districts where livestock farming is an important source of income. Thus, effective development of household plots in the Republic of Kazakhstan is impossible without a systematic legislative approach.

An analysis of the provisions of the Draft Law of the Republic of Kazakhstan "On Personal Subsidiary Farming" (2021) concluded that it is progressive compared to the current fragmented regulation. The draft defined household plots for the first time as a form of non-entrepreneurial activity aimed at meeting the personal needs of citizens without the use of hired labour. This distinction from farms is fundamentally important, as the latter are entrepreneurial structures with different objectives and scales of activity. In addition, the draft law included provisions on the access of HP to land resources, including pastures and hayfields, on technical, advisory and marketing support, and on participation in the sale of products through official channels. It also provided local executive bodies with the authority to support household plots, which correlates with the best international practices of decentralised agricultural governance. There is a need to adopt this draft law to formalise the activities of household plots, increase legal protection, ensure access to state support institutions and integrate into a sustainable model of agricultural development. In Kazakhstan, where the rural population includes a significant part of the overall demographic profile and the structure of agriculture is characterised by a high proportion of small farms, separate legislative regulation of household plots is not only appropriate but also a strategically necessary step towards social justice and sustainable rural development.

Household farms are central to ensuring food security and providing rural communities with food. They supply families with vegetables, fruits, dairy products, meat, eggs, and other agricultural goods. In conditions of limited access to food in certain regions or during periods of economic crisis, household plots become the main source of food security for the population. Household plot farming is a form of farming based on the labour of citizens and families, operating on allocated land plots. These farms produce agricultural products that meet the food needs of the family and can be partially sold on the market. From the early 2000s to 2024, in several countries, including the United States, China and the post-Soviet states, the area used for private subsidiary farming increased by an average of 10-25%, depending on the region. Interest has grown particularly strong since 2015, against the backdrop of global trends towards sustainable development, rising food prices and increased demand for environmentally friendly products (Józwiak *et al.*, 2023).

The main purpose of household plots is to provide food for the family and, in some cases, to generate additional income. However, only those farms that sell more than half of the produce on the market can be classified as high-value farms. The rest, due to the lack of a stable market infrastructure and insufficient support from the state, face difficulties in selling their products, which reduces their marketability. HPs are becoming an important source of income and a way to ensure self-employment (Galli *et al.*, 2020). The household plots are becoming not only a supplementary source of income, but also the main type of employment in the context of declining demand for labour in rural areas. To increase labour productivity and efficiency in private households, it is necessary to improve technical equipment, develop cooperation and restore collaboration between private and public farms, which will facilitate the integration of private households into the agro-industrial chain (Sen *et al.*, 2021).

Household plots contribute to biodiversity conservation and environmental sustainability. In contrast to large agricultural enterprises emphasising intensive production with the use of chemicals, private households are more likely to use traditional farming methods that are resistant to soil degradation and depletion of natural resources. Farms can preserve local plant varieties and animal breeds, maintaining the genetic diversity of agrobiocenoses. This practice contributes to the preservation of agricultural landscapes and minimises environmental impact. In addition, household plots are an important element of the social sustainability of villages. They employ household members, especially women, the elderly and young people, providing income without leaving home communities. This can reduce rural poverty, slow down urban migration and maintain social cohesion in local communities.

For the further development of smallholder farms, it is necessary to develop a coherent state policy aimed at supporting small farms, including at the regional level. It is necessary to create a unified strategy and develop effective legislative mechanisms for support at the local level. This is particularly relevant for the Republic of Kazakhstan, where household plots not only serve as the main source of food supply but also play an important social and cultural role, contributing to the preservation of traditions and ensuring the stability of the rural population. Thus, HPs are central to increasing food independence, reducing poverty, strengthening family ties and preserving traditional rural lifestyles. Due to the importance of the socio-economic development of rural areas, efforts should be prioritised on the creation of specialised legal mechanisms designed to maintain and develop household plots in a market economy.

In Kazakhstan, household plot farming is one of the sectors of agriculture that is ahead of large agricultural organisations and family-operated farms in some respects. Table 1 shows the total output of agricultural products. Data shows the dynamics of gross agricultural output in Kazakhstan, with a marked increase until 2022 when the volume reached KZT 8367.7 billion, and then a decline in 2023 to KZT 7576.5 billion and a slight recovery in 2024 (KZT 7800 billion). Crop production, which accounts for the bulk of output, declined significantly in 2023, which may be due to unfavourable weather conditions, while livestock production showed greater stability. Data by product type for 2024 had not yet been published at the time of the study. Agricultural services remain at a low level. These data underline the importance of HPs as a stabilising element in the agricultural economy, especially in the face of uncertainty in crop production, and indicate the need for reforms aimed at improving the legal status of HPs and further integration into the economy.

Table 1. Total agricultural output (services rendered) in Kazakhstan in 2021-2023, billion KZT

	2019	2020	2021	2022	2023	2024
Gross output	5,151.2	6,334.7	7,515.4	8,367.7	7,576.5	7,800
Crop production	2,817.7	3,687.3	4,387.2	5,808.3	4,552.4	-
Animal husbandry products	2,319.5	2,637.5	3,117.0	2,545.3	3,012.5	-
Agriculture services	14.0	9.9	11.2	14.2	11.6	-

Source: compiled by the authors based on Bureau of National Statistics (2025)

The agricultural sector is volatile, possibly due to natural and economic conditions. Sustainable growth requires measures to reduce dependence on external factors, modernise production, improve infrastructure and increase government support. Figure 1 shows the number of family-operated households and household plots. By the end of 2023, the total volume of products produced in household plots amounted to approximately KZT 2.6 trillion, which indicates a significant contribution of this form of management to national food security. In particular, 41.5% of the total agricultural output is accounted for by household plots, which employ over 3.5 million rural residents. The household plots produce about 90% of milk and about 70% of meat by slaughter weight. In addition, HPs provide 84% of outdoor vegetables and 83% of potatoes (Bureau of National Statistics, 2025). As of 2025, most agricultural products are produced by small

structures, including HPs, which account for approximately 75% of gross agricultural output (Bureau of National Statistics, 2025). The liquidation of collective agricultural enterprises has led to many households becoming fully self-sufficient while facing a lack of technical resources and limited opportunities to sell their products. There are 2,236,501 registered small and medium-sized enterprises in the Republic of Kazakhstan, of which 279,967 are family-operated farms. At the same time, the number of registered household plots is 1,636,200, which exceeds the number of farms by 85%. Nevertheless, household plots are key in ensuring the food sustainability of the rural population and partially meeting the demand for agricultural products in local markets.

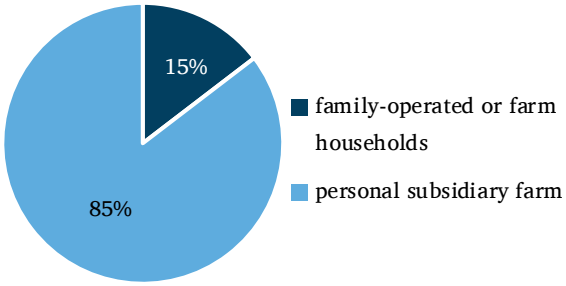


Figure 1. Number of family-operated households and household plots in Kazakhstan
Source: compiled by the authors based on Bureau of National Statistics (2025)

Historically, private household plots were regarded as an additional source of income alongside mainstream employment. However, there is a tendency for household plots to become the main, and often the only, source of income for many rural families (Muralidharan *et al.*, 2023). The household plots acquire the features of a sustainable economic unit. A household plot can be qualified as a form of entrepreneurial activity. Such farms are established to meet family needs. Surplus products are sold on the markets, and the profit from the sale is used for family needs, not for commercial purposes. Thus, the main function of a household plot is to provide the family with food in the required quantity and quality. In addition, household plots are of substantial environmental role: they promote the consumption of organic products, preserve the gene pool of animals and plants, and contribute to the protection of natural resources, including land, forests and water bodies (Muralidharan *et al.*, 2023).

The solution to these problems, as well as the tasks of providing employment and efficient use of resources in rural areas, can be achieved through the creation of regional meat and dairy clusters. However, the introduction of cluster models requires a systematic approach to rural management. It is also important to remove administrative barriers to product sales, simplify access to resources, and develop advisory and infrastructure centres. These measures should be part of the government's strategy to support alternative forms of farming in Kazakhstan. In practice, state support and concessional financing are mainly directed at large agro-industrial enterprises. At the same time, small producers, in particular, household plots, are left without proper support. One of the most acute problems is the organisation of grazing of livestock owned by private individuals.

The household plot owners are forced to sell the products at low prices, sometimes two to three times lower than market prices, which leads to up to 90% of the value of the products being retained by intermediaries (Up to 90%..., 2021). This limits income and development opportunities. This situation is exacerbated by an underdeveloped logistics system and an insufficient number of infrastructure facilities for harvesting and processing agricultural products. The main reason for this situation is the lack of legal status of HPs and regulatory legislation. Thus, to overcome these problems, it is proposed to grant the status of household plots similar to that of individual entrepreneurs. This legalises the activities, and gains access to preferential lending, state support measures and simplified forms of taxation. Recognition of household plots as business entities will strengthen positions in the economy and contribute to the development of rural areas.

In the United States, farms, especially family farms, are the backbone of the country's agricultural economy. More than 95% of all registered farms are family-owned, and they account for 90% of agricultural production. Of the approximately 1.9 million active farms, the vast majority, over 90%, are classified as small. Notably, about 60% of these small farms earn less than 10,000 USD per year and rely heavily on off-farm sources of income (Dhillon & Moncur, 2023). Nevertheless, these farms make a significant contribution to food security, biodiversity conservation and sustainable rural development. The average farm size is about 463 acres, equivalent to about 187 hectares, and covers 39% of the country's land area. Of every dollar spent by consumers on food, the farmer receives only 15 cents, while the remaining 85% goes to transport, processing, packaging and marketing (Bell, 2024).

US government policy in the field of agriculture is implemented primarily through the federal Farm Bill (2024), which is updated every five years and covers a wide range of issues: subsidies, crop insurance, food programmes, environmental protection measures, and educational initiatives. The U.S. Department of Agriculture (2024) provides small farmers with grants, subsidies, soft loans and technical support. Particular attention is paid to beginning farmers, who account for up to 30% of the total number of agricultural producers. In addition, farmers receive tax benefits and some forms of reporting are simplified. This comprehensive approach makes the US smallholder support system one of the most developed and effective in the world. At the same time, less than 2% of the US population is directly related to agriculture, which makes government support vital for the survival of rural communities.

In the People's Republic of China, agriculture is also largely based on small family farms, especially in rural and peri-urban areas. The Household Responsibility System (n.d.) was a key reform that strengthened the position of farmers. Under this system, land remains in state or collective ownership but is leased to households on a long-term basis, most often for 30 years or more. This has enabled millions of rural families to gain access to land, stabilised agricultural production and increased interest in the sustainable use of resources. By 2025, about 90% of rural households in China will continue to operate under this system (Liu *et al.*, 2021).

China's agricultural legislation includes acts such as the Law of the People's Republic of China "On Land Administration" (1986) and the Law of the People's Republic of China "On Farmers' Professional Cooperatives" (2006), as well as provisions governing insurance, subsidies and market access mechanisms. The government's strategies are aimed not only

at ensuring food security but also at reducing poverty, upgrading the agricultural sector, supporting small producers and promoting processing. The government is actively introducing innovative technologies, including smart agriculture elements such as crop monitoring drones, digital metering platforms, and automated irrigation and feeding systems, which can increase production efficiency by 20-30% by reducing costs, increasing yields and optimising resources. More than 30% of rural households participate in various land redistribution mechanisms, such as land leasing, cooperatives and collective land resources, which help to consolidate efficient farms and involve farmers in the market economy. China focuses on vertical integration, encouraging the creation of cooperatives, agricultural enterprises and partnership models of interaction between farmers and the state (Ao *et al.*, 2021). This distinguishes the Chinese model from the Kazakhstani one, where the cooperative movement and support infrastructure are still underdeveloped.

In Turkey, agriculture also has a deeply rooted family basis: around 88% of farms are family farms, with a significant proportion of them, around 33%, being smaller than two hectares. Despite a declining trend in the share of agriculture in GDP (from 10% to 6.2%) and in total employment (from 39.3% to 14.6%) between 2000 and 2023, the agricultural sector remains vital to the national economy and especially to rural areas (Turkish Statistical Institute, n.d.). Turkey is actively developing agricultural exports, and promoting organic and sustainable production, which makes small farms not only socially but also economically important.

The legal framework for Turkish agriculture is represented by several key laws: the Law of Turkey No. 3083 (1984), the Law of Turkey "On Cooperatives" (2004) and the Agricultural Law (2006). These acts regulate land ownership and leasing, farmer support, subsidies, market access and cooperative interaction. In contrast to Kazakhstan, private land ownership prevails in Turkey, which facilitates investment and long-term planning. The state provides subsidies for fertilisers, seeds and equipment, and implements insurance and preferential lending programmes. An important element of the policy is agricultural cooperatives, which enabled small farmers to join forces and provide joint access to markets, technologies and logistics. Despite its successes, the system faces challenges: weak coordination between institutions, limited access to microcredit, and informal employment of women in agriculture (Sevinç, 2021). Nevertheless, the Turkish model demonstrates the relatively stable integration of small farmers into the national and international agricultural system.

Kazakhstan, in contrast to the countries described above, is at the initial stage of developing an effective system of support for small farms. Household plots, which are widespread in rural areas, are often self-employed and self-sufficient, rarely participating in market processes. Although the plots are substantial for families and local communities, government policy in the agricultural sector has long been focused on the development of large agricultural holdings and corporate farms. In practice, access to state support for small farmers is often limited due to bureaucratic procedures, lack of information and weak financial infrastructure in rural areas.

Kazakhstan's agricultural policy needs to be restructured to create a favourable environment for the development of household plots and farmers with small land banks. The cooperative movement is developing slowly, and rural residents do not always trust these forms of association. Subsidy, insurance and training programmes are implemented to a limited extent and often do not reach their intended recipients. In contrast to China or Turkey, where farmers are involved in the market economy through support for cooperation and infrastructure, Kazakhstan's HPs remain isolated. Nevertheless, there is potential for growth in the country: the introduction of modern technologies, encouragement of cooperatives, easier access to finance and expanded educational initiatives could significantly increase the role of small farms in the national economy.

A comparative analysis of the legal and institutional models of support for small farms in the United States, China and Turkey shows that the Chinese model is the most relevant for Kazakhstan. This is due to the active involvement of the state in the redistribution of land resources and the use of innovative technologies, which contributes to the consolidation of agriculture and increase their efficiency. Adaptation of the Chinese experience, incorporating the specifics of the Kazakhstani agricultural sector, can become a key element for creating a sustainable system of support for household plots in the country, including improving state support mechanisms and expanding access to markets.

Discussion

Small-scale agricultural enterprises, particularly private subsistence farms, occupy a unique niche in the agricultural and food system. The resilience, flexibility and adaptability of these enterprises make them essential contributors to the provision of basic food needs. Despite their small scale, they play a significant role in maintaining employment in rural areas, shaping local markets and ensuring social stability. These entities often become the basis of livelihoods for vulnerable population groups. J. Woodhill *et al.* (2020) investigated the role of small-scale agriculture, emphasising household plot farming and its impact on food security. The study concluded that despite the importance of these farms, their growth is hampered by a lack of integration into the agricultural economy, a lack of state support and a complex bureaucratic system. T. Mizik (2021) also noted that small farms are highly dependent on seasonal factors, which makes them economically unstable. The study highlighted the same problems as in the current study: lack of support and bureaucratic barriers. However, the study prioritised instability, while the current study emphasised the problems of legal recognition and cooperation for sustainability.

One of the key problems identified during the study is the lack of a clear legal status for many small agricultural producers. Without official recognition, they find themselves outside the scope of tax and economic regulation, and thus outside the scope of targeted government support (Pavliv, 2023). This not only reduces their motivation to expand production but also deprives the state of the opportunity to fully consider their contribution to the economy. The formalisation of their status requires a balanced approach that avoids excessive administrative burden. B. Lojka *et al.* (2021) studied the role of legal recognition of small farms and concluded that, despite a sufficiently developed legal framework, many small farms remain outside the tax accounting system. The study emphasised that the system of subsidies and tax privileges does not cover most small forms, which hinders development. According to the current findings, legal recognition is also one of the main factors hindering the development of small farms. However, the current

study focused on the lack of a clear legal framework and bureaucratic barriers, while the study specifically referred to tax privileges and subsidies.

The analysis demonstrated that existing state programmes are generally targeted at large or medium-sized agricultural enterprises with higher administrative and financial stability. Smaller forms are left out of these mechanisms because they do not meet the formal eligibility criteria (Adamus, 2023). As a result, they do not have access to subsidies, loans, and modernisation programmes. This creates an unequal playing field and hinders the development of the rural economy. Y. Yang *et al.* (2024) analysed the Chinese model of state support for small-scale agriculture and identified successful practices of subsidies and farmer training programmes. The study emphasised that the Chinese model prioritises long-term stimulation of the rural economy through the creation of infrastructure and access to educational programmes, which significantly contribute to the stability of small farms. The current study also mentioned successful international experience. However, the study emphasised the educational component and infrastructure support, which is not as pronounced in this analysis.

S. Grando *et al.* (2020) also studied legal mechanisms to support small farms. The study demonstrated that the successful functioning of such farms is ensured not only by subsidies but also by the existence of defined legislative mechanisms for the protection of small producers in the market. The current study also highlighted the need for legal recognition and integration of smallholdings into the economy. However, the problems of unclear status and bureaucracy were emphasised more, while the authors emphasised positive examples of legislative support.

One of the possible solutions identified in the study is cooperation. The unification of small farms into production or marketing cooperatives can increase their market power, and provide access to logistics, processing and distribution networks (Shahini & Shtal, 2023). Notably, effective cooperation is impossible without institutional and educational support, as well as a transparent regulatory framework that eliminates bureaucratic barriers and coercive approaches (Kanaryk, 2024). W. Ma *et al.* (2023) studied the role of co-operative organisations in the development of small farms. The study concluded that cooperatives not only reduce risks but also improve access to markets and necessary resources. However, in practice, in some cases, co-operatives are ineffective due to internal competition and lack of professionalism among members. Current findings on cooperation as an important tool for small farms are consistent with the authors' research. However, cooperation cannot always be effective without institutional support and a legal framework.

M.A. Salam (2022) examined the impact of seasonal factors on the efficiency of household plots in Central Asia. The study concluded that climate variability and external economic factors have a significant impact on their profitability. However, following the study, to increase resilience, climate adaptation in agriculture, as well as to improve the meteorological forecasting system, should be prioritised. The present results did not devote much emphasis on external factors such as climate, in contrast to the analysed study, which highlighted climate instability as a key issue to be addressed.

A comparative analysis of practices in different countries demonstrated that successful integration of small farms into the agricultural economy is possible with systemic government support, a clear legal framework and incentive programmes. In other models, whether market-oriented or socially sustainable, small farms receive targeted subsidies, technical support, and access to infrastructure (Kalambet *et al.*, 2016). These practices can be adapted to national circumstances. M. Dzingirai (2021) also studied the role of small agricultural entrepreneurship and argued that state support for such forms of farming is aimed at increasing competitiveness through subsidies for machinery and improved logistics. E.A. Dumitru *et al.* (2021), in turn, argued that farms face difficulties in implementing programmes at the local level due to inconsistencies between central and local governments. The current analysis of international experience and approaches to supporting small farms intersects with the conclusions on the need for systemic state support. However, there is a greater emphasis on cooperation, and the authors emphasise the inefficiency of programme implementation at the local level.

H.J. Smidt and O. Jokonya (2021) conducted a study on the social function of small farms. The study argued that, in addition to the economic role, such farms are key in preserving traditional ways of life, intergenerational continuity and social stability in rural areas. They emphasised that such farms often become centres of the local community, even if they are not highly profitable. The current study mentioned the role of HPs in ensuring food security and local sustainable development, but the social component was not central. This broadens the context of the study and shows the importance of an integrated approach, not only economic but also socio-cultural. In general, the results highlighted the need for a comprehensive reform of the approach to small forms of agrarian entrepreneurship. It is necessary to institutionalise the role, develop flexible forms of state support, create conditions for voluntary cooperation, legalise their activities and integrate them into official agri-food policy. Only a systematic approach can fulfil the potential for sustainable rural development.

Conclusions

The analysis demonstrated that household plots occupy a key position in the agriculture of the Republic of Kazakhstan, despite the absence of an independent legislative act regulating the activities. As of 2023, there are 1,636,200 registered household plots, which is 85% more than the number of family-oriented households of 279,967. This underscores the scale and significance of household plots in the national agricultural structure. By the end of 2023, household plots produced about KZT 2.6 trillion worth of products, which is 41.5% of the total agricultural output. In general, small structures, including household plots, account for up to 75% of gross agricultural output. These farms employ more than 3.5 million rural residents, therefore a crucial source of self-employment and food security in low-income areas of the country.

Despite this, Kazakh legislation does not recognise household plots as business entities and citizens engaged in such activities are not subject to tax registration. This limits the development opportunities, obtaining loans and participation in government support programmes. Given the limited state involvement in the development of the household plots, Kazakhstan needs to take systemic measures. First and foremost, a separate law on household plots should be adopted, which would establish the legal status of such plots, and define the rights, obligations, forms of

state support and interaction with the authorities. It is also important to amend the Tax and Entrepreneurial Codes to equate household plots with a special category of individual entrepreneurship, incorporating seasonality, irregularity of income and family labour.

International experience shows that systemic support for small farms increases the resilience and role in the economy. In the US, more than 90% of all farms are family-owned, and 60% of small farms earn less than 10,000 USD per year, making government support critical. The US implements a comprehensive policy through the Farm Bill, including subsidies, training and market access. In China, a key success factor has been the introduction of family land contracting, which has ensured the sustainability of small farms. More than 30% of rural households participate in land redistribution programmes, which increases the efficiency of the agricultural sector. In Turkey, about 88% of farms are family-owned, and 33% of them have an area of less than 2 hectares. The government is actively developing cooperatives, providing subsidies, access to concessional lending and infrastructure, including logistics and marketing. Incorporating international experience, especially that of the United States, China and Turkey, there is a need to create an institutional infrastructure: cooperatives, information and advisory centres, and agricultural clusters. This will increase sales opportunities, increase rural incomes and reduce poverty. For further research, it is recommended to focus on the development and testing of effective mechanisms of state support for private subsidiary farms.

Acknowledgements

None.

Funding

The article was prepared within the framework of grant project of the Ministry of Science and Higher Education of the RK No. AP 19679168.

Conflict of interest

None.

References

[1] Adamus, R. (2023). Debt relief of debtors de lege ferenda and the protection of the creditor's property rights. *Scientific Journal of the National Academy of Internal Affairs*, 28(4), 9-18. doi: 10.56215/naia-herald/4.2023.09.

[2] Ao, G., Liu, Q., Qin, L., Chen, M., Liu, S., & Wu, W. (2021). Organization model, vertical integration, and farmers' income growth: Empirical evidence from large-scale farmers in Lin'an, China. *PLoS ONE*, 16(6), article number e0252482. doi: 10.1371/journal.pone.0252482.

[3] Association of Farmers of Kazakhstan. (n.d.). *Private household plots need official status*. Retrieved from https://sfk.kz/?p=759.

[4] Bekezhanov, D., Nessipbayeva, I., Rzabay, A., & Nessipbaev, O. (2024). Some legal issues regulating the rational use of agricultural land in the Republic of Kazakhstan. *Journal of Actual Problems of Jurisprudence*, 111(3), 101-108. doi: 10.26577/japj2024-111-i3-011.

[5] Bell, M.M. (2024). *Farming for us all: Practical agriculture and the cultivation of sustainability*. University Park: Penn State Press.

[6] Brenya, R., Akomea-Frimpong, I., Ofosu, D., & Adeabah, D. (2022). Barriers to sustainable agribusiness: A systematic review and conceptual framework. *Journal of Agribusiness in Developing and Emerging Economies*, 13(4), 570-589. doi: 10.1108/jadee-08-2021-0191.

[7] Bureau of National Statistics. (2025). *The main indicators of the development of livestock (January-April 2025)*. Retrieved from https://stat.gov.kz/en/industries/business-statistics/stat-forrest-village-hunt-fish/publications/374401/.

[8] Dhillon, R., & Moncur, Q. (2023). Small-scale farming: A review of challenges and potential opportunities offered by technological advancements. *Sustainability*, 15(21), article number 15478. doi: 10.3390/su152115478.

[9] Donner, M., Verniquet, A., Broeze, J., Kayser, K., & De Vries, H. (2020). Critical success and risk factors for circular business models valorising agricultural waste and by-products. *Resources Conservation and Recycling*, 165, article number 105236. doi: 10.1016/j.resconrec.2020.105236.

[10] Dumitru, E.A., Ursu, A., Tudor, V.C., & Micu, M.M. (2021). Sustainable development of the rural areas from Romania: Development of a digital tool to generate adapted solutions at local level. *Sustainability*, 13(21), article number 11921. doi: 10.3390/su132111921.

[11] Dzingirai, M. (2021). The role of entrepreneurship in reducing poverty in agricultural communities. *Journal of Enterprising Communities People and Places in the Global Economy*, 15(5), 665-683. doi: 10.1108/jec-01-2021-0016.

[12] Entrepreneurial Code of the Republic of Kazakhstan. (2015, October). Retrieved from https://adilet.zan.kz/eng/docs/K1500000375.

[13] Farm Bill. (2024, May). Retrieved from https://www.congress.gov/bill/118th-congress/house-bill/8467/text.

[14] Galli, F., *et al.* (2020). How do small farms contribute to food and nutrition security? Linking European small farms, strategies and outcomes in territorial food systems. *Global Food Security*, 26, article number 100427. doi: 10.1016/j.gfs.2020.100427.

[15] Grando, S., Bartolini, F., Bonjean, I., Brunori, G., Mathijs, E., Prosperi, P., & Vergamini, D. (2020). Small farms' behaviour: Conditions, strategies and performances. In G. Brunori & S. Grando (Eds.), *Innovation for sustainability: Small farmers facing new challenges in the evolving food systems* (pp. 125-169). Leeds: Emerald Publishing Limited. doi: 10.1108/S1057-192220200000025008.

[16] Gray meat market grows in Kazakhstan. (2025). Retrieved from https://surl.li/ikhemm.

[17] Gulati, A., Kapur, D., & Bouton, M.M. (2020). Reforming Indian agriculture. *Economic & Political Weekly*, 55(11), 35-42.

[18] Household Responsibility System. (n.d.). Retrieved from http://en.chinaculture.org/focus/2009-09/03/content_347005.htm.

[19] Józwiak, W., Mirkowska, Z., Sobierajewska, J., & Ziętara, W. (2023). Farms and their holders implementing agri-environment-climate measures. *Problems of Agricultural Economics*, 375(2), 68-94. doi: 10.30858/zer/168687.

[20] Kalambet, S.V., Zolotariova, O.V., & Pivniak, Y.V. (2016). Influence of households' finances in Ukraine on indicators of their mobility and socio-economic development of the state. *Scientific Bulletin of the National Mining University*, 4, 130-140.

[21] Kanaryk, Yu. (2024). Peculiarities of conducting economic activity under martial law: Business and human rights. *Law. Human. Environment*, 15(1), 23-36. doi: 10.31548/law/1.2024.23.
[22] Kapała, A.M. (2022). Legal status of farmers involved in short food supply chains, a comparative study. *Review of European and Comparative Law*, 48(1), 43-65. doi: 10.31743/recl.12317.
[23] Kosenko, Ye. (2025). *Meat to the masses*. Retrieved from https://www.kp.kz/daily/27689/5078844/?utm.
[24] Kuandykova, E., Baideldinov, D., & Hoffmann, T. (2023). Problems of legal regulation of digital transformation of agriculture of the Republic of Kazakhstan. *Bulletin of the Karaganda University "Law Series"*, 112(4), 7-17. doi: 10.31489/2023l4/7-17.
[25] Kussainova, A.K., Sabitova, A.A., Sabitova, S.A., Saparaliyeva, S.M., & Begaliyev, Y.N. (2022). Formation and development of taxation and legislation on administrative responsibility for tax offences in the Republic of Kazakhstan. *Journal of Financial Crime*, 30(2), 453-463. doi: 10.1108/jfc-12-2021-0268.
[26] Land Code of the Republic of Kazakhstan. (2003, June). Retrieved from https://adilet.zan.kz/eng/docs/K030000442 .
[27] Law of the People's Republic of China "On Farmers' Professional Cooperatives". (2006, October). Retrieved from http://iolawen.cssn.cn/ywflfg/202010/t20201030_5205975.shtml.
[28] Law of the People's Republic of China "On Land Administration". (1986, June). Retrieved from http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/12/content_1383939.htm.
[29] Law of the Republic of Kazakhstan No. 47-IV LRK "On Pastures". (2017, February). Retrieved from https://adilet.zan.kz/eng/docs/Z1700000047.
[30] Law of Turkey "On Cooperatives". (2004, April). Retrieved from https://www.lexpera.com.tr/mevzuat/kanunlar/kooperatifler-kanunu-1163.
[31] Law of Turkey No. 3083 "On Land reform Regarding Rearrangement of Land in Irrigated Areas". (1984, November). Retrieved from https://www.fao.org/faolex/results/details/en/c/LEX-FAOC023721/.
[32] Law of Turkey No. 5488 "Agricultural Law". (2006, April). Retrieved from https://faolex.fao.org/docs/pdf/tur90348.pdf.
[33] Liu, Y., Liu, C., & Zhou, M. (2021). Does digital inclusive finance promote agricultural production for rural households in China? Research based on the Chinese family database (CFD). *China Agricultural Economic Review*, 13(2), 475-494. doi: 10.1108/caer-06-2020-0141.
[34] Lojka, B., *et al.* (2021). Agroforestry in the Czech Republic: What hampers the comeback of a once traditional land use system? *Agronomy*, 12(1), article number 69. doi: 10.3390/agronomy12010069.
[35] Ma, W., Marini, M.A., & Rahut, D.B. (2023). Farmers' organizations and sustainable development: An introduction. *Annals of Public and Co-operative Economy*, 94(3), 683-700. doi: 10.1111/apce.12449.
[36] Mahmudov, O. (2021). Assessment of the role of private farms in increasing the income of the population. *Asian Journal of Multidimensional Research*, 10(3), 285-290. doi: 10.5958/2278-4853.2021.00127.0.
[37] Mizik, T. (2021). Climate-smart agriculture on small-scale farms: A systematic literature review. *Agronomy*, 11(6), article number 1096. doi: 10.3390/agronomy11061096.
[38] Muralidharan, K., Niehaus, P., & Sukhtankar, S. (2023). General equilibrium effects of (improving) public employment programs: Experimental evidence from India. *Econometrica*, 91(4), 1261-1295. doi: 10.3982/ecta18181.
[39] Olawuyi, D. (2019). Sustainable development and the water-energy-food nexus: Legal challenges and emerging solutions. *Environmental Science & Policy*, 103, 1-9. doi: 10.1016/j.envsci.2019.10.009.
[40] Olendiy, O., Nazarova, K., Nezhyva, M., Mysiuk, V., Mishchenko, V., & Rusyn-Hrynyk, R. (2023). Tax audit to ensure business prosperity: Trends and perspectives. *Financial and Credit Activity: Problems of Theory and Practice*, 4(51), 80-90. doi: 10.55643/fcaptp.4.51.2023.4069.
[41] Pavliv, O. (2023). International experience in regulating land relations and its adaptation in Ukraine. *Democratic Governance*, 16(2), 174-187. doi: 10.23939/dg2023.02.172.
[42] Personal subsidiary farms in Kazakhstan: Reforms, challenges, and international experience. (2025). Retrieved from https://parlaminst-mtqb.qr-pib.kz/en/p/42672.
[43] Resolution of the Government of the Republic of Kazakhstan No. 985 "On the Draft Law of the Republic of Kazakhstan "On Personal Subsidiary Farming". (2021, December). Retrieved from https://adilet.zan.kz/rus/docs/P2100000985.
[44] Salam, M.A. (2022). Exploring the seasonal yield variability, production risk and efficiency: The case of rice farms in Bangladesh. *Heliyon*, 8(9), article number e10559. doi: 10.1016/j.heliyon.2022.e10559.
[45] Sen, B., Dorosh, P., & Ahmed, M. (2021). Moving out of agriculture in Bangladesh: The role of farm, non-farm and mixed households. *World Development*, 144, article number 105479. doi: 10.1016/j.worlddev.2021.105479.
[46] Sevinç, M.R. (2021). Farmers' perception of agricultural cooperatives: The case of **Şanlıurfa**, Turkey. *Ciência Rural*, 51(3), article number e20200445. doi: 10.1590/0103-8478cr20200445.
[47] Shahini, E., & Shtal, T. (2023). Assessment of the level of competitiveness of Ukrainian agricultural holdings in international markets. *Ekonomika APK*, 30(6), 45-56. doi: 10.32317/2221-1055.202306045.
[48] Smidt, H.J., & Jokonya, O. (2021). Factors affecting digital technology adoption by small-scale farmers in agriculture value chains (AVCs) in South Africa. *Information Technology for Development*, 28(3), 558-584. doi: 10.1080/02681102.2021.1975256.
[49] State of the Nation Address by President of the Republic of Kazakhstan Kassym-Jomart Tokayev. (2021). Retrieved from https://www.akorda.kz/en/state-of-the-nation-addressby-president-of-the-republic-of-kazakhstan-kassym-jomart-tokayev-38126.
[50] Tax Code of the Republic of Kazakhstan. (2017, December). Retrieved from https://adilet.zan.kz/eng/docs/K1700000120.
[51] Tseng, T.J., *et al.* (2020). Influence of land tenure interventions on human well-being and environmental outcomes. *Nature Sustainability*, 4(3), 242-251. doi: 10.1038/s41893-020-00648-5.
[52] Turkish Statistical Institute. (n.d.). *Agriculture*. Retrieved from https://data.tuik.gov.tr/Kategori/GetKategori?p=tarim-111&dil=2.

[53] U.S. Department of Agriculture. (2024). *Fiscal year 2024-2026 data strategy*. Retrieved from https://www.usda.gov/sites/default/files/documents/fy-2024-2026-usda-data-strategy.pdf.

[54] Up to 90% of the cost of agricultural products ends up in the pockets of intermediaries, says Kazakhstani expert. (2021). Retrieved from https://agroinfo.kz/do-90-stoimosti-selxozprodukcii-osedaet-v-karmanax-posrednikov-kazaxstanskij-ekspert/?utm.

[55] Widiyono, T., & Khan, M.Z.K. (2023). Legal certainty in land rights acquisition in Indonesia's National Land Law. *Law Reform*, 19(1), 128-147. doi: 10.14710/lr.v19i1.48393.

[56] Woodhill, J., Hasnain, S., & Griffith, A. (2020). *What future for small-scale agriculture?* Environmental Oxford: Change Institute, University of Oxford.

[57] Yang, Y., Lian, D., Zhang, Y., Wang, D., & Wang, J. (2024). Towards sustainable agricultural development: Integrating small-scale farmers in China through agricultural social services. *Journal of the Knowledge Economy*, 15(4), 16575-16616. doi: 10.1007/s13132-024-01742-1.

Питання правового статусу особистого підсобного господарства в Казахстані в контексті розвитку підприємництва

Айгерім Озенбаєва
Доктор філософії, доцент
Центральноазіатський інноваційний університет
160000, вул. Байтурсинова, 80А, м. Шимкент, Республіка Казахстан
https://orcid.org/0000-0002-0703-3599

Жанна Акшатаєва
Кандидат юридичних наук, доцент
Шимкентський університет
160000, вул. Жибек Жоли, 6, м. Шимкент, Республіка Казахстан
https://orcid.org/0000-0002-8389-0461

Лаззат Єркінбаєва
Доктор юридичних наук, професор
Таразький університет імені М.Х. Дулаті
080012, вул. Сулейменова, 7, м. Тараз, Республіка Казахстан
https://orcid.org/0000-0002-1958-9535

Гульзагіра Жарилкапова
Магістр, старший викладач
Шимкентський університет
160000, вул. Жибек Жоли, 6, м. Шимкент, Республіка Казахстан
https://orcid.org/0009-0006-9488-6528

Марлен Алгазієв
Молодший науковий співробітник
Центральноазіатський інноваційний університет
160000, вул. Байтурсинова, 80А, м. Шимкент, Республіка Казахстан
https://orcid.org/0009-0003-6778-4225

Анотація. Робота була спрямована на вивчення існуючих правових механізмів, що регулюють діяльність особистих підсобних господарств у Казахстані. Методологія дослідження базувалася на системно-порівняльному підході із застосуванням структурного аналізу аграрного сектору та правової діагностики статусу особистих підсобних господарств, включаючи податкові та земельні аспекти. Основні результати дослідження показали, що в Казахстані відсутній самостійний законодавчий акт, який регулює діяльність особистих підсобних господарств, що призводить до їх маргіналізації та напівправового становища. У Республіці Казахстан із загального числа 2,236,501 суб'єкта малого та середнього підприємництва 279,967 припадає на фермерські господарства, тоді як особисті підсобні господарства становлять набагато більше – 1,636,200. Незважаючи на те, що на частку особистих підсобних господарств припадає близько 41,5 % сільгосппродукції і в них підприємництва, які не обкладаються податками та не отримують належної державної підтримки. Статус особистих підсобних господарств регулюється фрагментарно – переважно земельним законодавством (зокрема, статтею 100 Земельного кодексу), тоді як податкова, економічна та соціальна складові залишаються поза правовим полем. Проведене порівняння з міжнародним досвідом виявило, що у США, Китаї та Туреччині сімейні ферми та особисті підсобні господарства офіційно визнані формами агробізнесу та отримують комплексну підтримку: фінансову, освітню, інфраструктурну та інституційну. У цих країнах розроблено спеціалізовані законодавчі акти, діють програми субсидій, кредитування, агрострахування та податкові пільги. Навпаки, в Казахстані основна увага приділяється великим агрохолдингам, тоді як малі форми господарювання відчувають дефіцит ресурсів та правового захисту

Ключові слова: аграрний сектор; продовольча безпека; державна підтримка; кооперація; землекористування

UDC 342.7(497.7)
DOI: 10.32518/sals2.2025.226

Соціально-правові студії. 2025. Т. 8, № 2
Social & Legal Studios. 2025. Vol. 8, No. 2

The compatibility of the law "On Social Security in the Republic of Albania" with the European Convention on Human Rights

Griselda Muhametaj Guma*
PhD, Assistant Professor
University of Tirana
1010, 183 Mother Tereza Str., Tirana, Albania
https://orcid.org/0009-0002-2088-7668

Etien Isak
PhD
School of Magistrates
1019, Ana Komnena Str., Tirana, Albania
https://orcid.org/0009-0006-2056-3611

Abstract. This research examined the compatibility of Albanian social security legislation with both the Constitution of the Republic of Albania and the European Convention on Human Rights, focusing specifically on the legal issues that arose following the landmark "Dauti v. Albania" case. Using legal-normative analysis and comparative legal assessment, in this pivotal case, the European Court of Human Rights determined that Albania violated Article 6 of the Convention by denying effective judicial review of Medical Commission decisions on disability benefits. The study analyses Law No. 7703 "On Social Security in the Republic of Albania" and its amendments through Law No. 10447, which were implemented in response to the European Convention on Human Rights decision. Despite the Committee of Foreign Ministers of the Council of Europe issuing a report stating these amendments had addressed the Court's findings, the research reveals that significant compatibility issues persist. The Administrative College of the High Court of Albania later determined that despite the legislative changes, the law's incompatibility with Article 6 of the Convention continues, referring the matter to the Constitutional Court for an incidental review. This case ultimately resulted in a unifying decision of substantial importance in Albanian judicial practice, with the High Court affirming that access to courts for disabled persons must be guaranteed regardless of any legislative limitations. The research identified ongoing gaps in three categories: structural (imperfect appointment mechanisms for Appeals Commission members), procedural (inequality of arms and limited accessibility), and substantive (inconsistent standards for reviewing medical determinations). The study concluded that while formal amendments have been made, Albania must implement further reforms to ensure the practical effectiveness of judicial protection in social security cases, particularly for vulnerable groups such as persons with disabilities

Keywords: judicial review; administrative appeals; fair trial; medical commission; disability benefits

Introduction

Social security in Albania is an important component of the welfare state, aimed at protecting individuals from various life risks. The historical development of the social security system in Albania reflects the transition from a Soviet-style model to a system more aligned with the principles of a market economy, influenced by international standards and the process of joining the European Union. This transformation included legislative reforms and institutional restructuring. The reforms launched in the 1990s were due to the need to adapt to the conditions of the market economy, which indicates the awareness of the need for a new regulatory framework. Given that Albania is a signatory to the European Convention on Human Rights (1950) (ECHR) and intends to join the EU, the harmonisation of its national legislation, including social security legislation, with European human rights standards is of particular importance. This coordination is important not only for the European integration process, but also for ensuring the fundamental rights of the country's citizens. Analysis of scientific literature indicates growing researcher interest in the compatibility of Albanian legislation with European standards, though current research exhibits significant gaps in comprehensive analysis.

Suggested Citation **Article's History**: Received: 18.02.2025 Revised: 16.05.2025 Accepted: 25.06.2025

Guma, G.M., & Isak, E. (2025). The compatibility of the law "On Social Security in the Republic of Albania" with the European Convention on Human Rights. *Social & Legal Studios*, 8(2), 226-247. doi: 10.32518/sals2.2025.226.

*Corresponding author

Copyright © The Author(s). This is an open access Article distributed under the terms of the Creative Commons Attribution License 4.0 (https://creativecommons.org/licenses/by/4.0/)

Existing studies can be grouped into three main thematic areas: institutional framework challenges, financial sustainability issues, and procedural rights implementation.

Regarding institutional frameworks, T.N. Kortoci and S. Macukulli (2021) examined structural deficiencies in Albania's social security scheme, particularly highlighting the insufficient independence of the Appeals Commission. This institutional perspective was expanded by S. Guzina and E. Tiri (2023), who noted progress in regulatory framework reforms while identifying ineffective implementation of new norms. I. Konini *et al.* (2024) contributed to this area by examining fair trial principles in Albanian public security legislation that have potential application to social security systems. From the financial sustainability perspective, A. Mustafa and M. Gerovska-Mitev (2022) revealed insufficient funding for social programs in Albania compared to European indicators through comparative analysis of social protection expenditures across Western Balkan countries. This financial dimension is further contextualised by A. Pjetri (2024), whose analysis of inheritance law reforms in Albania demonstrates how economic constraints systematically affect legal implementation across multiple domains of social protection. O. Hoxhaj and B. Halilaj (2025) expand this perspective by examining how resource allocation challenges similarly affect digital governance frameworks designed to support social welfare administration, identifying substantial gaps between policy objectives and implementation capacity.

Concerning procedural rights implementation, I.K. Melo and N. Rusi (2024) established connections between property rights protection and social security by examining government policies within ECtHR practice contexts. E. Tiri and E. Aliaj (2024) examined harmonisation of legislation with European standards through the lens of EU integration processes. These procedural perspectives are enriched by G. Riza (2021), who documents similar patterns in Albania's implementation of European data protection standards, revealing how formal legislative compliance often precedes effective practical implementation. E. Leci (2023) provides additional evidence of this implementation gap in her comprehensive analysis of privacy rights compliance, demonstrating that Albanian authorities consistently struggle to translate adopted European legal frameworks into effective administrative practices – a pattern that parallels challenges in social security administration.

Despite existing contributions, significant research gaps remain in evaluating post- "Dauti v. Albania" (2009) legislative changes against ECHR (1950) standards. Current studies mainly focus on isolated aspects rather than offering a holistic analysis of Albania's compliance with international obligations. There is a notable lack of research on the practical implementation of these changes, especially regarding appeal mechanisms, judicial review effectiveness, and procedural guarantees. Additionally, the absence of comprehensive studies on the intersection of social security legislation and ECHR requirements, particularly concerning the right to a fair trial, further highlights the need for more thorough exploration in this field. The purpose of this research was to assess the compatibility between Albania's "On Social Security" (1993) law and European Convention on Human Rights (1950) standards, with particular focus on post-reform implementation gaps. To achieve this purpose, the following research tasks were addressed:

1) to conduct a comprehensive examination of the normative framework and methodological approaches for assessing the Albanian social security legislation's alignment with European standards;

2) to evaluate key jurisprudence of the European Court of Human Rights and identify structural, procedural, and substantive gaps in legislative compliance;

3) to develop evidence-based proposals for strengthening judicial and administrative oversight mechanisms in Albania's social security system.

Materials and methods

The study of compatibility between Albania's social security law and the European Convention on Human Rights was based on analysis of key legislative documents, including Law No. 7703 "On Social Security in the Republic of Albania" (1993). Particular attention was given to Article 39/1 of Law No. 7703, which governs the appeals process for Medical Commission decisions on disability determinations, and Articles 35-38 concerning disability benefit qualification mechanisms. The analysis also focused on the structural provisions in Articles 71-73 regarding the composition and functioning of the Appeals Commission. These acts were examined for compliance with Article 6 of the European Convention on Human Rights (1950). The pivotal case of Dauti v. Albania (2009) established that Albanian legislation regarding appeals of Medical Commission decisions failed to meet standards for independent tribunals.

The international framework was examined through documents including the European Social Charter (1996), the European Commission (2024) working document, and materials from the United Nations Human Rights Council (2025). Contemporary social protection measures were analysed through National Social Protection Strategy (2024) and the Action Plan for its Implementation (2024) and the National Action Plan for Equality, Inclusion and Participation of Roma and Egyptians in Albania (2022). Actual jurisprudence was studied through the case of Strazimiri v. Albania (2020), while regional context was provided by the Western Balkan economies report (Ymeri, 2023). Additional legislative context was provided by Law No. 9136 "On the Collection of Mandatory Social and Health Insurance Contributions in the Republic of Albania" (2003) on mandatory social insurance contributions. The system functions through mandatory contributions from employers, employees, and self-employed individuals, administered by the Social Insurance Institute, an autonomous state entity that provides protection against various contingencies including temporary disability due to illness, maternity, old age, disability, survivorship, employment accidents, occupational diseases, and unemployment. Case of Le Compte, Van Leuven and De Meyere v. Belgium (1981) established fundamental principles regarding what constitutes a tribunal under Article 6 of ECHR, while case of Benthem v. The Netherlands (1985) defined criteria for determining a body's independence. Albanian courts have increasingly incorporated these standards, referencing case of Ramos Nunes de Carvalho and Sá v. Portugal (2018) and case of Morice v. France (2015). Case of Strazimiri v. Albania No. 34602/16 (2020) demonstrates ongoing challenges in social protection implementation.

The methodological basis of the study was the formal-legal method, which made it possible to analyse the content of the legislation on social security in the Republic of Albania

and its changes. A detailed analysis of the normative provisions on the procedures for appealing the decisions of the Medical Commission on the determination of working capacity was carried out, in particular in the aspect of ensuring the right to a fair trial under the ECHR (1950). For example, this method enabled systematic examination of amendments to Article 39/1 of Law of Alnbania No. 7703 (1993) following the Dauti case, tracing how legislative language evolved to accommodate judicial review requirements.

The comparative legal method was used to compare the Albanian social security system with European standards developed through the case law of the European Court of Human Rights (2025). This method involved systematic juxtaposition of Albanian legal provisions with ECHR principles across multiple dimensions including procedural guarantees, institutional independence, and accessibility criteria. The comparative analysis was conducted through a structured matrix approach that evaluated each element of the Albanian system against corresponding ECHR standards, utilising a three-tier assessment scale (full compliance, partial compliance, non-compliance) with specific indicators for each category. This made it possible to identify discrepancies between national legislation and international requirements, in particular regarding the independence of bodies that consider disputes in the field of social security.

The system-structural analysis provided an opportunity to investigate the institutional structure of the Albanian social security system, including key institutions. The functional relationships between these bodies and their compliance with the requirements of independence and impartiality established in key legal precedents were assessed. This approach revealed hierarchical dependence patterns between Medical Commissions and Appeals Commissions that compromised institutional independence required by ECHR standards. The method of analysing judicial practice was key to the study. The decision of the European Court of Human Rights (2025) regarding Albania and other countries was analysed. The analysis of these precedents has made it possible to identify the standards that apply to social security systems in the context of human rights, including requirements for the independence of tribunals, equality of parties and access to justice. This method was applied through chronological and thematic categorisation of case law, tracing the evolution of tribunal independence requirements from foundational cases.

Results and Discussion

Methodological and legislative framework analysis. The primary materials examined included Law of Albania No. 7703 (1993) and its significant amendments. The initial reform occurred through Law of Albania No. 10447 (2011), which fundamentally modified Article 39/1 by removing provisions declaring Appeals Commission decisions as "final" and explicitly granting claimants the right to challenge these decisions in administrative courts. Subsequent amendments in 2023 introduced further refinements, including enhanced procedural timelines for appeals processing and expanded documentation requirements for medical assessments (Law of Albania No. 64/2023, 2023). These normative legal acts were systematically analysed for their alignment with Article 6 of the European Convention on Human Rights (1950), which guarantees the right to a fair trial. The pivotal European Court of Human Rights judgment in case of Dauti v. Albania (2009) provided an essential interpretative framework for understanding the specific compatibility issues within the Albanian social security appeals system.

Supporting documents examined included Albania's "National Social Protection Strategy (2024-2030) and the Action Plan for its Implementation" (2024), the European Commission (2024), and assessments by the United Nations Human Rights Council (2025). These materials collectively provided a comprehensive basis for evaluating Albania's legislative alignment with European human rights standards in social security administration.

The Albanian social security system has undergone significant evolution since the post-communist transition, with Law of Albania No. 7703 (1993) establishing the foundational framework. This legislation, structured across nine sections, established a comprehensive social insurance system operating on a pay-as-you-go principle, providing protection against various contingencies including temporary disability due to illness, maternity, old age, disability, survivorship, employment accidents, occupational diseases, and unemployment. The system functions through mandatory contributions from employers, employees, and self-employed individuals, administered by the Social Insurance Institute, an autonomous state entity. Law of Albania No. 9136 (2003) provides the procedural framework for collecting these contributions, which fund the various benefit schemes. The system also includes provisions for voluntary social insurance, allowing individuals who are no longer mandatorily insured to continue their coverage.

A critical aspect of the legislation for this analysis concerns the procedural mechanisms for appealing decisions related to disability benefits. Prior to the 2011 amendments, Article 39/1 of Law of Albania No. 7703 (1993) established that decisions of the Medical Commission for Assignment of Work Ability Superior (MCAWA Superior) were final and could only be appealed to an Appeals Commission, with no provision for judicial review. Following the ECtHR's judgment in Dauti v. Albania (2009), Law of Albania No. 10447 (2011) amended the original legislation to permit judicial review of these decisions, representing a significant alignment with ECHR Article 6 requirements.

The Albanian system's structure reveals a bifurcated approach to social protection: contributory social insurance administered by the Social Insurance Institute and non-contributory social assistance managed by local authorities. This division creates potential gaps in coverage, particularly for marginalised groups and those in the informal economy. International assessments, including the Regional Cooperation Council's review (Ymeri, 2023), have identified structural weaknesses including low unemployment benefit coverage, inadequate benefit levels, and limited child benefit provisions. While the ECHR (1950) does not explicitly guarantee a right to social security, several provisions have been interpreted by the ECtHR as applicable to social security systems. This interpretative framework has evolved through extensive case law, establishing clear standards that national social security legislation must meet to ensure compatibility with the Convention. Article 6 of the Convention, guaranteeing the right to a fair trial, has particular relevance for the procedural aspects of social security systems. The Court has consistently held that social security disputes fall within the scope of "civil rights and obligations" under Article 6(1), entitling claimants to have their cases heard by an "independent and

impartial tribunal established by law". The ECtHR's interpretation requires that administrative decisions affecting social security entitlements must be subject to judicial review by a body with "full jurisdiction" to examine both questions of fact and law. This standard was central to the Court's finding in Dauti v. Albania (2009) that the lack of judicial review for MCAWA Superior decisions violated Article 6.

Article 1 of Protocol No. 1 to the ECHR (1950), protecting the right to property, has been interpreted to encompass social security entitlements where these constitute a property interest. The Court has established that contributory benefits create a property interest, while non-contributory benefits may also fall within this protection if they constitute an enforceable right under domestic law. This provision requires that any interference with established social security entitlements must be lawful, pursue a legitimate aim, and maintain a fair balance between the general interest and protection of individual rights.

Article 14 of the ECHR (1950), prohibiting discrimination, applies in conjunction with other Convention rights and requires that social security systems operate without unjustified discrimination. The Court has applied this provision to cases involving differential treatment in access to or levels of social security benefits based on protected characteristics. The standards developed through ECtHR jurisprudence in case of Le Compte, Van Leuven and De Meyere v. Belgium (1981), case of Benthem v. The Netherlands (1985), and more recently Case of Ramos Nunes de Carvalho and Sá v. Portugal (2018) establish clear requirements for social security systems. These requirements include accessibility, whereby individuals must have effective access to judicial review of administrative decisions; independence, meaning tribunals deciding social security disputes must be independent from the executive; fairness, requiring procedures to provide equality of arms and adequate opportunity to present one's case; and reasonableness, stipulating that any limitations on social security entitlements must be proportionate and justified.

Case law assessment and compatibility analysis. Following the Dauti case, Albania undertook a series of legislative and judicial reforms to address identified incompatibilities with ECHR (1950) standards. To provide a comprehensive overview of Albania's legislative response to ECtHR requirements, Table 1 presents the chronological evolution of social security legislation and related judicial decisions. This timeline illustrates the gradual alignment of Albanian law with European human rights standards, highlighting both progress achieved and persistent challenges in the reform process. The legislative trajectory follows a pattern of incremental reform prompted by external judicial assessment. While the 2011 amendments addressed the fundamental issue identified in the Dauti case by removing the "finality" provision, structural deficiencies concerning the appointment and independence of Appeals Commission members remained unaddressed. The judicial interpretation through the 2021 Unifying Decision helped clarify standards of review, but subsequent amendments in 2023 continued to focus on procedural refinements rather than fundamental structural reforms. This evolutionary pattern reveals a tendency toward achieving formal rather than substantive compliance with European standards. The reforms addressed the explicit requirements identified by the ECtHR while leaving underlying structural problems largely intact, creating a system that permits judicial review in principle but may still present practical barriers to effective protection of social security rights.

Table 1. Evolution of Albanian social security legislation in response to ECtHR decisions

Period	Legislative Act	Key Provisions	Compliance with ECtHR Standards
1993	Law of Albania No. 7703 (1993)	Establishment of a comprehensive social insurance system; decisions of the Medical Commission for Assignment of Work Ability Superior (MCAWA Superior) were final; appeals possible only to the Appeals Commission	Non-compliance with Article 6(1) ECHR (1950) – lack of judicial review of administrative decisions
2009	Case of Dauti v. Albania (2009)	ECtHR found a violation of Article 6 ECHR due to the absence of judicial review of Medical Commission decisions	Establishment of standards for Albania's social security system
2011	Law of Albania No. 10447 (amendments to Law No. 7703 (1993))	Elimination of the "finality" provision for Appeals Commission decisions; granting the right to judicial review; establishing access to administrative courts	Partial compliance with Article 6(1) ECHR (1950) – ensuring the right to judicial review, but preservation of structural independence issues
2021	Unifying Decision of the Constitutional Court of the Republic of Albania No. 113 (2021)	Establishment of principles regarding the scope of judicial review; defining the balance between respect for medical expertise and effective judicial protection	Improved compliance through judicial interpretation of ECHR (1950) requirements
2023	Law of Albania No. 64 (2023)	Refinement of procedural timelines for appeals; expansion of documentation requirements for medical assessments	Further alignment with procedural aspects of Article 6, but preservation of structural deficiencies

Source: compiled by the authors

This observation aligns with findings from international monitoring bodies that consistently note progress in legislative alignment while highlighting implementation challenges. The European Commission's assessments acknowledge Albania's efforts to reform its social protection frameworks but identify continuing concerns regarding accessibility for vulnerable groups (European Commission, 2024). Similarly, the Regional Cooperation Council's review positions Albania's reforms within a regional context, recognising progress while noting the need for further development in coverage and adequacy (Ymeri, 2023).

The case of Dauti v. Albania (2009) represents a watershed moment in the alignment of Albanian social security legislation with European human rights standards. The case

concerned Mr. Ramiz Dauti, who had been diagnosed with physical incapacity for work caused by an accident during working and sought disability benefits. After the MCAWA classified him with Group II disability, he later appealed when his condition worsened. The MCAWA Superior reclassified him with a less severe Group III disability, reducing his benefits. Crucially, under the then-applicable Article 39/1 of Law of Albania No. 7703 (1993), this decision could only be appealed to an Appeals Commission whose decisions were deemed "final" with no provision for judicial review.

The European Court of Human Rights found that this arrangement violated Article 6(1) of the ECHR (1950), which guarantees the right to a fair trial before an independent and impartial tribunal. The Court's analysis centered on two critical aspects: first, whether social security disputes fall within the ambit of "civil rights and obligations", and second, whether the Appeals Commission constituted an "independent and impartial tribunal established by law". On the first point, the Court confirmed its established practice, according to which disputes concerning social benefits fall under Article 6(1) of the ECHR. In the case of Dauti v. Albania (2009), it was noted: "The Court recalls that according to its practice, processes regarding social benefits belong to the civil sphere of application of Article 6". This provision is important as it establishes that procedural guarantees should apply to all social security disputes in Albania. Case of Schuler-Zgraggen v. Switzerland (1993) and Case of Mennitto v. Italy No. 33804/96 (2000) clearly defined that dispute about social benefits are considered "civil" in the sense of Article 6(1) of ECHR, as they concern individual rights arising from legislative norms, not discretionary social payments. In the case of Grand Chamber Decision as to the Admissibility Nos. 65731/01 and 65900/01 (2005), the Court further clarified that contribution-based payments (such as pensions or disability benefits) definitely belong to "civil rights", while non-contributory payments may require individual assessment. For Albania, the decision in the Dauti case is of fundamental importance as it confirms that all social security disputes – whether pensions, health insurance, or disability benefits – must meet the requirements for procedural fairness, including access to an independent tribunal.

On the second point, the Court conducted a detailed analysis of the Appeals Commission structure, finding that it does not meet the independence requirements under Article 6(1) of the ECHR. The Court noted that the Appeals Commission was subordinate to the Medical Commission whose decisions it reviewed, its members were appointed by administrative bodies, and there were no guarantees of protection from external pressure. Drawing on principles established in case of Le Compte, Van Leuven and De Meyere v. Belgium (1981), the Court emphasised that tribunals must be independent of both the executive power and the parties to the case. In particular, the following key deficiencies were identified: Institutional subordination: The Appeals Commission was structurally subordinate to the Medical Commission whose decisions it reviewed, creating a conflict of interest (Judgment European Court of Human Rights in the Case No. 22107/93, 1995). Commission members were appointed by administrative bodies without guarantees of protection from political influence (Judgment European Court of Human Rights in the Case No. 7819/77, 1982). The legislation contained no provisions protecting commission members from arbitrary dismissal or external pressure (Judgment European Court of Human Rights in the Case No. 6878/75, 1981). The Court emphasised that a tribunal should be free from hierarchical or institutional connections with bodies whose activities it controls (Judgment European Court of Human Rights in the Case No. 22237/93, 1996). These requirements are also confirmed by international standards, particularly the UN "Basic Principles on the Independence of the Judiciary" (1985) and C102 – Social Security (Minimum Standards) Convention (1952) (Article 70), which provide that appeals in social security require independent judicial or quasi-judicial review. In the Dauti case, the dependence of the Appeals Commission on the Medical Commission violated the principle that "no one can be a judge in their own case" from Judgment European Court of Human Rights in the Case No. 8692/79 (1982).

The immediate implication of this judgment was the need for Albania to amend its legislative framework to provide for judicial review of social security decisions. This represented a fundamental shift in approach, challenging the administrative finality that had previously characterised the social security appeals system. The Court's decision effectively established that administrative expertise in specialised fields like disability assessment cannot override the requirement for independent judicial oversight of administrative decisions affecting individual rights. The culmination of this judicial evolution is found in a Unifying Decision of the Administrative College of the High Court, which established binding precedent on the scope of judicial review in disability benefit cases. The Court affirmed that while judges are not medical specialists and should respect the technical expertise of medical commissions, they must nonetheless conduct a comprehensive review of both procedural and substantive aspects of these decisions. This approach reflects the careful balance articulated by the ECtHR between respecting specialised administrative expertise and ensuring effective judicial protection. This evolutionary trajectory in Albanian jurisprudence demonstrates a progressive integration of ECHR standards into domestic judicial reasoning. From initial recognition of the right to judicial review to sophisticated elaboration of the scope and standards of that review, Albanian courts have increasingly embraced the substantive dimensions of the right to a fair trial in the social security context. This development represents a significant advancement in the protection of social rights through procedural guarantees.

Despite the significant progress represented by the 2011 amendments and subsequent judicial interpretation, systematic analysis reveals several persistent compatibility gaps between Albanian social security legislation and ECHR (1950) standards. These gaps can be categorised as structural, procedural, and substantive. This case illustrates how procedural formalities continue to undermine effective access to justice despite legislative reforms. Similarly, in case Kraja v. Appeals Commission No. 653 (2020), the Administrative Court of Durrës documented substantial delays in the adjudication of disability appeals, with the court noting that the average waiting period of 14 months for appeals processing effectively denied timely access to benefits for vulnerable applicants. The court specifically referenced the ECHR principle that "justice delayed is justice denied" and concluded that while formal appeal mechanisms existed, their practical implementation failed to meet the standards of accessibility required under Article 6 of the ECHR. These cases demonstrate that despite structural changes to permit judicial

review, both procedural obstacles (refusal to consider relevant evidence) and practical barriers (excessive delays) continue to impede effective access to justice for persons with disabilities. This pattern of post-reform jurisprudence indicates that legislative amendments have achieved formal rather than substantive compliance with ECHR standards, leaving significant gaps particularly affecting vulnerable populations.

Structurally, the most significant gap prior to the 2011 reforms was the absence of judicial review for decisions of the MCAWA Superior, identified by the ECtHR in the Dauti case. Law No. 10447 (2011) addressed this fundamental incompatibility by amending Article 39/1 to permit judicial review. However, the amended provision initially retained ambiguous language regarding the "final" nature of administrative decisions, creating interpretative uncertainty that required subsequent clarification by the Constitutional Court. A persistent structural issue concerns the composition and appointment mechanism of the Appeals Commission. While the ECtHR in the case of Dauti v. Albania (2009) identified concerns about the Commission's independence, the 2011 reforms did not substantially alter its composition or appointment process. This arrangement continues to fall short of the standards articulated in case of Benthem v. The Netherlands (1985), which emphasises the importance of appointment procedures that safeguard independence from executive influence.

Procedurally, significant improvements have been achieved through the establishment of judicial review, but questions remain regarding the equality of arms and accessibility of the appeals process. The administrative appeals system continues to require exhaustion before judicial review can be sought, potentially creating barriers for vulnerable applicants. These persistent procedural challenges reflect broader patterns in Albania's legal harmonisation efforts. R. Kau and J. Gjika (2022) identify similar gaps between Albanian procedural frameworks and European requirements in their analysis of civil procedure, particularly noting how formal adoption of European standards often precedes effective procedural implementation. In their other reveals that even when Albanian courts formally acknowledge European procedural standards, practical application frequently remains inconsistent, creating legal uncertainty for vulnerable parties – a pattern that parallels experience in social security appeals (Gjika & Kau, 2024). This evidence suggests that procedural barriers in social security cases represent a systemic feature of Albania's legal development rather than isolated deficiencies.

Substantively, the most significant remaining gap concerns the standard of review applied by courts when examining medical determinations. In practice, courts often demonstrate deference to medical expertise (Kimatova *et al.*, 2025). This tension between respect for specialised knowledge and effective judicial protection remains inadequately resolved in the legislative framework, leaving courts to navigate this balance through case-by-case determination (Dostanova *et al.*, 2024). The systematic assessment of compatibility between Albanian social security legislation and European Convention on Human Rights standards reveals several persistent gaps despite significant reform efforts. Table 2 presents the key areas where legislative alignment remains incomplete, providing a structured overview of violations identified in ECtHR jurisprudence, reforms implemented to address these deficiencies, and remaining concerns that require further attention.

Table 2. Compatibility gaps and legislative reforms in Albanian social security system

Compatibility Gap	ECHR Standard Violated	Legislative/Judicial Reform	Remaining Concerns
Lack of judicial review for MCAWA Superior decisions	Article 6(1) – Right to tribunal	Law of Albania No. 10447 (2011) amended Article 39/1 to permit judicial review	Initial ambiguity regarding the "final" nature of administrative decisions
Independence concerns with Appeals Commission	Article 6(1) – Independent tribunal	Limited structural reform of Appeals Commission appointment process	Continued ministerial appointment of Commission members raises independence questions
Unclear scope of judicial review	Article 6(1) – Full jurisdiction	Unifying Decision of the Constitutional Court of the Republic of Albania of Albania No. 113 (2021) established scope of review principles	Practical implementation challenges regarding technical medical assessments
Accessibility barriers to judicial review	Article 6(1) – Access to court	Procedural law provisions for legal aid	Practical barriers including costs, complexity, and delays
Inadequate protection of legitimate expectations	Article 1, Protocol 1 – Property rights	Limited comprehensive reform addressing continuity of benefits during appeals	Uncertainty during appeals process potentially affecting livelihood

Source: compiled by the authors

The reforms implemented following the Case of Dauti v. Albania (2009) judgment have addressed the most fundamental compatibility issue by establishing judicial review of administrative decisions. However, significant concerns persist regarding the structural independence of review bodies, practical accessibility of appeal mechanisms, and the substantive protection of property rights during appeal processes. These findings align with observations made by I I.K. Melo and N. Rusi (2024) regarding the challenges in implementing ECtHR jurisprudence in domestic legal frameworks. M. Leskoviku and K. Kaçupi (2023) further highlight this pattern in their analysis of Albania's journey toward EU integration, noting that the country consistently struggles with practical implementation of formally adopted European standards across multiple sectors. This systematic gap between legislative adoption and effective implementation is similarly documented by M. Bregu (2023), who examines how despite the EU's normative influence driving

formal human rights protections, institutional transformation lags behind. The identified gaps suggest that while formal legislative compliance has improved significantly, practical implementation requires further structural and procedural reforms to fully align with ECHR standards established in cases such as case of Benthem v. The Netherlands (1985) and case of Ramos Nunes de Carvalho and Sá v. Portugal (2018). B. Hajdini and G. Skara (2022) provide additional evidence of this implementation gap in their analysis of how ECHR standards are unevenly applied in Albanian administrative contexts, despite formal recognition in legislation. E. Xhuvani and N. Mecalla (2023) reinforce this conclusion through their case study of Albania's EU harmonisation process, which identifies a persistent pattern of adopting European legal frameworks without fully implementing the corresponding procedural guarantees. These persistent implementation gaps demonstrate that Albania's social security system remains in a transitional state of compliance – having achieved important formal legislative alignment while still requiring substantial institutional reforms to ensure the practical effectiveness of human rights protections for vulnerable citizens.

Findings and recommendations for enhancing compliance. The analysis of Albanian social security legislation reveals a mixed landscape of compliance with European Convention on Human Rights standards. Following the landmark the case of Dauti v. Albania (2009) and subsequent reforms, significant progress has been achieved in aligning the legal framework with Article 6 requirements, though several areas of concern persist. However, compliance assessment must extend beyond formal legislative provisions to examine practical implementation. In this regard, several concerns emerge. First, the reformed system continues to maintain a sequential appeal process requiring exhaustion of administrative remedies before accessing judicial review. While this structure is not inherently incompatible with ECHR standards, it creates potential barriers for vulnerable applicants, particularly those with limited resources or urgent needs. The European Commission notes persistent practical obstacles to accessing justice, especially for economically disadvantaged groups (European Commission, 2024). This suggests that formal compliance has not fully translated to effective access to justice.

Through comprehensive examination of the normative framework as outlined in the first research task, the independence of the administrative appeals structure also remains questionable. Despite the 2011 reforms (Law of Albania No. 10447, 2011), the Appeals Commission continues to operate under ministerial authority, with members appointed through administrative processes that may not sufficiently insulate them from executive influence. This arrangement falls short of the independence standards articulated in cases such as case of Benthem v. The Netherlands (1985) and case of Morice v. France (2015), which emphasise structural independence as essential to impartial adjudication.

In accordance with the second research task of evaluating key jurisprudence and identifying gaps in compliance, a significant area of partial compliance concerns the standard of review applied in social security cases. While Albanian courts now formally recognise their obligation to conduct comprehensive review of both procedural and substantive aspects of administrative decisions, in practice judicial deference to medical expertise often results in limited scrutiny of the substantive determinations affecting benefit entitlements. This tension between respecting specialised expertise and ensuring effective judicial control remains inadequately resolved, creating potential compatibility issues with the "full jurisdiction" requirement under Article 6 of the European Convention on Human Rights (1950).

The current compliance status might best be characterised as formal alignment with fundamental ECHR requirements but with remaining shortcomings in practical implementation and structural independence. This assessment aligns with the broader observation in the Council of Europe's review of Albania's social protection framework regarding progress in legislative alignment but persistent gaps in implementation and accessibility (Council of Europe Portal, n.d.). International monitoring bodies have provided valuable external assessment of Albania's reforms in the social security domain, offering perspectives that help contextualise national efforts within broader European standards. These assessments reveal a nuanced view of Albania's progress in aligning its social security system with human rights requirements.

The European Commission's assessments provide a broader context for understanding Albania's reform trajectory. The Commission acknowledges progress in aligning social protection frameworks with European standards but identifies continuing challenges regarding uneven implementation and concerns about vulnerable groups' access to benefits and services (European Commission, 2024). This assessment suggests that formal legislative compliance has not yet translated into consistently effective protection of social rights. The United Nations Human Rights Council's Universal Periodic Review outcomes for Albania note progress in developing legal frameworks for social protection while recommending strengthened implementation mechanisms and enhanced accessibility for marginalised communities (UPR Outcomes for Albania, 2025). This assessment reinforces the pattern observed across international bodies: recognition of legislative progress coupled with concerns about practical implementation.

The Regional Cooperation Council's performance review of Western Balkan economies provides a comparative regional perspective, positioning Albania's social security reforms within broader European social rights standards. This assessment identifies Albania's social security system as evolving toward European standards but requiring further development in coverage, adequacy, and non-discrimination (Ymeri, 2023). The identification of these specific weaknesses aligns with potential ECHR compatibility concerns regarding effective protection of social rights and non-discrimination. Collectively, these international assessments reflect a consensus that Albania has made significant progress in the formal alignment of its social security legislation with European standards following the Dauti judgment (2009), but that substantial work remains to ensure effective implementation, particularly regarding accessibility for vulnerable groups and the practical functioning of appeal mechanisms. This external perspective reinforces the finding that compliance remains partial and those further reforms are needed to fully align Albanian practice with ECHR (1950) requirements.

Addressing the third research task of developing evidence-based proposals for strengthening oversight mechanisms, the following recommendations aim to enhance the alignment of Albanian social security legislation with European Convention on Human Rights (1950) standards. First,

to address structural gaps identified throughout this study, the current structure of the Appeals Commission continues to raise concerns regarding independence from executive influence. Legislative reform should establish an independent appeals tribunal with members appointed through a transparent, merit-based process involving judicial oversight (Khazhanets, 2024). This reformed body should operate with functional independence from ministerial authorities, with secure tenure for members and clear rules against conflicts of interest. Such reforms would address the structural independence concerns identified in case of Dauti v. Albania (2009) and align more fully with the standards articulated in cases such as case of Morice v. France (2015).

Second, to strengthen procedural guarantees in line with ECHR requirements, while judicial review now provides a crucial safeguard, the administrative phase of appeals remains the primary forum for most claimants. Legislative amendments should strengthen procedural guarantees at this stage, including explicit provisions for legal representation, access to relevant medical evidence, opportunities to present expert opinions, and reasoned decisions. These reforms would enhance compliance with the "equality of arms" principle under Article 6 of the European Convention on Human Rights (1950) and potentially reduce the need for judicial proceedings by resolving more cases fairly at the administrative level. Third, to address substantive compliance issues identified in the research, legislative provisions should explicitly clarify the scope of judicial review in social security cases, particularly regarding medical determinations. The legislation should establish that while courts should respect specialised expertise, they must conduct independent assessment of whether administrative decisions are substantiated by evidence and reasoned in a manner that satisfies legal requirements (Cherevko, 2025). This would address the tension between deference to expertise and effective judicial control, enhancing compliance with the "full jurisdiction" requirement under Article 6 of the European Convention on Human Rights (1950). Fourth, to improve practical accessibility as highlighted in our analysis of implementation gaps, legislative reforms should address practical barriers to accessing review mechanisms, including provisions for expedited procedures in urgent cases, reduced formal requirements for vulnerable applicants, and expanded legal aid specifically targeted at social security disputes. Article 6 of the European Convention on Human Rights (1950) not only requires the existence of judicial review but effective access to it, and these reforms would enhance practical compliance with this requirement. Fifth, to safeguard property rights during appeal processes, to address potential violations of Article 1 of Protocol No. 1 (protection of property) of the ECHR (1950), legislation should provide for continuity of benefits during appeal processes in cases where termination or reduction would create significant hardship. This would protect the legitimate expectations of beneficiaries while their claims are under review. Finally, to ensure ongoing assessment of progress toward full compliance, legislative provisions should establish systematic monitoring of appeal outcomes, processing times, and accessibility indicators, with regular reporting requirements to parliament (Vozniuk & Hryha, 2024). This data-driven approach would facilitate evidence-based assessment of the effectiveness of the appeal system and identification of areas requiring further reform. Such monitoring would also facilitate compliance with reporting obligations to international bodies including the Council of Europe Portal (n.d.).

To enhance compliance with Article 14 of the of the ECHR (1950) in conjunction with other Convention rights, explicit non-discrimination provisions should be incorporated into social security legislation, with particular attention to potentially vulnerable groups. The need for such provisions is evidenced by significant documented disparities affecting multiple vulnerable populations in Albania. According to the UN Committee on Economic, Social and Cultural Rights, only 23% of Roma families in Albania receive social assistance despite eligibility, with discriminatory administrative practices identified as a key barrier (UN Committee on Economic..., 2024). The Council of Europe Commissioner for Human Rights has reported that 68% of Roma and Egyptian applicants face exclusion from benefits due to language barriers or documentation issues, demonstrating persistent implementation gaps affecting these communities (National Action Plan…, 2022; Commissioner for Human Rights, 2023).

For persons with disabilities, the 2023 Country Reports on Human Rights Practices documents that approximately 40% of disability claims are rejected due to procedurally inaccessible application mechanisms (U.S. Department of State, 2022; 2024), while the European Disability Forum ranked Albania lowest among Western Balkan countries for disability inclusion in social protection systems (Suárez, 2024). Gender disparities are similarly pronounced, with UN Women (n.d.) revealing that women constitute 72% of denied unemployment claims, often linked to gender-biased assessment criteria.

To address these documented disparities, legislation should establish comprehensive monitoring mechanisms, including mandatory annual disparity audits and positive action clauses modelled after successful implementations in neighbouring countries. The World Bank has specifically recommended such reforms for Albania, noting that targeted non-discrimination provisions represent a critical opportunity for advancing social protection effectiveness (Advancing social protection..., 2023). These provisions should address both direct and indirect discrimination and establish effective mechanisms to identify and address disparities in access or outcomes across all vulnerable groups, consistent with standards established in cases such as case of Caruso v. Italy (2022).

Addressing these implementation gaps requires a comprehensive approach to building institutional capacity. I. Broerse (2024), M. Kapo and S. Ibrahımı (2025) emphasise the critical role of legal education in systematically integrating European human rights standards into Albanian legal practice, arguing that effective implementation requires not only legislative changes but also cultural transformation within administrative and judicial bodies. This perspective underscores that comprehensive training programs for all personnel involved in social security administration and appeals represent an essential component of effective reform, as sustainable implementation depends on developing institutional knowledge and commitment to rights-based approaches.

The Albanian social security system has undergone significant reforms, particularly following the Dauti v. Albania (2009) case. These reforms aimed to align the system with the European Convention on Human Rights (1950), especially ensuring the right to judicial review of decisions concerning disability benefits. However, while legislative changes have been made, several gaps remain in the

system's structural, procedural, and substantive aspects. Issues such as the independence of the Appeals Commission and the accessibility of the appeals process for vulnerable populations continue to impede the system's full compliance with ECHR standards. Despite improvements in procedural timelines and documentation requirements, practical barriers still hinder effective access to justice for many claimants. Therefore, further reforms are necessary to not only improve formal compliance but also address these persistent practical challenges, ensuring that Albania's social security system provides effective protection of social rights in accordance with European standards.

Conclusions

This study examined the compatibility of Albania's social security legislation with the European Convention on Human Rights, particularly focusing on post-reform implementation gaps. The research aimed to assess how well Albania's legislative amendments, specifically following the landmark Dauti v. Albania case, align with the ECHR's standards, especially regarding judicial review of disability benefit decisions. The study successfully identified the key areas where reforms had been made and areas where significant gaps remain.

The research involved a comprehensive analysis of Albanian social security law, including Law No. 7703 and its amendments, in relation to ECHR principles, especially Article 6, which guarantees the right to a fair trial. The study also reviewed relevant case law, such as Dauti v. Albania and Strazimiri v. Albania, to identify compatibility issues in Albania's legal framework. It was found that while judicial review of social security decisions was introduced after the 2011 amendments, structural issues, such as the independence of the Appeals Commission and the accessibility of the appeals process, still persist. The analysis of these gaps revealed that while some progress has been made, procedural barriers and a lack of substantial reform in key areas continue to affect the system's compliance with European standards.

The results of the study showed that despite legal amendments, Albania's social security system remains in a transitional state. Structural deficiencies, such as the ongoing ministerial appointment of Appeals Commission members, and procedural challenges, including unequal access to appeals for vulnerable groups, undermine the full realisation of the right to judicial review. The analysis also revealed that while Albania has made significant strides in formal compliance with ECHR requirements, the practical implementation of these changes has been slow, often leaving vulnerable populations without effective protection. These findings allow us to conclude that Albania must continue its legislative reforms to ensure that social security decisions are not only legally reviewed but that such reviews are accessible, impartial, and independent.

Summarising the results obtained, it can be noted that Albania's alignment with ECHR standards has improved in some respects, particularly in terms of judicial review, but the system still faces significant challenges in achieving full compliance. The research emphasises the importance of continuing reforms in the areas of structural independence, procedural accessibility, and substantive protection for individuals, especially vulnerable groups. Conceptually, the study indicates that Albania's progress has been more formal than substantive, suggesting that further legislative and institutional changes are required to ensure effective protection of citizens' rights in social security matters.

For further research, a deeper examination of the practical application of judicial review in social security cases is needed, especially regarding the independence of tribunals and accessibility for marginalised groups. Additionally, a comparative analysis of the implementation of ECHR standards in other Western Balkan countries could provide valuable insights into the broader regional challenges and solutions. Despite the limitations of this study, including the reliance on secondary data and the absence of primary empirical evidence from post-reform cases, it highlights important areas that require further scholarly attention and reform.

Acknowledgements

None.

Funding

The study was not funded.

Conflict of interest

None.

References

[1] Advancing social protection and opportunities for reform in the Western Balkans. (2023). Retrieved from https://www.worldbank.org/en/region/eca/brief/advancing-social-protection-and-opportunities-for-reform-in-the-western-balkans.

[2] Basic Principles on the Independence of the Judiciary. (1985, September). Retrieved from https://surl.lu/cqifvj.

[3] Bregu, M. (2023). The role of the EU as a normative power on the protection of human rights in Albania. *Security Studies*, 17(2), 38-46.

[4] Broerse, I. (2024). The Italy-Albania agreement: Externalising asylum procedures in violation of Human Rights. *ACMRL Migration Law Series*, 26. doi: 10.71881/51abe5cb-92a2-4de9-8395-9323bdc7f75c.

[5] C102 – Social Security (Minimum Standards) Convention. (1952, June). Retrieved from https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312247:NO.

[6] Cherevko, N. (2025). Mechanisms for monitoring the implementation of the European Social Charter and their significance for the Member States. *Scientific Journal of the National Academy of Internal Affairs*, 30(1), 60-70. doi: 10.63341/naia-herald/1.2025.60.

[7] Commissioner for Human Rights. (n.d.). *Albania*. Retrieved from https://www.coe.int/en/web/commissioner/country-work/albania.

[8] Council of Europe Portal. (n.d.). *Albania*. Retrieved from https://www.coe.int/en/web/european-social-charter/albania.

[9] Decision of the Constitutional Court of the Republic of Albania No. 113. (2021, October). Retrieved from https://www.gjykatakushtetuese.gov.al/wp-content/uploads/2024/12/vend.mosk .113 21.docx.

[10] Dostanova, Z., Yermukhanova, L., Blaževičienė, A., Baigozhina, Z., Taushanova, M., Abdikadirova, I., & Sultanova, G. (2024). Perception and experience of independent consultations in primary healthcare among registered nurses in Kazakhstan: A qualitative study. *Healthcare (Switzerland)*, 12(15), article number 1461. doi: 10.3390/healthcare12151461.

[11] European Commission. (2024). *Commission Staff Working Document "Albania 2024 report accompanying the document communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions 2024 Communication on EU Enlargement Policy"*. Retrieved from https://surl.li/zktpea.
[12] European Convention on Human Rights. (1950, November). Retrieved from https://surl.li/khxmqk.
[13] European Court of Human Rights. (2025). *Press country profile: Albania*. Retrieved from https://www.echr.coe.int/documents/d/echr/cp_albania_eng.
[14] European Social Charter. (1996, May). Retrieved from https://rm.coe.int/168007cf93.
[15] Gjika, J., & Kau, R. (2024). The infrastructure for providing electronic communication services and its impact on effective competition. *Mediterranean Journal of Social Sciences*, 15(1), 93-104. doi: 10.36941/mjss-2024-0007.
[16] Grand Chamber Decision as to the Admissibility of Applications Nos. 65731/01 and 65900/01 "Stec and Others against the United Kingdom". (2005, July). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-70087%22]}.
[17] Guzina, S., & Tiri, E. (2023). Constitutional protection of human rights in the Republic of Albania. *Interdisciplinary Journal of Research and Development*, 10(3), 22-26. doi: 10.56345/ijrdv10n3s104.
[18] Hajdini, B., & Skara, G. (2022). The right to freedom of peaceful assembly during the Covid-19 pandemic in the light of ECHR standards. *EU and Comparative Law Issues and Challenges Series*, 6, 267-286. doi: 10.25234/eclic/22430.
[19] Hoxhaj, O., & Halilaj, B. (2025). Legal and policy frameworks for sustainable digital governance in Albania: A Human Rights approach to SDG 16 compliance. *Journal of Lifestyle and SDGs Review*, 5(5), article number e06131. doi: 10.47172/2965-730X.SDGsReview.v5.n05.pe06131.
[20] Judgment European Court of Human Rights in the Case No. 14518/89 "Schuler-Zgraggen v. Switzerland". (1993, June). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57840%22]}.
[21] Judgment European Court of Human Rights in the Case No. 19206/05 "Dauti v. Albania". (2009, February). Retrieved from https://hudoc.echr.coe.int/eng?i=001-91103/.
[22] Judgment European Court of Human Rights in the Case No. 22107/93 "Alexander Findlay v. the United Kingdom". (1995, February). Retrieved from https://hudoc.echr.coe.int/eng?i=001-2051.
[23] Judgment European Court of Human Rights in the Case No. 22237/93 "John Bryan v. the United Kingdom". (1996, April). Retrieved from https://hudoc.echr.coe.int/eng?i=001-2823.
[24] Judgment European Court of Human Rights in the Case No. 29369/10 "Morice v. France". (2015, April). Retrieved from https://hudoc.echr.coe.int/eng?i=001-154265.
[25] Judgment European Court of Human Rights in the Case No. 33804/96 "Mennitto v. Italy". (2000, October). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58848%22]}.
[26] Judgment European Court of Human Rights in the Case No. 34602/16 "Strazimiri v. Albania". (2020, January). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-200452%22]}.
[27] Judgment European Court of Human Rights in the Case No. 4457/18 "Caruso v. Italy". (2022, October). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-63394%22]}.
[28] Judgment European Court of Human Rights in the Case No. 55391/13, 57728/13 and 74041/13 "Ramos Nunes de Carvalho and Sá v. Portugal". (2018, November). Retrieved from https://hudoc.echr.coe.int/eng?i=001-187507
[29] Judgment European Court of Human Rights in the Cases Nos. 6878/75 and 7238/75 "Le Compte, Van Leuven and De Meyere v. Belgium". (1981, June). Retrieved from https://hudoc.echr.coe.int/eng?i=001-57522.
[30] Judgment European Court of Human Rights in the Cases Nos. 7819/77 and 7878/77 "John Joseph Campbell and Patrick Fell against United Kingdom: Report of the Commission". (1982, May). Retrieved from https://www.stradalex.com/en/sl_src_publ_jur_int/document/echr_7819-77_001-73569.
[31] Judgment European Court of Human Rights in the Case No. 8692/79 "Piersack v. Belgium". (1982, October). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57557%22]}.
[32] Judgment European Court of Human Rights in the Case No. 8848/80 "Benthem v. The Netherlands". (1985, October) Retrieved from https://hudoc.echr.coe.int/eng?i=001-57436.
[33] Judgment of the Administrative Court of Durrës in Case No. 653 "Kraja v. Appeals Commission". (2020). Retrieved from https://www.gjykata.gov.al/gjykata-administrative-e-shkalles-se-pare-durres/vendime/2020/653.
[34] Kapo, M., & Ibrahımı, S. (2025). The right to life through legal education: The Albanian legal context against euthanasia. In C.F. de Sousa Reis, M. Fodor-Garai & O. Titrek (Eds.), *Proceeding of the 10th International conference on lifelong education and leadership for all* (pp. 709-725). Dordrecht: Atlantis Press. doi: 10.2991/978-94-6463-686-4_48.
[35] Kau, R., & Gjika, J. (2022). Lis pendens in the Albanian Civil Procedural Code in the light of the European Legislation. *Jus & Justicia*, 16(2), 69-80. doi: 10.58944/oaeq8412.
[36] Khazhanets, V. (2024). Current challenges of ensuring patients' rights in Europe and the USA. *Law. Human. Environment*, 15(3), 121-136. doi: 10.31548/law/3.2024.121.
[37] Kimatova, K., *et al.* (2025). Needs of older adults in Kazakhstan: Analysis and psychometric properties of the localized version of the EASYCare standard 2010 instrument. *Frontiers in Public Health*, 13, article number 1487827. doi: 10.3389/fpubh.2025.1487827.
[38] Konini, I., Elezi, A., & Rokaj, I. (2024). A fair trial perspective on Albanian Law No. 19/2016 "On Additional Measures for Public Security": Aligning with European Human Rights Standards. *Academic Journal of Interdisciplinary Studies,* 13(4), 82-98. doi: 10.36941/ajis-2024-0101.
[39] Kortoci, T.N., & Macukulli, S. (2021). The functionality of the social security scheme in Albania: Challenges and perspectives. In *Social security in the Balkans – volume 1: An overview of social policy in Croatia, Albania, Bosnia and Herzegovina, Greece, Romania and Bulgaria* (pp. 75-110). Leiden: Brill. doi: 10.1163/9789004466579_005.

[40] Law of Albania No. 10447 "On Some Additional Provisions on the Law 7703/1993 "On Social Security". (2011, July). Retrieved from https://rm.coe.int/native/09000016804a6af6.
[41] Law of Albania No. 64/2023 "On Some Additions and Amendments to Law No. 7703, Dated 11.5.1993, "On Social Security in the Republic of Albania". (2023, July). Retrieved from https://gosnishti.com/wp-content/uploads/2023/08/Ligj-nr.-64-2023-date-21.07.2023-Per-disa-shtesa-dhe-ndryshime-ne-ligjin-nr.-7703-date-11.05.1993-Per-sigurimet-shoqerore-ne-RSh-te-ndryshuar1.pdf.
[42] Law of Albania No. 7703 "On Social Security in the Republic of Albania". (1993, May). Retrieved from https://www.issh.gov.al/wp-content/uploads/2014/05/Kapitulli-1.pdf.
[43] Law of Albania No.9136 "On the Collection of Mandatory Social and Health Insurance Contributions in the Republic of Albania". (2003, September). Retrieved from https://www.issh.gov.al/wp-content/uploads/2022/04/Ligj 9136 11092003 perditesuar-2017.pdf.
[44] Leci, E. (2023). *The right to privacy in Albania. Its compliance with EU GDPR and current challenges*. Tirana: Epoka University.
[45] Leskoviku, M., & Kaçupi, K. (2023). Albania's journey towards EU integration and accession in the field of rule of law and Human Rights. In *EU enlargement and the Western Balkans: Current challenges and prospects: Conference proceedings* (pp. 87-98). Tirana: Institute of European Studies.
[46] Melo, I.K., & Rusi, N. (2024). Social impact of governmental policies on property rights in Albania in the spirit of ECtHR jurisprudence. *Journal of Educational and Social Research,* 14(4), 191-200. doi: 10.36941/jesr-2024-0096.
[47] Mustafa, A., & Gerovska-Mitev, M. (2022). Social protection expenditure and redistribution in the Western Balkans. *Journal of International and Comparative Social Policy*, 38(2), 135-152. doi: 10.1017/ics.2022.1.
[48] National Action Plan for Equality, Inclusion and Participation of Roma and Egyptians in Albania. (2022, April). Retrieved from https://www.undp.org/albania/publications/national-action-plan-equality-inclusion-and-participation-roma-and-egyptians-albania.
[49] National Social Protection Strategy (2024-2030) and the Action Plan for its Implementation. (2024, March). Retrieved from https://natlex.ilo.org/dyn/natlex2/r/natlex/fe/details?p3_isn=116463.
[50] Pjetri, A. (2024). The legal regime of cohabiting in inheritance law in the Republic of Albania. *Perspectives of Law and Public Administration*, 13(3), 352-358. doi: 10.62768/PLPA/2024/13/3/01.
[51] Riza, G. (2021). GDPR and personal data protection in non- EU countries: Albanian case of data protection legislation. *Proceedings of RTA-CSIT 2021*. Retrieved from https://ceur-ws.org/Vol-2872/short06.pdf
[52] Skara, G. (2022). Europeanisation of Albanian competition law: Roles and perspectives of private Enforcement. In *Europeanisation of private enforcement of competition law; The case of Albania* (pp. 217-290). Cham: Springer. doi: 10.1007/978-3-030-97034-5_6.
[53] Suárez, N. (2024) *EDF Annual Report 2023*. Retrieved from https://www.edf-feph.org/publications/edf-annual-report-2023/.
[54] Tiri, E., & Aliaj, E. (2024). Promotion of Human Rights in Albania in light of its perspective of integration into the European Union. *Bulletin of the Transilvania University of Braşov. Series VII: Social Sciences*, 16(65), 73-80. doi: 10.31926/but.ssl.2023.16.65.3.9.
[55] U.S. Department of State. (2022). *2021 country reports on human rights practices: Albania*. Retrieved from https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/albania.
[56] U.S. Department of State. (2024). *2023 country reports on human rights practices: Albania*. Retrieved from https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/albania/.
[57] UN Committee on Economic, Social and Cultural Rights issues findings on Albania, Cyprus, Honduras, Iceland, Kyrgyzstan, Malawi and Poland. (2024). Retrieved from https://www.ohchr.org/en/press-releases/2024/09/un-committee-economic-social-and-cultural-rights-issues-findings-albania.
[58] UN Women. (n.d.). *Albania*. Retrieved from https://data.unwomen.org/country/albania.
[59] United Nations Human Rights Council. (2025). *Adoption of UPR outcomes Albania*. Retrieved from https://gchragd.org/wp-content/uploads/2025/02/Albania-UPR-Outcomes.pdf.
[60] Vozniuk, A., & Hryha, M. (2024). Improper performance of professional duties by medical and pharmaceutical professionals: Current status and problems of counteraction. *Law Journal of the National Academy of Internal Affairs*, 14(2), 9-19. doi: 10.56215/naia-chasopis/2.2024.09.
[61] Xhuvani, E., & Mecalla, N. (2023). Case study on integration process of Albania towards EU: Harmonisation of domestic legislation with that of EU. *Access to Justice in Eastern Europe*, 21(4), 253-264. doi: 10.33327/AJEE-18-6.4-n000404.
[62] Ymeri, S. (2023). *Performance of Western Balkan economies regarding the European Pillar of Social Rights; 2022 Review on Albania*. Sarajevo: Regional Cooperation Council.

Сумісність закону «Про соціальне забезпечення в Республіці Албанія» з Європейською конвенцією прав людини

Грізельда Мухаметадж Гума
Доктор філософії, асистуючий професор
Тиранський університет
1010, вул. Матері Терези, 183, м. Тирана, Албанія
https://orcid.org/0009-0002-2088-7668
Етьєн Ісак
Доктор філософії
Школа магістратури
1019, вул. Ана Комнена, м. Тирана, Албанія
https://orcid.org/0009-0006-2056-3611

Анотація. У цьому дослідженні розглянуто сумісність албанського законодавства про соціальне забезпечення як з Конституцією Республіки Албанія, так і з Європейською конвенцією з прав людини, зосереджуючись, зокрема, на правових питаннях, що виникли після знакової справи «Дауті проти Албанії». Використовуючи нормативно-правовий аналіз та порівняльно-правову оцінку, у цій ключовій справі Європейський суд з прав людини визначив, що Албанія порушила статтю 6 Конвенції, відмовивши в ефективному судовому перегляді рішень Медичної комісії щодо допомоги по інвалідності. У дослідженні проаналізовано Закон № 7703 «Про соціальне забезпечення в Республіці Албанія» та його зміни, внесені Законом № 10447, які були впроваджені у відповідь на рішення Європейської конвенції з прав людини. Незважаючи на те, що Комітет міністрів закордонних справ Ради Європи опублікував звіт, у якому зазначалося, що ці зміни врахували висновки Суду, дослідження показало, що значні проблеми сумісності зберігаються. Адміністративна колегія Високого суду Албанії пізніше визначила, що, незважаючи на законодавчі зміни, несумісність закону зі статтею 6 Конвенції продовжується, і передала це питання до Конституційного Суду для перегляду. Ця справа зрештою призвела до об'єднуючого рішення, яке мало суттєве значення в албанській судовій практиці, а Високий суд підтвердив, що доступ до судів для осіб з інвалідністю має бути гарантований незалежно від будь-яких законодавчих обмежень. Дослідження виявило постійні прогалини у трьох категоріях: структурні (недосконалі механізми призначення членів Апеляційної комісії), процедурні (рівність сторін та обмежена доступність) та матеріальні (невідповідні стандарти перегляду медичних висновків). Дослідження робить висновок, що, хоча формальні зміни були внесені, Албанія повинна запровадити подальші реформи для забезпечення практичної ефективності судового захисту у справах соціального забезпечення, особливо для вразливих груп, таких як особи з інвалідністю

Ключові слова: судовий перегляд; адміністративні апеляції; справедливий суд; медична комісія; виплати по інвалідності

UDC 342.9
DOI: 10.32518/sals2.2025.250

Соціально-правові студії. 2025. Т. 8, № 2
Social & Legal Studios. 2025. Vol. 8, No. 2

Impact of digitalisation on the justice system: Challenges of administrative justice

Nadiya Ilchyshyn*
Doctor of Law
Lviv State University of Internal Affairs
79000, 26 Horodotska Str. Lviv, Ukraine
https://orcid.org/0000-0001-6066-8772

Abstract. The relevance of this study is driven by the incomplete digitalisation of justice and the constant need to update data on the effectiveness of digital tools in justice. The purpose of the study was to summarise the existing approaches to the digitalisation of administrative justice presented in the scientific literature, law enforcement practice, regulations, and analytical reports. The methodological framework of the study included the systematic review method, which involved comparative legal, historical-legal, systemic-structural, and axiological approaches. Based on the results of the systematic review of scientific studies, it was found that digitalisation of court proceedings demonstrates patterns of development and widespread approaches to the introduction of electronic document management, submission of electronic evidence, and remote participation in various legal systems. The analysed history of research on this subject showed that the stages of development of digital tools in the judicial sphere are linked to their regulatory consolidation and adaptation. The analysis of scientific literature helped to establish that the relationship between the components of digital justice, specifically, the means of filing documents and the organisation of case consideration, is key. The study found that the current scientific discourse discusses the effects of digital solutions on the exercise of procedural rights, assesses the value of digitalisation for effective, accessible, and transparent justice, and identifies challenges and threats associated with the transformation of conventional procedures. The findings obtained are of practical significance for scholars, lawmakers, judges, and lawyers in the further development and implementation of digital tools for administrative justice

Keywords: judicial system; procedural rights and obligations; information technology; big data; artificial intelligence

Introduction

The relevance of the topic of reforming the administrative justice system in Ukraine following the requirements of the Association Agreement between Ukraine, on the one part, and the European Union, the European Atomic Energy Community and their Member States, on the other part (2014), is determined by the development of a secure information and telecommunications infrastructure for the judiciary. To this end, the introduction of secure digital communication and data transmission networks is becoming increasingly widespread in Ukraine (Limantė & Moskvytyn, 2024). Another relevant area of digital technologies' impact on administrative justice is the development of judicial information coding and the creation of catalogues of unified systems of electronic documents in the field of administrative justice. These developments allow systematising information, minimising the timeframe of court proceedings, etc. Thus, digital technologies in administrative proceedings will help to reduce the time and facilitate citizens' access to judicial protection. Legal relations in various spheres of life are regulated by digital technologies. It is significant that this process has not spared the justice sector. Thus, "among the prominent areas of application of artificial intelligence (AI) by 2030, the sphere of justice is proposed, among other things", says a report developed by Stanford University (Artificial Intelligence and Life in 2030, 2016).

Notably, in December 2018, the European Commission on the Efficiency of Judicial Proceedings, as part of the Council of Europe, approved the European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems (2019). The document sets out five principles that must be observed when using AI in judicial proceedings: non-infringement of fundamental human rights; non-discrimination, namely the prevention of any discrimination between individuals or groups of individuals; quality and security of processing court decisions and data in a secure technological environment; the principle of "user control", which means that all procedural aspects, capabilities, and functions of AI should be set out in clear language that follows Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) –

Suggested Citation **Article's History**: Received: 23.02.2025 Revised: 30.05.2025 Accepted: 25.06.2025

Ilchyshyn, N. (2025). Impact of digitalisation on the justice system: Challenges of administrative justice. *Social & Legal Studios*, 8(2), 250-259. doi: 10.32518/sals2.2025.250.

*Corresponding author

Copyright © The Author(s). This is an open access Article distributed under the terms of the Creative Commons Attribution License 4.0 (https://creativecommons.org/licenses/by/4.0/)

transparency, impartiality, and fairness. These principles are fully relevant to the field of administrative justice, which is also tending towards global digitalisation.

The provisions of Law of Ukraine No. 2073-IX "On Administrative Procedure" (2022) stipulate a special rule according to which "if a decision in a case can be made based on electronic documents in a machine-readable format and/or data from national electronic information resources, an administrative act may be adopted automatically in cases prescribed by law" (part 2 of Article 69). The Code of Judicial Ethics (2013) also prescribes in Article 16 that "the use of artificial intelligence technologies by a judge is permissible if it does not affect the independence and impartiality of the judge; does not concern the evaluation of evidence; does not concern the decision-making process; does not violate the requirements of the law".

There have already been attempts to summarise the effects of digitalisation on the justice system in the scientific discourse. One of the most comprehensive for its time was the study by P.M.A.R. Correia *et al.* (2024), which covered the literature for 2001-2022 and analysed the types, goals, factors, and results of digital transformations in the justice sector. The researchers identified contextual, institutional, and individual preconditions for digitalisation. As a result, four areas for future research were proposed: expanding the methodological framework, strengthening the theoretical basis through the concepts of public administration, developing comparative studies between countries, and evaluating public policy in the field of digital transformation of justice. V. Pyrohovska *et al.* (2024) focused on the benefits, challenges, and prospects for the development of e-justice. The content analysis of previous studies helped the researchers to conclude that the challenges worthy of attention included technical inequality, cyber threats, and excessive formalisation. As a prospect, the researchers proposed to develop the functionality of e-judicial platforms using artificial intelligence and blockchain technologies. In a review study, P. Nazarenko *et al.* (2024) systematised the current prospects for digital transformation of the Ukrainian legal system. The researchers concluded that Ukraine's legal system is not yet sufficiently adapted to the pace of digitalisation, which is manifested in legislative gaps and unresolved ethical and jurisdictional issues that do not enable the integration of AI into the national justice system. At the same time, according to O. Kozakevych and N. Prus (2025) and A. Petrovskyi *et al.* (2025), who reviewed the use of AI in the judiciary in a number of countries, digitalisation would expedite the consideration of cases.

Since the digitalisation of the judiciary is not yet complete not only in Ukraine but also in countries that have integrated digital tools into justice earlier, the scientific discourse needs to be constantly updated with data on the outcomes of applying various digitalisation models, which constituted the purpose of the present study. The methodological framework of this study was a systematic review method, which helped to summarise the existing approaches to the digitalisation of administrative justice presented in the scientific literature, law enforcement practice, regulations, and analytical reports. The selection of sources was based on the criteria of their thematic relevance, credibility, and scientific value, covering publications from 2015-2025 with a focus on the most relevant Ukrainian studies. The systemic analysis employed comparative legal, historical legal, systemic-structural, and axiological approaches that enabled a comprehensive study of the development of digital tools in the judicial sphere, a comparison of international practices, and an assessment of their effects on justice. The logic of the material presentation was based on the subject principle, which facilitated a consistent analysis of the impact of digitalisation on administrative justice.

Concept of digital technologies in justice

The transition from conventional to electronic judicial proceedings using modern information and communication technologies is undoubtedly a crucial part of the comprehensive development of Ukraine as a legal, democratic state, and the development of the judiciary in the era of digital transformation of the state and society specifically. With this in mind, the issue of e-justice is of particular relevance and significance for the development of the administrative justice institution. On this basis, Ukraine is included in the EU's Digital Europe Programme until 2027. The key purpose of the programme is to accelerate economic recovery and digitalisation. Ukraine's participation in this programme will allow it to become part of the EU's Digital Single Market (Ukraine joined the Digital Europe Programme, 2022).

E-justice in Ukraine is one of the most promising forms of its implementation, which is aimed at optimising and modernising the national judicial system using electronic technologies. The development of this institution is driven by the need to integrate existing information and communication technologies into all legal institutions of the Ukrainian state. Digital justice is the administration of justice using information and telecommunication technologies. This includes not only electronic document management and online meetings, but also the availability of electronic court cases, the use of artificial intelligence, etc. Thus, the principal idea of e-justice is that information technology enables participants in the process and the court to interact with each other in the digital space. According to O. Barabash (2023), many elements of people's lives are gradually becoming digitalised. Additionally, according to L. Kalashnikova (2023), society and its structural components have been transformed under the influence of IT technologies, thereby determining the transition from the post-industrial to the digital stage of its development.

According to I. Mishchenko, the digitalisation of the judicial system, particularly through the use of AI to analyse and systematise court decisions, identify differences in practice and promote its unification, is a key tool for improving the quality of court decisions and ensuring their predictability (Yasynska, 2019). V. Antonyuk (2021) emphasised that the introduction of certain systems for analysing and controlling court decisions using AI would substantially improve the Ukrainian legal system and increase its predictability; the introduction of technical solutions using AI will enable the application of the law following the fundamental principles of law. Such a technical solution would avoid the influence of political conditions or other external factors that negatively affect the unity and independence of the judiciary and create a sense of inconsistency in decision-making. In this regard, the opinion of Supreme Court Justice J. Bernazyuk (2024) is also correct: "The task of collecting, analysing, and summarising judicial practices is on the agenda. In this case, it is AI that can substantially optimise these labour-intensive processes to improve the efficiency of the Ukrainian judicial system".

The modern digital world is quite diverse. Researchers have focused on various information technologies used on the Internet, including artificial intelligence and machine learning, the Internet of Things, blockchain, Big Data, cloud computing, smart systems and devices, digital twins, social networks, modern bioengineering technologies, cybersecurity systems, etc. The technological features of modern e-justice include the introduction of not only automated programmes and systems that are typical for domestic e-justice, but also modern digital technologies (blockchain, artificial intelligence systems, biometric data, personal identification, etc.). Notably, modern digital justice is also a new remote form of interaction between the court and individuals as parties to a court case, including remote access to the court and remote participation in court hearings; a new way of interaction based on the exchange of digital data; a virtual, paperless form of court proceedings and court record keeping, based on an electronic case file. The distributed ledger system (e.g., blockchain) is of immense value in this process. According to researchers, "a distributed registry system is a new approach to creating distributed databases (each of which is accessed through a single interface), where there is no single control centre and where each node independently compiles and records updates to the registry" (Voronkova, 2022).

Artificial intelligence is also gaining momentum in the justice sector. The European Union Act on Artificial Intelligence (2024) defines AI as "a computer system designed to operate with varying levels of autonomy and that can be adaptive after deployment, and which, to achieve explicit or implicit goals, draws conclusions about how to generate outputs such as predictions, content, recommendations, or decisions that may affect a physical or virtual environment based on the input it receives".

The current legislation of Ukraine stipulates that artificial intelligence is a function of artificial consciousness represented by a system of algorithms created and controlled by it, which ensures self-learning according to available information, acquired knowledge, rules, laws of society, and its experience, the creation of new knowledge on this basis to fulfil human instructions, as well as the ability to conduct self-diagnostics and justify decisions made by it (Strategy for the development of artificial intelligence in Ukraine, 2023). This is the advantage of AI as a set of mathematical algorithms over the "living" intelligence of a judge. In modern conditions, the robotisation of the judicial process is manifested in holding court hearings via video conferencing using modern messengers, in replacing a judge or the judiciary as a whole, courtroom clerks, and judicial assistants with robots.

Admittedly, an algorithm itself is not capable of making "subjective" decisions, but the quality of its decisions depends on how it is designed and what data is included in it. Furthermore, complex artificial algorithms study the relationship between various information and the behavioural patterns embedded in it through a multi-layered structure and develop their unique decision-making rules that are usually incomprehensible to humans. This feature of artificial intelligence has significant implications, which were clearly demonstrated in the case of State v Loomis (2016), when a criminal who had entered into a plea deal with the investigators and was expecting a suspended sentence was sentenced to six years in prison and five years of strict supervision based on the conclusion of the automated COMPAS system that he was likely to recidivate (Cantens, 2024).

In this case, it is noteworthy that the system used was, firstly, not fully suited to the purposes of decision-making in the judiciary, as it was modelled for the executive system, for consideration of early release; secondly, it can identify groups of high-risk offenders, but is unable to assess the risk of recidivism of an individual; thirdly, the reliability of the algorithm's reports has been questioned by researchers who noted that COMPAS scores coincided with actual recidivism in only 20% of cases; and finally, the system is owned by a private firm that refused to disclose the mechanism of the algorithm, which made it impossible to understand what led to this conclusion (Cantens, 2024).

The defendant attempted to appeal the court's decision and went all the way to the state Supreme Court, which dismissed his appeal despite the "flaws" in the reliability of the algorithm, but noted that automated systems should not be the only justification for a decision. Therewith, it is worth pointing out that the United States is considering the possibility of using the capabilities of artificial intelligence not only for the judiciary, but also for ordinary citizens, so that they can predict the outcome of a case, receive systematic resources on their case and arguments for their position, just like a judge (Chesterman *et al.*, 2023).

This example demonstrates the serious risk that society faces in the digitalisation of justice. The risks associated with bowing down to algorithms and placing too much trust in their results are evident. For example, in China, there are concerns regarding artificial intelligence making wrong judgements (Honcharuk, 2019). J. Yao and P. Hui (2020) stated that the use of artificial intelligence in justice for judicial decision-making poses a series of risks: "the weakening of freedom of discretion, judicial discrimination, judicial dictatorship, protection of privacy, etc., which is undoubtedly contrary to the rule of law".

The foregoing allows distinguishing several models of artificial intelligence: predictive (allows determining the probability of a certain event), prescriptive (allows determining the most suitable actions to achieve the intended goal, i.e., optimises decision-making), and generative (works with databases that have a more complex algorithm of actions, which allos generating human language and entering into a dialogue with a person) (Artificial Intelligence Act, 2023). Thus, a considerable number of problems can be pointed out in the field of artificial intelligence in justice. Sometimes these problems are accompanied by risks for the entire legal system of Ukraine, provoked by cyber threats and cyber-attacks. For instance, in December 2024, cyberattacks on state registers of Ukraine took place – hacker attacks on the websites of the National Information Systems (NIS) and the Ministry of Justice of Ukraine (BBC Ukraine, 2024).

Thus, O. Barabash's (2023) opinion that "the digitalisation of justice does not solve all the problems in the judiciary, and therefore the judicial reforms launched by Ukraine should not be limited to the digitalisation and informatisation of justice, but should serve as a catalyst for further positive changes in the judicial system and improve the quality of the exercise of rights and freedoms by Ukrainian citizens" is correct. The use of artificial intelligence systems should not diminish the humanistic content of justice, which should be based on justice rather than mathematical algorithms. Otherwise, the principle of humanism of justice can be replaced by transhumanism, which destroys the very essence of law, which comes from a person and is aimed at protecting their

rights and freedoms. For these reasons, the term "predictive justice" is used, wherein information technology should play a supporting role. This type of justice does not fit into the existing procedural system in the national legislation, but such ideas have become more widespread in foreign countries. Predictive justice means the use of algorithms by which persons seeking judicial protection can calculate and assess the prospects of going to court, which are determined based on the established judicial practices. Justice is an indisputable principle of human civilisation, reflecting the natural law nature and humanistic content of law.

Application of digital technologies in the judicial system of foreign countries

In legal doctrine, the issue of digitalisation is in the spotlight. Researchers point out that digitalisation offers great opportunities. It can lead to the emergence of new business models, new competitors, better and cheaper products and services (Sorensen, 2018). By adopting European standards for data protection in communication networks, researchers are exploring alternative ways of governance, such as standardisation or promotion of certain social norms, and extending beyond conventional legal actors and mechanisms, admitting that there is no one-size-fits-all solution to adapt law and governance to modern technologies (Jozwiak *et al.*, 2016). At the same time, it is emphasised that digitalisation poses not only a legal regulation problem, but also a methodological problem for international legal science overall (Altwicker, 2019).

Singapore was one of the first countries to introduce digital technologies into the judicial system. In 2000, the country launched an electronic filing and issuance system. Later, in 2011, the process of implementing the Integrated Electronic Court System (EFS), a specialised electronic document management system, began. This system enables automatic verification of compliance with the requirements of the procedural law of an electronic document received by the court, as well as its further forwarding for processing (Barabash, 2022). Singapore's integrated electronic court system ensures the maintenance of an "electronic case" in court. The introduction of such a system has led to a reduction in costs and an increase in the efficiency of court staff.

Another country where digital technologies have penetrated almost all spheres of public life is China (notably, China is famous for its prominent achievements in the field of artificial intelligence). In the 2020s, the introduction of digital technologies into the judicial system of this country intensified, although this process began many years ago. Presently, China is one of the world's leaders in the use of digital technologies in the judiciary. It was during the COVID-19 period that positive results of digitalisation in civil, administrative, and criminal proceedings emerged. China has effectively started implementing an e-justice system.

The digitalisation of all types of judicial proceedings in China is carried out in several areas. Thus, since 2017, the so-called Internet courts have been operating in this country. First, such a court was opened in Hangzhou, then in 2018 – in Beijing and Guangzhou. Applications to such courts are filed via the Internet, and proceedings are conducted only online. According to preliminary assessments of the effectiveness of such courts, experts have noted such positive aspects as reduced consideration time, reduced paperwork (Honcharuk, 2019).

In China, the blockchain stores an ever-growing list of ordered records called blocks. Each block contains a timestamp and a link to the previous block. A blockchain record is recognised as evidence in a particular court case (Honcharuk, 2019). China has registered a judicial platform based on artificial intelligence. Its purpose is to help judges improve their efficiency and provide people with easier access to legal services. The platform is an AI-powered legal infrastructure at the national level that is built on massive, authoritative, and high-quality judicial data. To date, the platform has collected 320 million pieces of legal data and materials, including legal documents, court decisions, cases, and legal opinions. It also has the capabilities to understand legal terms, reason logically, search and generate content after learning. It is noted that these innovations will improve the efficiency of judges' work, such as searching for legal documents and selecting cases, as well as meeting the legal demand of the public (Yin, 2024). However, it is also worth pointing out the substantial drawbacks of the digitalisation of all types of court proceedings in China, namely the significant restriction of the legal rights of litigants.

Another highly developed "e-state" in the world is Estonia. A. Petrovskyi *et al.* (2025) argue that virtually every decision in a case in court proceedings in this country will be made by an electronic judge. However, such a procedure can only be extended to small-scale court cases. In Germany, the digitalisation of administrative proceedings has its specific features, particularly in the area of gradual regulation of electronic administrative proceedings to remove barriers to electronic communication with administrative courts (Kopp & Schenke, 2018) by modernising existing legal provisions and adopting new regulations. The Administrative Procedure Act of the Federal Republic of Germany (1976) introduced §55a and §55b, which enabled the use of electronic documents in administrative proceedings alongside the usual paper-based documents; §55a allows for electronic document flow between the court and the parties to the proceedings; §Section 55b prescribes the maintenance of electronic procedural acts; the introduction and use of electronic communication depends not only on the availability of federal regulations, but also on the acts of the federal states, which as of 2025 have not been adopted in all federal states. Electronic communication between courts and persons involved in a case (§55a) takes markedly less time and has a rational basis. Electronic case management also contributes to the acceleration and optimisation of the process. This is manifested, specifically, in the fact that both the court and the participants in the process have quicker and easier access to the electronic court case materials compared to a large number of folders with paper acts.

Thus, the analysis of positive practices in the digitalisation of justice suggests that this process is carried out in most countries in different ways. Certain countries are implementing electronic record keeping and document management, while others are taking bolder steps by integrating artificial intelligence into all stages of the judicial process. This diversity of approaches demonstrates the absence of a universal model for the digital transformation of judicial proceedings and, at the same time, indicates the potential for comparative analysis and adoption of best practices. It is valuable not only to technically improve processes, but also to maintain a balance between technological efficiency and

human rights guarantees. It is this balance that should guide further justice reform in the digital era.

Key areas of digitalisation of the Ukrainian judicial system

As noted, digital technologies in the modern world transform the judicial system and change the principles of its functioning. Presently, it is impossible to imagine improving any area without modern technologies and information, without the widespread introduction of elements of the Fourth Industrial Revolution (Akhmetov *et al.*, 2018), without discussing the provision of information through modern digital technologies, risk sharing, and ways to encourage responsible innovation in high technology (Keren-Paz *et al.*, 2019). The digitalisation of public administration affects the relationship of an individual with public authorities, local governments, and other persons authorised to perform administrative functions. This process is of particular significance in the context of the challenges faced by states today. Rapidly changing circumstances, such as the COVID-19 pandemic, the economic crisis, or a major environmental disaster, require finding new balances and building resilience to crises. With the spread of the new virus and the adoption of relevant government measures in 2020, the COVID-19 pandemic affected almost all aspects of public life, including administrative relations arising from the exercise of subjective public rights, the performance of duties by individuals, as well as the collection of taxes, the provision of social assistance, and permits in the field of economic activity (Luchenko, 2022). Online meetings, electronic documents, and automated systems help to reduce bureaucratic procedures and speed up the judicial review of administrative cases.

The fundamental constitutional principles of Ukrainian justice are the principles of accessibility, equality, impartiality, and independence (Bielov & Bielova, 2025). However, these principles are changing under the influence of digital technologies. On the one hand, digital technologies make justice more accessible and convenient and reduce the amount of resources and time spent. Thanks to the latest technologies, it is possible to quickly get online access to various court operations: filing documents, remote participation in court hearings, as well as access to documents and cases without personal presence in court. On the other hand, digital inequality is growing and the risk of bias in digital algorithms is increasing. This is reflected in unequal access to digital technologies. For instance, there are categories of citizens who do not have knowledge of information technology: the elderly, citizens from remote villages, low-income citizens, and disadvantaged families who do not have access to new electronic applications.

In the context of digital transformation, it is essential to consider not only technological progress, but also the legal aspects of its implementation in modern everyday life. The state must develop a clear legal framework that will regulate the use of digital technologies in judicial proceedings to guarantee the protection of the rights of Ukrainian citizens and, at the same time, maintain fairness in access to justice. In other words, it is vital to strike a balance between digital justice and conventional methods of proceedings, considering that the latter more effectively account for a massive number of factors that affect court decisions: social status, nationality, place of residence, criminal record, etc.

Cybersecurity, digital literacy, and uniform standards of judicial work are also essential issues in the field of e-justice, so that the judicial system can truly become modern and efficient for any category of citizens. On 5 October 2021, three subsystems (modules) of the Unified Judicial Information and Telecommunication System (UJITS) – the Electronic Cabinet, the Electronic Court, and the video conferencing subsystem – officially began to operate in Ukraine. In this area, the State Judicial Administration of Ukraine has developed a procedure for video conferencing during a court hearing with the participation of the parties outside the courtroom (Decision of the High Council of Justice No. 1845/0/15-21, 2021). Thus, it was envisaged to use the EasyCon system or other means available to the court and litigants to ensure that court hearings are held via video conferencing (Tatulich, 2022).

New digital technologies in administrative justice can be divided into certain groups. The first group of digital technologies is related to the exercise of the right to judicial protection – filing an administrative claim electronically. Currently, administrative plaintiffs can choose the form of the document to be sent to court. These documents may be submitted in hard copy or as an electronic document signed with an electronic signature. Using the capabilities of digital technologies, a document can be sent electronically to the court.

The second group of digital technologies relates to the right of a person to receive documents from the court in electronic form. By using the Internet, litigants are entitled to receive copies of court acts executed in the form of electronic documents, except for information to which access is restricted following the current legislation of Ukraine. Information may be communicated to litigants by posting relevant information on the official website of the judicial authorities on the Internet.

The third group of digital technologies is related to the court's assessment of electronic evidence. The court assesses compliance with the procedural form of obtaining a document as a means of proof. The legal force of electronic documents in administrative proceedings is given by confirmed authority, authenticity, and mandatory details. If electronic evidence is submitted to the court with a violation of its integrity, a situation may arise where the information contained in this document is distorted or a special procedure for recording a legal fact is violated, the electronic evidence may be invalid. Considering the above, it is worth considering the range of processes covered by digitalisation in the field of administrative justice in Ukraine.

Firstly, it is e-justice itself. From now on, there is no need to come to court in person, stand in queues, or waste time filling out paperwork – all documents can be submitted online in a few minutes. This is especially useful for those who live in remote locations or cannot come in person, e.g., due to health reasons. Court hearings can be held via video conferencing, and thus anyone from anywhere with an Internet connection can take part in the process. Digital databases help to quickly find the necessary documents and track the progress of a case, prevent the loss of crucial details or the entire case, and reduce the risk of corruption. Automated systems check papers, correct mistakes and expedite the work of judicial officers. As a result, court proceedings take less time and it becomes easier to get a fair decision. However, there are also major challenges to e-discovery, e.g., in civil proceedings. A critical obstacle is the issue of insufficient training and

education of judges and judicial staff to work with the latest digital technologies, which can lead to low efficiency of the use of electronic systems (Parasyuk *et al.*, 2025).

Secondly, the digitalisation of administrative justice is impossible without artificial intelligence and trial automation. The latest digital algorithms help to analyse judicial practices, predict decisions, automatically search or sort various documents and regulations, and, based on current legislation, analyse evidence, which considerably expedites the court decision-making process. Admittedly, this requires mechanisms to control artificial intelligence and its algorithms to avoid unreasonable decisions made with its help. According to K. Popovych (2023), some countries are testing AI-based programmes that can offer optimal court decisions, but so far, their use is still limited due to the risks of legal errors. It is vital to remember that AI should be used to complement the work of judges, not replace them. The human factor continues to be essential in making final decisions, especially in complex and unusual cases.

Thirdly, digitalisation of administrative proceedings is possible through remote court hearings. Videoconferencing allows litigants to attend court hearings remotely, considering the territorial inaccessibility and physical capabilities of citizens. However, this may pose a risk of violating privacy rights and requires reliable technological solutions from the state. For example, during the COVID-19 pandemic, remote meetings became standard practice in many foreign countries. The transition to the online format was necessary to ensure the safety and continuation of the work of the courts, but this process has encountered some challenges. One of the principal problems was the difficulty of verifying the identity of participants. Without adequate verification mechanisms, there is a risk that the wrong person may attend a court hearing, which could affect the course of the trial and its fairness (Zilka *et al.*, 2022). There are also problems with ensuring confidentiality. Whereas previously, hearings were held in closed rooms, in strict confidentiality, now they are held in an open digital space where sensitive data can be extremely vulnerable. This puts the protection of the personal information of litigants at risk. For example, if the video conferencing platform is not sufficiently secure, one may face interception or leakage of personal data. However, according to M. Sydorenko and O. Chepik-Tregubenko (2025), despite the progress made in judicial reform, further development of the system should focus on overcoming corruption risks, strengthening control over the activities of judges, and implementing exacting standards of justice. The researchers emphasised that the efficiency of the judiciary is only possible with a comprehensive approach that combines legal, organisational, and financial instruments following democratic norms and international obligations. They view e-justice as a promising stage of system modernisation that can improve access to justice and its speed. At the same time, the fulfilment of this potential is currently limited due to regulatory shortcomings, technical barriers, low levels of public trust, and the slow pace of digital change.

Fourthly, digitalisation of administrative justice is possible through the creation of electronic archives and registers. Digital archives and registers in administrative proceedings are necessary for convenient and fast work of courts. Electronic archives and registers allow storing all documents electronically, which eliminates the need to manage paperwork. When all the data is in one place and easily accessible, it expedites the search for the information required. A judge or lawyer can quickly find the documents they need without having to search through massive paper archives. Undoubtedly, such systems make the judicial process more transparent: all documents are recorded and stored, and no one can simply "lose" essential materials. All this helps to keep track of the progress of cases – one can see the progress of a particular stage of the court process. It also reduces the probability of errors or manipulation of personal data. Digital archives and registers make the judicial system more modern and accessible to all parties to the judicial process, help the court to work faster, and make it easier for citizens to access domestic justice.

Fifthly, the digitalisation of administrative justice is possible through blockchain technology. Blockchain is a technology that helps protect data from forgery and makes the judicial system more transparent and reliable. Records in the blockchain cannot be changed or deleted, which is vital for storing evidence in a court case. For example, the aforementioned Estonian experience shows that this country is already using blockchain in the judicial system to record and store information about court proceedings, ensuring their transparency and security.

Thus, an interim conclusion can be drawn that digitalisation affects the key principles of the justice system and introduces valuable changes in their implementation. Specifically, it is worth focusing on the key ones:

1) Accessibility of domestic justice. Digital services can reduce the time and money that Ukrainian citizens spend on litigation. However, this will raise the problem of "digital inequality", as not all Ukrainian citizens have access to the Internet or have sufficient knowledge to use online platforms. To make justice accessible to all, free consultations and training courses on digital culture and literacy should be provided.

2) Principle of equality before the law. Automated systems can reduce the number of errors caused by human error. However, these algorithms are not perfect either. They can be biased if they are based on unreliable data. That is why it is crucial that the work of artificial intelligence in the judicial system is transparent and that no discrimination is allowed. In the US, for instance, there have already been cases where algorithms analysing criminal cases have shown racial bias.

3) Principle of independence and impartiality of the court. Artificial intelligence can influence judicial decision-making, which calls into question their impartiality. Judges should control the operation of digital tools and make final decisions personally, factoring in all the circumstances of the case, so as not to be influenced by machine algorithms.

Thus, digitalisation is having a significant impact on the judicial system of Ukraine, leading to significant changes in the way Ukrainian citizens interact with justice, as well as in the work of the judiciary itself, based on the constitutional principles of equality, independence, and accessibility. Modern digital technologies open new horizons for simplifying and expediting the judicial process, making justice more accessible. Judicial acts, lawsuits, and applications can be filed through online systems, which greatly simplifies the process for plaintiffs and defendants, lowering the barrier to going to court.

Challenges and prospects for digitalisation of administrative justice in Ukraine

It is also prudent to focus on the main problems and risks of the digitalisation of justice. According to Ukrainian

researchers, the relevance of transformation in the field of administrative proceedings and the justice system as a whole is driven by a series of factors, including the complication of interagency cooperation and coordination of law enforcement activities; costly conventional judicial and law enforcement activities (human, material, financial and other resources); increasing use of information and communication technologies by criminal communities, terrorist organisations, radical religious groups, and other groups.

Thus, digital transformation faces several major challenges that impede its full implementation in the Ukrainian judicial system. One of the principal obstacles in this process is that digitalisation is uneven. Trials can take place at different speeds in different courts. Some courts are actively using online platforms to file lawsuits and take part in court hearings, while others still rely on paper documents. This inconsistency can create problems in the interaction between courts, leading to delays and unequal access to justice. To address this problem, it is necessary to develop unified digitalisation standards for the entire judicial system of Ukraine and to allocate resources equally so that all Ukrainian citizens can enjoy the same opportunities, regardless of territorial jurisdiction.

The purpose of digitalisation is to process a large amount of personal data, including information about Ukrainian citizens, their property, and financial status, which makes the judicial system vulnerable to cyberattacks and personal data leaks. This can lead to a loss of trust in the judicial system, violation of privacy, and manipulation of personal information. To prevent such negative phenomena, modern methods of personal data protection should be applied: encryption, multi-level authentication, and constant monitoring of personal security, etc. It is also essential to develop mechanisms for legal protection and compensation in case of a confidential information leak. Strict standards of personal data protection and effective control over their observance are the basis for the safe use of digital technologies in the Ukrainian judiciary.

Successful digital transformation requires addressing the lack of digital literacy among both Ukrainian citizens and judicial officers. Many people face challenges when using online platforms to file applications, follow the progress of a court case, or take part in court hearings. In addition, some members of the judiciary may lack the knowledge necessary to work with new digital tools, which slows down the process and increases the probability of miscarriages of justice. To address this problem, there is a need for more frequent training for all participants in the judicial process, providing programmes that cover both basic computer and internet skills, and specialised knowledge related to court platforms and electronic documentation.

Apart from the problems that impede the effective digitalisation of administrative justice, it is worth pointing out the promising areas for the development of digital justice in Ukraine, which include several crucial aspects. Specifically, this includes the creation of secure digital platforms. Thus, V. Turov (2025) argued that one of the key steps in the digitalisation of Ukrainian justice is the creation of safe and reliable online platforms for filing lawsuits, exchanging documents, holding online meetings, and other operations. These platforms must be protected from cyberattacks, data leaks, and falsification of documents. To this end, it is essential to use modern technologies such as encryption and two-factor authentication to ensure the security of a person's interaction with the judicial system.

In the context of the digitalisation of judicial proceedings, special attention should be paid to the protection of personal data of Ukrainian citizens. Judicial systems process confidential information that may affect the reputation or safety of all participants in the judicial process. Clear rules should be developed to regulate how and where personal data can be used, and measures should be put in place to protect it from unauthorised access. Transparency in the use of data and clear responsibility for its protection are also crucial aspects of increasing the effectiveness of the digitalisation of the judicial process.

Additionally, to adapt to digital justice in Ukraine more successfully, it is necessary to actively improve the digital literacy of Ukrainian citizens. This process includes learning how to use digital platforms, submit documents to the court via the Internet, take part in online hearings, and protect their rights in the digital space. This approach will help to expedite processes and make justice accessible to a wider population, especially those who have not previously used digital technologies.

According to O. Petriv (2024), the use of algorithms in the judicial system can also increase its efficiency. However, it is worth pointing out the transparency of these algorithms. Algorithmic decisions, e.g., when distributing cases or analysing evidence, should be understandable to both the parties and society at large. This helps to increase trust in the Ukrainian judicial system and reduce the risks of biased or non-transparent methods. The transparency of algorithms can be ensured through the development of standards and open methods for their operation.

For the successful functioning of digital justice, it is necessary to amend the current legislation to meet the modern requirements of digitalisation. Presently, most legal provisions do not factor in the specifics of the digital environment, e.g., the authorship of electronic documents, online identity verification, or the status of electronic court decisions. Legislative changes, such as the recognition of electronic signatures and the rights of litigants to take part in proceedings remotely, will help create a legal framework for the operation of digital platforms and other technologies in the justice system. Moreover, digital technologies make data storage structured and accessible, enabling quick retrieval of information and verification of its relevance and accuracy. However, it is vital to understand that digitalisation is not merely a transition to the latest technologies, but also a solution to many existing problems in the Ukrainian judicial system. Primarily, the agenda should include strengthening cybersecurity to protect data from possible cyber threats and personal data leaks. It is also crucial to increase digital literacy among Ukrainian citizens to enable them to use new services and platforms effectively. Finally, it is critical to create unified electronic standards for the national justice system, which will harmonise the digitalisation process and adapt the Ukrainian justice system to the requirements of the new reality, ensuring its accessibility, transparency, and efficiency for all Ukrainian citizens. However, only a comprehensive approach to solving the pressing problems of the national justice system will enable the creation of a truly effective and secure digital judicial system in Ukraine. On the other hand, this will require coordinated work of public authorities, technology companies, and higher education institutions of Ukraine, as well as clear coordination of their actions in the field of digital tools implementation.

Conclusions

The findings of a systematic review of scientific research established that the digitalisation of public administration and justice is one of the determining factors in the modernisation of the modern legal system. The prevailing opinion in the scientific discourse is that digital technologies contribute to increasing the efficiency, transparency, and accessibility of justice, including administrative justice, which is especially relevant in the period of active digital transformation of the public sector in Ukraine. An analysis of the scientific literature identified the key advantages of introducing digital tools, such as reducing the time for case consideration, reducing costs, increasing convenience for participants in the process, and reducing the bureaucratic burden on the judicial system. Therewith, such aspects of the topic as the legal legitimacy of electronic evidence, ensuring procedural equality in the digital environment, standards for cyber protection of personal data, and the ethical implications of using artificial intelligence in litigation are still understudied. The analysed history of research suggests that a reasonable integration of digital technologies into the administrative justice system is possible only with a comprehensive approach that includes regulatory harmonisation with European standards, development of digital infrastructure, increasing digital literacy of judges and participants in the process, and ensuring public trust in e-justice.

In summary, the systematisation of scientific positions suggests that electronic administrative justice not only promotes the principles of efficiency, openness, and fairness, but also requires adequate regulatory, organisational, and ethical support. Further research on this subject should focus on a comparative analysis of foreign practices, investigating the effects of digital platforms on the guarantees of the rights of participants in the process, and assessing the risks associated with the automation of court decisions. All these aspects are crucial for the development of a national model of digital justice that meets both technical capabilities and the requirements of the rule of law. At the same time, it should be understood that the expansion of the use of artificial intelligence in the administration of justice should primarily be an auxiliary opportunity for judges, but not a complete replacement for them. Information technologies can identify problems of uniform application of legal provisions based on the analysis of a massive volume of court decisions. However, the responsibility for the judgement should rest solely with the judge.

Promising areas for further research include the development of a regulatory framework for e-justice, analysis of the impact of digital technologies on procedural guarantees, study of the admissibility of electronic evidence, assessment of the risks of automating court decisions, and a comparative study of international practices in the digitalisation of justice.

Acknowledgements

None.

Funding

The study was not funded.

Conflict of interest

None.

References

[1] Administrative Procedure Act of Federal Republic of Germany. (1976, May). Retrieved from https://surli.cc/kjjuku.

[2] Akhmetov, A.T., Bekisheva, S., Syrbu, A.V., & Kainazarova, D.B. (2018). Retrospective review of information technologies in the criminal code of Kazakhstan. *Journal of Advanced Research in Law and Economics (JARLE)*, 35(9), 1545-1550. doi: 10.14505//jarle.v9.5(35).05.

[3] Altwicker, T. (2019). International legal scholarship and the challenge of digitalization. *Chinese Journal of International Law*, 18(2), 217-246. doi: 10.1093/chinesejil/jmz012.

[4] Antonyuk, V.V. (2021). Elements of digitalisation of administrative justice in Ukraine. In *Digitalisation and human rights: Proceedings of the international scientific and practical internet conference* (pp. 9-12). Khmelnytskyi: Khmelnytskyi University of Management and Law named after Leonid Yuzkov.

[5] Artificial Intelligence Act. (2023, June). Retrieved from https://www.europarl.europa.eu/topics/en/article/20230601STO93804/eu-ai-act-first-regulation-on-artificial-intelligence.

[6] Artificial intelligence and life in 2030: One hundred year study on artificial intelligence. (2016). Retrieved from https://cra.org/ccc/wpcontent/uploads/sites/2/2016/09/ai_100_report_0916fnl_single.pdf.

[7] Association Agreement between Ukraine, on the one Hand, and the European Union, the European Atomic Energy Community and their Member States, on the Other. (2014, June). Retrieved from https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22014A0529%2801%29.

[8] Barabash, O. (2022). Digitalisation of national education: Problems and development prospects in the context of globalisation. *Law of Ukraine*, 12, 109-121.

[9] Barabash, O.O. (2023). Digitalisation of justice in the context of e-court implementation: Challenges and tasks. *Scientific Bulletin of Lviv State University of Internal Affairs. Law Series*, 1, 57-66. doi: 10.32782/2311-8040/2023-1-8.

[10] BBC Ukraine. (2024). *Russian hackers breached Ukraine's State Registers. What is known*. Retrieved from https://www.bbc.com/ukrainian/articles/c7ve1298ndgo.

[11] Bernazyuk, Ya.O. (2025). *The digital era of justice: The role of AI in ensuring unity of judicial practice in Ukraine*. Retrieved from https://court.gov.ua/storage/portal/supreme/prezentacii_2025/120_AI_uniformity_of_judicial_practice_bernaziuk.pdf.

[12] Bielov, D.M., & Bielova, M.V. (2023). Artificial intelligence in judiciary and judicial decisions: Potential and risks. *Scientific Bulletin of Uzhhorod National University. Series: Law*, 78(2), 315-320. doi: 10.24144/2307-3322.2023.78.2.50.

[13] Cantens, T. (2024). How will the state think with ChatGPT? The challenges of generative artificial intelligence for public administrations. *AI & Society*, 40, 133-144. doi: 10.1007/s00146-023-01840-9.

[14] Chesterman, S., Moses, B.L., & Pagallo, U. (2023). All rise for the honourable robot judge? Using Artificial Intelligence to regulate AI: A debate. *Technology and Regulation*, 20, 45-57. doi: 10.71265/0p137y60.

[15] Code of Judicial Ethics. (2013, February). Retrieved from https://zakon.rada.gov.ua/rada/show/n0001415-13#Text.
[16] Comment of the Wisconsin Supreme Court on Case No. 881N.W.2d749 "State v. Loomis". (2017, March). Retrieved from https://harvardlawreview.org/print/vol-130/state-v-loomis/.
[17] Constitution of Ukraine. (1996, June). Retrieved from https://www.president.gov.ua/documents/constitution.
[18] Convention for the Protection of Human Rights and Fundamental Freedoms. (1950, November). Retrieved from https://surli.cc/kinbka.
[19] Correia, P.M.A.R., Pereira, S.P.M., & de Faria Bilhim, J.A. (2024). Innovation and digital transformation in justice: A systematic literature review. *Journal of Digital Technologies and Law*, 2(1), 221-250. doi: 10.21202/jdtl.2024.12.
[20] Decision of the High Council of Justice No. 1845/0/15-21 "On Approval of the Regulations on the Functioning of Individual Subsystems of the Unified Judicial Information and Telecommunications System". (2021, August). Retrieved from https://zakon.rada.gov.ua/rada/show/v1845910-21#Text.
[21] European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and Their Environment. (2018, December). Retrieved from https://rm.coe.int/ethical-charter-en-for-publication-4-december-2018/16808f699c.
[22] Honcharuk, A.Z. (2019). The role of China in the development of artificial intelligence in Ukraine. *Ukrainian Association of Sinologists*, 16(2).
[23] Jozwiak, M., Anemaet, L., & Hazenberg, J. (2016). Editorial: Special issue on law and governance in the digital era: Data protection and beyond. *Journal of Intellectual Property, Information Technology and E-Commerce Law*, 7(3).
[24] Kalashnikova, L. (2023). Digitalisation of social relations: Theoretical justification and empirical verification. In A. Lobanova, L. Kalashnikova & I. Hrabovets (Eds.), *Information society and nature in the focus of sociological analytics* (pp. 13-48). Kyiv: Karavela.
[25] Keren-Paz, T., Cockburn, T., & El Haj, A. (2019). Regulating innovative treatments: Information, risk allocation and redress. *Law, Innovation and Technology*, 11(1).
[26] Kopp, F.O., & Schenke, W.-R. (2025). *Kommentar zur VwGO. 24th ed*. Auflage: C.H. Beck.
[27] Kozakevych, O., & Prus, N. (2025). Artificial intelligence and justice: An overview of its use in foreign countries. *New Ukrainian Law*, 2, 186-193.
[28] Law of Ukraine No. 2073-IX "On Administrative Procedure". (2022, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2073-20#Text.
[29] Limantė, A., & Moskvytyn, Y. (2024). Integrating artificial intelligence in Ukraine's courts: State of play and future prospect. *Verfassungsblog*. doi: 10.59704/c472a6ec2910dae3.
[30] Luchenko, D.V. (Ed.). (2022). *Human rights in the context of digital transformation of society*. Kharkiv: Yaroslav Mudryi National Law University.
[31] Ministry of Digital Transformation of Ukraine. (2022). *Ukraine joined the "Digital Europe" program: What it means.* Retrieved from https://www.kmu.gov.ua/news/ukraina-doluchylasia-do-prohramy-tsyfrova-ievropa-shcho-tse-oznachaie.
[32] Nazarenko, P., Sieriebriak, S., & Kolotilova, T. (2024). Effective functioning of the legal system in the digital age: Analysis and prospects. *Ukrainian Political and Legal Discourse*, 1. doi: 10.5281/zenodo.13235365.
[33] Parasyuk, V.M., Onyshko, O.B., & Boryslavskyi, R.A. (2025). Theoretical and legal principles of electronic justice in civil proceedings in Ukraine: Current challenges. *Scientific Bulletin of Lviv State University of Internal Affairs*, 1, 3-10. doi: 10.32782/2311-8040/2025-1-1.
[34] Petriv, O. (2024). *The role of artificial intelligence in the modernisation of the judiciary: Tools for judges*. Retrieved from https://cedem.org.ua/consultations/shtuchnyi-intelekt-sud/.
[35] Petrovskyi, A., Kurdan, B., & Kutsyk, K. (2025). Implementation of artificial intelligence in civil proceedings: Experience of EU countries. *Scientific Journal of the National Academy of Internal Affairs*, 30(1), 45-59. doi: 10.63341/naia-herald/1.2025.45.
[36] Popovych, K. (2023). Citizens' access to justice during the introduction and implementation of the legal regime of martial law in Ukraine. *Law Journal of the National Academy of Internal Affairs*, 13(3), 55-64. doi: 10.56215/naia-chasopis/3.2023.55.
[37] Pyrohovska, V., Holota, N., Kolotilova, T., Hreku, A., & Kroitor, V. (2024). E-justice and the development of Justice: Strengths, challenges and prospects. *Lex Humana*, 16(1), 426-442.
[38] Sorensen, T.B. (2018). Digitalisation: An opportunity or a risk? *Journal of European Competition Law & Practice*, 9(6), 349-350. doi: 10.1093/jeclap/lpy038.
[39] Sydorenko, M., & Chepik-Trehubenko, O. (2025). Electronic justice as a means of improving access to justice: Theoretical and legal aspect. In *Collection of scientific papers "SCIENTIA"* (pp. 45-47). Lisbon: International Center of Scientific Research.
[40] Tatulich, I. (2022). Communication with the court under martial law. *Legal Scientific Electronic Journal*, 6, 151-154. doi: 10.32782/2524-0374/2022-6/35.
[41] Turov, V.D. (2025). Legal regulation of the use of information technologies in administrative justice of Ukraine. *Analytical and Comparative Jurisprudence*, 1, 529-535. doi: 10.24144/2788-6018.2025.01.88.
[42] Voitovskyi, V.S. (2024). The impact of digitalisation on administrative proceedings. *Academic Visions*, 32.
[43] Voronkova, V.H. (2022). *The philosophy of the digital human and digital society: Theory and Practice*. Lviv; Toruń: Liha-Pres.
[44] Yao, J., & Hui, P. (2020). Research on the application of artificial intelligence in judicial trial: Experience from China. *Journal of Physics: Conference Series*, 1487(1), article number 012013.
[45] Yasynska, M. (2019). *A quality decisions and unity of practice can only be achieved by digitalising the courts – Judge Ivan Mishchenko, Supreme Court of Ukraine*. Retrieved from https://supreme.court.gov.ua/supreme/pres-centr/zmi/838768.
[46] Yin, C. (2024). *Top court launches AI-generated platform to help judges, public*. Retrieved from https://surl.li/cvgaup.
[47] Zilka, M., Sargeant, H., & Weller, A. (2022). Transparency, governance and regulation of algorithmic tools deployed in the criminal justice system: A UK case study. In *AIES'22: proceedings of the 2022 AAAI/ACM conference on AI, ethics, and society* (pp. 880-889). New York: Association for Computing Machinery. doi: 10.1145/3514094.3534200.

Вплив цифровізації на систему правосуддя: виклики адміністративного судочинства

Надія Ільчишин
Доктор юридичних наук
Львівський державний університет внутрішніх справ
79000, вул. Городоцька, 26, м. Львів, Україна
https://orcid.org/0000-0001-6066-8772

Анотація. Актуальність дослідження обумовлена незавершеністю цифровізації судочинства та постійною потребою в оновленні даних щодо ефективності застосування цифрових інструментів у правосудді. Метою роботи було узагальнення наявних підходів до цифровізації адміністративного судочинства, представлених у науковій літературі, правозастосовній практиці, нормативно-правових актах та аналітичних звітах. Методологічною основою дослідження став метод системного огляду, що включав порівняльно-правовий, історико-правовий, системно-структурний та аксіологічний підходи. За результатами системного огляду наукових досліджень було встановлено, що цифровізація судочинства демонструє закономірності розвитку та спільні підходи до впровадження електронного документообігу, подання електронних доказів і дистанційної участі у різних правових системах. Проаналізована історія досліджень даної тематики показала, що етапність розвитку цифрових інструментів у судовій сфері пов'язана з їх нормативним закріпленням та адаптацією. Аналіз наукової літератури допоміг встановити, що взаємозв'язок між компонентами цифрового судочинства, зокрема засобами подання документів та організацією розгляду справ, є ключовим. Встановлено, що в сучасному науковому дискурсі обговорюється вплив цифрових рішень на реалізацію процесуальних прав, оцінюється ціннісний зміст цифровізації для ефективного, доступного та прозорого правосуддя, а також ідентифікуються виклики та загрози, пов'язані з трансформацією традиційних процедур. Отримані результати мають практичне значення для науковців, законотворців, суддів та адвокатів у подальшому розвитку та впровадженні цифрових інструментів адміністративного судочинства

Ключові слова: судова система; процесуальні права та обов'язки; інформаційні технології; великі дані; штучний інтелект

UDC 342.7:004.9
DOI: 10.32518/sals2.2025.248

Соціально-правові студії. 2025. Т. 8, № 2
Social & Legal Studios. 2025. Vol. 8, No. 2

Theoretical grounds for defining the criteria to distinguish between digital and traditional human rights: An international legal analysis

Mariia Pleskach*
PhD in Law, Researcher
Mykolas Romeris University
LT-08303, 20 Ateities Str., Vilnius, Lithuania
https://orcid.org/0000-0003-3296-5475

Abstract. The growing influence of digital technologies and the internet on legal systems has raised the urgent need to clearly distinguish between traditional and digital human rights. The purpose of this study was to define theoretical criteria for differentiating these rights within the framework of international legal analysis. The research was based on methods of legal analysis, comparative methodology, and content analysis of scholarly literature, international documents and national legal acts. The study examined the evolution of human rights in the digital age and analysed legal gaps in international and national frameworks. It was found that digital rights differ from traditional rights due to their technological dependence, dynamic content, and the multi-stakeholder structure of legal relations. Key features such as the context of emergence, subject composition, regulatory mechanisms, and objects of protection were identified as criteria for differentiation. It was also revealed that most digital rights emerge from private-law relations and involve actors beyond the state, including transnational corporations and algorithmic systems. The research concluded that current legal doctrine lacks a unified standard for digital rights and that the distinction between digital and traditional rights requires a systematic theoretical basis. It was generalised that new legal standards must be developed to adequately address threats to digital rights, especially in the context of AI, data privacy, and content regulation. The findings of this study can be applied by international organisations, national lawmakers, human rights defenders and academic researchers in the development of coherent and adaptive legal policies for safeguarding rights in digital environments

Keywords: digital rights; online freedoms; international legal standards; digital transformation; cybersecurity; privacy in the digital era

Introduction

As of 2025, the increasing entrenchment of digital technologies across all areas of human life has fundamentally transformed communication, data access, civic participation, and interaction with state authorities. Against this background, the issue of safeguarding human rights in the digital environment has become significantly more complex. The importance of this topic lies not only in the need to adapt existing legal instruments but also in the rethinking of the conceptual foundations of human rights in an age of digital omnipresence. A distinction must now be drawn between those rights that emerged as a response to new digital threats and opportunities, and classical rights formulated in the physical reality of human experience. On the one hand, traditional rights are increasingly being extended into the digital sphere; on the other, a new set of phenomena has arisen that demands separate legal recognition. Therefore, establishing criteria that enable the identification of digital rights as a distinct category is both theoretically significant and practically urgent for the development of effective human rights protection mechanisms in the 21st century.

The issue of human rights transformation in the digital era has become the focus of numerous international and national academic studies. According to N. Ahmad *et al.* (2025), the main challenges in the age of artificial intelligence (AI) include the erosion of privacy, the expansion of surveillance mechanisms, and the discriminatory effects of algorithmic systems, which complicate the exercise of classical rights. The normative differentiation between rights in digital contexts has been addressed by W. Benedek (2025), who proposed a three-stage typology of digital rights development: adaptation of existing rights, emergence of new digital rights, and the introduction of the digital legal subject. From an institutional perspective, A. Brantly (2022) underscored those digital technologies do not merely transform the exercise of rights but also generate new threat vectors, including those related to disinformation and opaque platform governance.

Suggested Citation

Article's History: Received: 08.03.2025 Revised: 15.05.2025 Accepted: 25.06.2025

Pleskach, M. (2025). Theoretical grounds for defining the criteria to distinguish between digital and traditional human rights: An international legal analysis. *Social & Legal Studios*, 8(2), 248-261. doi: 10.32518/sals2.2025.248.

*Corresponding author

Copyright © The Author(s). This is an open access Article distributed under the terms of the Creative Commons Attribution License 4.0 (https://creativecommons.org/licenses/by/4.0/)

E. Celeste *et al.* (2023) examined how platforms increasingly regulate communication through so-called "platform law", a normative system that operates independently of public legal institutions. A. Bon *et al.* (2023) focused on the "digital divide" and introduced the concept of a "digital censor" – the phenomenon where individuals without access to technology are de facto excluded from exercising basic rights. In the studies of M. Baumgärtel and S. Ganty (2024), national frameworks for electronic communications and e-commerce were identified as critical for enabling the realisation of digital rights. Provisions of the Civil Code of Lithuania (2000) and the Civil Code of the Republic of Estonia (2002) show an attempt to integrate digital realities into civil law, but in the absence of coherent theoretical underpinnings, such integration remains fragmented.

The aim of this study was to substantiate the theoretical foundations and to formulate concrete criteria for distinguishing between traditional and digital human rights in the context of international legal frameworks. The objectives included:

1) identifying the core features of digital rights as an autonomous legal phenomenon;

2) systematising scholarly approaches to the classification of human rights in the digital era; and

3) analysing the practical consequences of legal ambiguity surrounding digital rights for national and international human rights mechanisms.

Literature review

Recent legal scholarship has increasingly addressed the evolving relationship between digital transformation and the existing framework of human rights. Scholars have sought to define the limits of traditional legal systems in responding to rapidly advancing technologies that impact individuals' rights in ways previously unanticipated by international law. A significant contribution to this discourse is the work of A. Mantelero (2024), who introduced the concept of the Fundamental Rights Impact Assessment in the context of the EU's Artificial Intelligence Act (2024). Author contends that any high-risk AI system must undergo legal scrutiny to assess its potential human rights implications before implementation. This model emphasizes proactive governance, arguing for the transition from reactive protection to anticipatory legal safeguards. The Fundamental Rights Impact Assessment concept is not only a procedural innovation but also a philosophical shift in the understanding of risk, legitimacy, and responsibility within digital ecosystems. Another foundational perspective is offered by M.K. Land (2019), who analysed the emergence of what she terms "platform law" – a form of pluralistic legal ordering governed not by states but by the internal rules of social media platforms. Researcher argues that these platforms construct their own quasi-legal systems, frequently operating independently of and, at times, in opposition to national and international human rights standards. This raises fundamental questions about legal authority and accountability, as these private actors increasingly mediate access to freedom of expression, privacy, and due process in the digital realm. The tension between public law and corporate rule-making is at the heart of debates concerning the legitimacy and enforceability of digital rights. The multinational report by T. Pajuste (2022) contributes further nuance by mapping out the core threats posed by digital technologies to the existing human rights regime. These include algorithmic opacity, mass data surveillance, manipulation of information through AI-driven tools, and the erosion of legal certainty. The authors argue that existing legal instruments, including the Universal Declaration of Human Rights (1948) and the European Convention on Human Rights (1950), offer only limited guidance in addressing these challenges. Their work calls for a new legal architecture capable of navigating cross-border governance, platform responsibility, and evolving conceptions of identity and autonomy in the digital space. In particular, they advocate for the establishment of transnational monitoring mechanisms to identify digital rights violations and ensure cross-jurisdictional accountability.

In a more practical and technical vein, P. Pathak (2025) investigated the covert installation of Android's SafetyCore application on millions of mobile devices. The incident, involving no prior user consent or notification, highlighted a regulatory vacuum in addressing corporate actions that affect users' privacy and autonomy. Author's analysis revealed the ways in which digital platforms bypass traditional consent models, exploiting terms of service to implement surveillance technologies. The SafetyCore case stands as a paradigm of how legal norms surrounding notice, consent, and control are insufficiently adapted to the digital environment. It also raises important questions about the private origins of digital normativity, often divorced from democratic deliberation or legal accountability. C.E. Popa Tache and C.S. Săraru (2024) broaden this discussion by examining the triangulated relationship between digital transformation, corporate governance, and international law. Their analysis highlights those digital rights are increasingly shaped not only by states but by transnational corporate entities that participate in global norm-setting. They emphasise that legal scholars and regulators must account for the hybrid character of digital regulation, where private companies, international organisations, and national legal systems interact in complex and often asymmetrical ways.

B. Farrand (2025) explored how digital rights are reshaping intellectual property regimes, arguing that digitalisation blurs the boundaries between private and public rights and renders existing classifications obsolete. The study highlights how digital rights challenge established legal categories, requiring a reconfiguration of concepts such as ownership, authorship, and usage rights in the age of blockchain, streaming, and algorithmic distribution. In a complementary approach, C.H. Kan (2024) examined the dual legal nature of digital human rights, distinguishing between those rights that have emerged directly due to technological advancements and those that are digital extensions of traditional rights. The study calls for a differentiated typology of digital rights and argues that failure to distinguish between these categories creates confusion in legislative and judicial interpretation.

Materials and methods

This study was grounded in a purely theoretical legal framework and does not involve empirical data collection, case law analysis, or legislative application. The methodology draws upon doctrinal legal research, conceptual reasoning, and a critical review of contemporary academic and normative sources related to the classification of digital rights. The study relied on a systematic review of 48 academic, normative, and institutional sources published primarily between 2019 and 2025. The literature included peer-reviewed articles, international legal documents, and analytical reports issued by

academic institutions and intergovernmental organisations. A purposive sampling approach was applied to ensure conceptual rigor and temporal relevance. Sources that offered descriptive overviews without analytical depth were excluded.

The study applied a range of theoretical methods. The hermeneutic method was used to interpret transformations in core legal concepts such as rule of law and human dignity in the digital context. Logical and semantic analysis allowed for the distinction of interrelated legal categories, such as legality and legitimacy. Comparative doctrinal analysis was employed to contrast theoretical perspectives across legal traditions and jurisdictions. Content analysis was used to identify recurring themes and structural patterns in legal doctrine and theory. Discourse analysis enabled the identification of normative and rhetorical strategies shaping the field of digital constitutionalism. The research also relied on typologisation and conceptual modelling, particularly in constructing the taxonomy of digital rights and their legal characteristics.

In addition to scholarly publications, a range of normative instruments was consulted as conceptual baselines. These included the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the European Convention on Human Rights (1950), and the Convention on the Rights of the Child (1989). Special attention was also given to regional legislative instruments that address digital governance and personal data protection, such as the General Data Protection Regulation (2016), the Artificial Intelligence Act (2024). The legislation of the client's country was analysed, in particular the Law of the Republic of Lithuania No. XIII-1120 "On Electronic Identification and Trust Services for Electronic Transactions" (2018), which regulates the legal framework for digital identity and electronic commerce. These were not examined as normative rules for application but as illustrative frameworks that reflect the evolution of legal thinking. Institutional and policy-based declarations were likewise integrated, including the European Declaration on Digital Rights and Principles for the Digital Decade (2022) and the Global Digital Compact (2023) and the decisions provided in cases Getty Images v. Stability AI (2025) and Mata v. Avianca, Inc. (2023), which illustrate new legal dilemmas in the application of traditional doctrines to AI-generated outputs. These documents provided insight into emerging consensus on digital rights at the international level, even in the absence of binding legal definitions.

Results and Discussion

Specific features of the legal nature of digital human rights. Traditional human rights and digital rights share a common goal – securing the opportunities and extent of individual freedom – yet they differ considerably in terms of the spheres of their application and the methods via which they are realised in the modern world. Traditional human rights, enshrined in international instruments such as the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966), focus on the protection and safeguarding of human rights in the material world, particularly the right to life, liberty, equality before the law and personal inviolability. These rights have historically formed the foundation of legal systems and cover the most crucial aspects of human existence, without which the physical functioning of a democratic society would be impossible.

However, the rapid development of digital technologies and the globalisation of the virtual environment have compelled human rights organisations, governments and international institutions to address new challenges related to the emerging legal phenomenon of digital human rights. Digital rights, such as the right to access the internet, the protection of personal data and freedom of expression in the digital environment, have already become essential for ensuring legal protection for citizens in the modern world, which is particularly relevant in the context of the rapid digitisation of the banking sector. For example, as the O. Kolodiziev *et al.* (2021) shows, the introduction of digital innovations not only determines the competitiveness of banks, but also leads to the active use of personal data and online platforms, which in turn increases the importance of digital rights in the legal regulation of banking activities. Thus, the transformation of banks into digital ecosystems creates a need for a balance between the efficiency of digital services and the observance of basic user rights in the digital environment. However, these rights are not clearly defined in international law and often remain outside the scope of traditional legal norms. This is due to the fact that international legal documents, such as the Universal Declaration of Human Rights, were created in an era when the internet and other digital technologies did not yet exist in the form that familiar with today.

A distinctive feature of digital rights is their dependence on and relation to emerging technologies, which have the potential to radically alter the ways in which people interact with information. Currently, legal systems in different countries face challenges in ensuring the protection of digital rights. In some countries, particularly countries that are members of the EU, progressive legal mechanisms such as the General Data Protection Regulation (2016) have already been established to regulate the protection of personal data and ensure users' rights to privacy in the digital space. In contrast, there are many other countries that lack clear laws aimed at protecting human rights on the Internet. This creates legal uncertainty, which consequently makes users vulnerable to abuses such as unauthorised surveillance, data collection without consent and violations of privacy.

Currently, legal doctrine offers no direct guidance on how to distinguish between digital and traditional rights. Instead, it emphasises the principles of universality and non-discrimination in terms of human rights, which should apply to all forms of their realisation, including digital rights. International law does not yet have clearly defined and universally accepted standards for distinguishing digital and traditional rights, although some developments have occurred. For example, the European Declaration on Digital Rights and Principles for the Digital Decade (2022) attempts to address the new digital reality by enshrining within it the key principle that "what is illegal offline is illegal online". However, the question arises as to whether the approach of applying the "doctrine of the equivalence of human rights in online and offline space" is justified and sufficiently grounded. Currently, most international treaties and legal acts still focus on the material aspects of human rights, rather than their digital manifestations. This highlights the importance of amending existing legal norms and developing specific international standards for the protection of digital rights, as only in this way can harmony be ensured between the observance of human rights and technological progress. In the context of the need to develop digital rights that would

effectively protect the interests and needs of citizens in the digital age, it should be noted that the protection of human rights in cyberspace cannot be ensured solely through existing international human rights law. Existing rights require adaptation and supplementation with new digital rights to ensure the effective protection of individual rights in the digital world. The recognition of emerging digital human rights is evidenced by the formalisation of specific guarantees such as the right to access the Internet and the right not to be subject to automated decision-making. The United Nations Human Rights Council (2021) has affirmed that the same rights people enjoy offline must be protected online, explicitly emphasising Internet access as a prerequisite for exercising freedom of expression and participation in modern society. Complementing this, Article 22 of the General Data Protection Regulation (2016) establishes the individual's right not to be subject to decisions based solely on automated processing, including profiling, when such decisions have legal or significant effects. Further normative developments have been articulated by the Y. Shany (2022), which conceptualises a human-centric digital rights framework, advocating for the legal recognition of a "right to a human decision-maker" to ensure transparency, accountability, and fairness in algorithmically governed processes. This situation is primarily due to the fact that the criteria for distinguishing digital rights from traditional human rights remain unclear. As a result, this negatively impacts the development of a more practical mechanism for their protection.

A study by S. Demeke (2024) is insightful, stating that digital technologies directly or indirectly influence almost all aspects of private and public life. Human rights face new challenges and threats, and their content, scope and understanding are changing considerably in the digital age. The conceptual changes involve the fact that the scope of recognised fundamental rights is changing in unpredictable ways, the boundaries between physical and digital actions are gradually blurring and, as a result, the application of traditional criteria to such activities ceases to be relevant. Human rights are no longer embedded in existing theoretical structures and legal doctrines, and "digital rights" are gaining increasing salience.

Analysis of doctrinal sources and scholarly works demonstrates that many researchers focus on developing their own lists or classifications of digital rights without providing sufficient justification for why specific rights should be categorised as digital. Scholars who have attempted to catalogue digital rights offer heterogeneous and often mutually inconsistent taxonomies. A. Mantelero (2024) anchors his list in the risk-based logic of the Fundamental Rights Impact Assessment, dividing rights into those threatened by "high-risk" and "limited-risk" AI systems. Although the model is technologically sensitive, it conflates the source of risk with the nature of the right: access-to-internet, data-portability and transparency appear side by side without a shared doctrinal denominator, making the catalogue hard to transpose beyond the AI-governance context. W. Benedek (2025) distinguish three "generations" of digital rights – adapted, new and prospective – yet leave the transition thresholds undefined. Because the same right (for instance, data protection) may be "adapted" in one jurisdiction and "new" in another, their matrix reproduces the very boundary problem it seeks to solve. G. Malgieri and C. Santos (2025) proposes a pragmatic checklist – right to digital identity, right to cybersecurity, right to digital heritage and so on – but offers no criteria for inclusion beyond empirical salience. The resulting inventory is exhaustive in appearance yet conceptually eclectic; several entries (e.g., digital education) describe policy goals rather than rights in the strict legal sense. M.K. Land (2019) groups rights around the notion of "platform law", treating content governance rules as sui generis digital rights. This platform-centric lens illuminates private-ordering problems but obscures public-law obligations; it also labels corporate terms of service as "rights", thereby blurring the line between contractual privileges and universal entitlements. E. Celeste *et al.* (2023) frames digital rights within "digital constitutionalism", differentiating participatory, informational and procedural clusters. Yet the scheme rests on constitutional rhetoric without clarifying whether the clusters are distinct rights, principles or interpretive canons, which weakens its normative precision. Finally, B. Farrand (2025) treats digital rights as a subsection of intellectual-property law, carving out "digital authorship" and "algorithmic creativity". While this sectoral focus reveals important collisions, it neglects non-proprietary dimensions such as autonomy or equality, resulting in a partial and discipline-bound taxonomy. Taken together, these classifications illustrate the field's terminological dispersion, the absence of shared inclusion criteria and the tendency to merge technological descriptors with legal categories – shortcomings that continue to hinder the formation of a coherent, standardized catalogue of digital human rights.

A similar observation was made by G. Malgieri and C. Santos (2025), who described "new rights" (both new in essence and new manifestations of fundamental human rights): the right to access the Internet, the right to digital education and the development of digital skills, the right to digital identity, the right to cybersecurity, the right to protection from misinformation, the right to the protection of personal data, the right to access digital public services, the right to freedom of content creation and protection and the right to digital heritage (the right to digital freedom and the right to be forgotten). However, the criteria for classifying this list of rights as "new" are not entirely clear.

These discussions lead to the conclusion that to classify a specific right as digital, it is necessary to determine not only how this right differs from classical (traditional) rights but also its legal nature and why it should receive special status in the legal world. This question is crucial for establishing a clear legal framework that will allow these rights to be protected at the international level, as different jurisdictions may approach the regulation of digital rights differently. Scholars should focus not only on creating a list of digital rights but also on a deeper exploration of the theoretical foundations that allow a particular right to be classified as digital. This approach will help foster a clearer understanding of digital rights and ensure their correct application in different legal systems. To achieve a consistent and enforceable system of digital human rights, it is essential to analyse the current state of national legal systems that continue to rely on traditional legal instruments to regulate digital relations. Many states have not yet developed autonomous legal frameworks for digital rights and instead attempt to extend classical civil or administrative law norms into the digital environment, which is particularly noticeable during the transformation of the public administration system in the current crisis conditions. As noted by O. Krasivskyy (2023),

the digitisation of public services has accelerated significantly, but this institutional modernisation has not been accompanied by a corresponding update of legal approaches to the protection of digital rights. Therefore, legal practice often involves the mechanical transfer of traditional civil or administrative law norms to new digital realities without proper adaptation to the specifics of digital environments. This approach creates risks of legal uncertainty for citizens and requires a conceptual understanding of digital rights as an independent area of regulation.

This approach leads to legal uncertainty and insufficient protection of rights specific to cyberspace. One example is the Civil Code of Ukraine (2003). Despite the emergence of multiple legal relations in the digital sphere – such as digital identity verification, algorithmic decision-making, and personal data governance – the Code still defines the grounds for civil rights and obligations based solely on traditional notions: transactions, law-prescribed acts, and general legal principles. Article 11 of the Code establishes a closed list of grounds for legal relations, including contracts and events, but fails to recognise digital interaction or automated decision-making systems as independent legal phenomena. This omission becomes critical in cases involving the misuse of algorithms or the breach of platform-based obligations, where the parties' digital conduct does not fully align with established contractual or delictual models. Similarly, the Civil Code of the Republic of Lithuania (2000), while progressive in certain civil matters, also lacks clear provisions on digital rights. Article 1.136 provides a list of sources for the emergence of civil obligations, such as contracts, law, or custom. However, it does not mention digital consent, algorithmic processing, or terms-of-service-based interactions that are now widespread in online communication and commerce. In practice, this forces courts to interpret internet-related disputes through analogies with classical civil obligations, which may not adequately reflect the nature of decentralised or automated digital conduct. Another illustrative case is Public Information Act of the Republic of Estonia (2000), which governs access to public data but lacks a dedicated section on the rights of individuals to digital privacy, digital literacy, or algorithmic transparency. Estonia is often praised for its digital governance model, yet its foundational legislation remains focused on access, not control or accountability in digital interactions. As a result, while digital infrastructure is advanced, the legal system has not caught up in terms of individual rights within the algorithmically mediated public domain.

These examples reflect a broader trend in which national legal systems extend existing analog-world doctrines into the digital space rather than developing new normative categories. This results in several consequences: rights are often defined in material rather than informational terms; enforcement mechanisms are reactive and poorly adapted to the speed of digital harm; and individuals lack effective redress for violations that originate in automated, transnational or platform-governed environments. Therefore, the absence of direct recognition of digital rights – such as the right to algorithmic transparency, the right to be forgotten, or the right to fair platform governance – in foundational legal acts of civil law systems underscores the need for explicit codification and doctrinal innovation. Without this, the regulation of digital relations remains fragmented, relying on analogical reasoning and subject to the interpretive discretion of courts, rather than grounded in proactive, rights-based legislative design. This indicates that, although digital rights are gaining increasing importance, most legal systems still lack clearly defined provisions specifically addressing digital rights and continue to adapt existing civil law norms to the new conditions.

Currently, in European countries, most types of human activity in cyberspace are primarily regulated by traditional civil law norms, which have been adapted to regulate this type of activity. A high proportion of legal relations in cyberspace falls under civil law regulation, including online contract formation for purchasing goods in e-commerce stores, protection of intellectual property rights, information security, protection of personal data, provision of software services and development, legal protection of websites and content, and registration and protection of copyrights and trademarks online (Urtaiev, 2022).

The grounds for the emergence of rights and obligations of subjects of civil legal relations are established at the level of national legislation (civil codes). For example, in Lithuania, Article 1.136 of the Civil Code of the Republic of Lithuania (2000) sets out the grounds for the emergence of civil rights and duties. It states that rights and duties shall emerge from the grounds established by this Code and other laws, in addition to actions performed by persons and organisations which, although not determined by laws, create civil rights and duties within the general principles and the meaning of the civil laws. Article 5 of the Civil Code of the Republic of Estonia (2002) established that civil rights and duties arise from transactions, events specified by law and other acts that the law links to the creation of civil rights and obligations, as well as from unlawful acts.

The ability of modern technologies to integrate data and provide prompt access to these data changes the usual models of interaction and transforms traditional tools for the realisation of subjective rights (Vachhani, 2024). In particular, most digital rights, interests and needs of today's individuals are realised in private-law relationships. For example, the right to access the Internet is implemented between the end user of electronic communication services and the electronic communication service provider. According to the Law of the Republic of Lithuania No. XIII-1120 (2018), contractual relations in the field of electronic services are based on the provider's obligation to ensure the availability and secure delivery of such services – particularly when it comes to the processing and transmission of data in digital environments. The user, in turn, is required to fulfil payment obligations and comply with the agreed conditions for service use. Digital rights, including the right to personal data protection in cyberspace, constitute a core component of these legal relationships and are embedded within broader contractual and regulatory frameworks. In the context of electronic commerce, the use of personal data is permissible only when the commercial actor implements effective measures to guarantee its protection, thereby ensuring lawful and transparent data processing in accordance with both national and EU legal requirements. As stipulated in Article 6 of the Law, parties engaged in electronic transactions are obliged to ensure the confidentiality and protection of personal data obtained through electronic means, in accordance with the requirements of relevant data protection legislation, including the General Data Protection Regulation (2016).

The private nature of digital human rights is also emphasised in a study by M. Susi (2019). He notes that a characteristic of digital rights is that they are ensured not only through the international normative architecture of human rights but also through norms created by electronic communication service providers (e.g., digital platforms and technology giants). He argues that in cases where a digital platform "reserves the right to ultimately determine whether its rules have been violated", this reflects a fundamental difference between digital and traditional rights. He refers to the possibility of using terms such as "Lex Facebook", which indicates the private nature of the origin of digital human rights.

Thus, digital human rights emerge as a response to the rapid development of technology and its penetration into all areas of life. They have specific aspects related to the interactions between humans and the digital environment and are predominantly characterised by a private-law nature of dual character: the digital rights themselves and the extension of traditional rights to the digital environment. Distinguishing between digital rights, traditional rights and rights that are extensions of traditional rights is crucial for understanding how human rights evolve in the context of technological advancements. Purely digital rights are rights that have emerged as a result of the development of digital technologies and would have no real meaning without the digital environment. They came about with the growing influence of the Internet, mobile technologies, big data and AI. Examples of these rights include the right to access the Internet, the right to access digital services, and the right to cybersecurity protection against cyber threats, such as hacking and malware. In other words, technological progress itself has created new types of threats that did not exist in the traditional physical world.

All other digital rights are an expansion of the scope of existing traditional rights into new conditions, where an increasing number of aspects of lives occur in the online space. For example, the right to freedom of expression on the Internet represents a reinterpretation of the traditional right to freedom of expression, as enshrined in Article 10 of the European Convention on Human Rights (1950). In the digital environment, this right extends to the ability to freely express one's views via the Internet, for example in blogs or on social networks.

It is clear that the criteria for defining digital rights need to be reconsidered in a legal context. The insights of W. Benedek (2025) are useful here. They observed that the development of digital human rights can be viewed through three conditional generations of evolution. The first generation of digital human rights focused on adapting existing human rights to the conditions of the digital age. The second generation involves the introduction of new digital rights that address specific needs and interests in the online space, which traditional rights cannot fully encompass. A potential third generation could introduce new right-holders and duty-bearers, including the concept of a digital persona, which would impose legal obligations on private technology companies. Together, these three generations could create a comprehensive human rights system capable of effectively protecting individual needs and interests in the online environment.

Criteria for distinguishing between digital and traditional human rights. To distinguish digital rights from traditional human rights in a meaningful and applicable way, it is necessary to define a coherent set of criteria that clarify the legal nature of each category. Such differentiation enables more precise interpretation and implementation of rights within contemporary legislative frameworks and enforcement practices. These criteria should reflect not only the origin and technological context of digital rights but also their functional divergence from classical rights in terms of protection mechanisms, subject scope, and normative objectives. By establishing clear parameters for comparison, the legal system can more effectively integrate emerging digital entitlements into existing human rights architecture without eroding the foundational principles of either.

The context of the emergence of the respective right is first and foremost among such criteria. Traditional human rights are fundamental, universal rights and freedoms that are integral to human dignity and provide protection against discrimination, violence and the abuse of power. These rights have been formulated and enshrined through the historical development and evolution of legal norms that apply to every individual, regardless of nationality, gender, age, religion or other characteristics. According to the Icelandic Human Rights Centre, they include civil, political, social and cultural human rights. The formation of international standards for traditional human rights has become a crucial process that ensures fundamental rights and freedoms for individuals at a global level. Thanks to numerous international agreements, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (1966), the Convention on the Rights of the Child (1989), the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) and other international agreements, human rights standards have become the foundation for the development of the modern global legal system. They guarantee that all individuals, regardless of nationality, race, religion or other characteristics, have the right to life, liberty and dignity.

In contrast, digital rights, in their own essence, emerged as a result of the development of digital technologies, prior to which they did not exist. These rights would have been meaningless or impossible without technological progress. An example of this is the right to access the Internet. The extension of traditional human rights into the digital environment refers to rights that are a direct consequence of adapting traditional human rights to the digital context. For example, the right to privacy, which was traditionally associated with physical spaces (such as the inviolability of the home and the confidentiality of correspondence), now extends to the protection of personal data in the online environment. Similarly, the right to freedom of expression has also undergone a major transformation in the digital space. As noted by R. Spano (2021), the Internet in its current form is unique in that it offers instant access to diverse content for anyone who can afford relatively low-cost connectivity. This allows individuals to share their views, ideas and opinions, creating equal opportunities for communication. These advances have had a profound impact on freedom of expression, which has been a fundamental element of international human rights since its inclusion in Article 19 of the Universal Declaration of Human Rights (1948). In other words, to practically apply the criterion of the context of the emergence of a right to determine whether a specific right is

traditional, purely digital or a digital extension of a traditional right, it is necessary to identify the period in which the right emerged and also to ascertain whether its creation (or transformation) is directly linked to technologies or innovations.

The dynamic nature of the content of rights, as a second criterion, is manifested as follows. Traditional rights are relatively stable, as they are formed based on widely accepted principles in the physical world. Their development occurs gradually within structured processes that depend on changes in social, political and economic conditions. The three generations of rights (civil, economic, and social and cultural rights), each of which developed based on the previous ones, reflect certain stages in the evolution of legal ideals.

Unlike traditional rights, digital rights develop much more rapidly and more unevenly as technologies are constantly changing. These are rights that emerge in conditions of rapid technological advancement and have no analogues in the traditional legal context. For example, the right to access Internet resources or the right to protection from manipulation through new technologies, such as fake news and automated bots. The emergence of digital technologies has triggered a wide range of legal, social and ethical issues that often lack definitive legal solutions. A notable example is the case of Mata v. Avianca, Inc. (2023), where a lawyer submitted a legal brief generated by ChatGPT that included fictitious judicial decisions. The court sanctioned the attorney for failing to verify the authenticity of the sources, thereby raising concerns about the professional responsibility of legal practitioners using generative AI tools. Another illustrative case is Getty Images v. Stability AI (2025), in which Getty accused Stability AI of unlawfully scraping millions of copyrighted images to train its Stable Diffusion model. The High Court of Justice in the UK allowed the case to proceed, indicating the judiciary's growing recognition of the complexities surrounding intellectual property and data use in AI training. These cases underscore the inadequacy of traditional legal frameworks in addressing the novel challenges posed by AI-generated content, authorship attribution, and data provenance in machine learning contexts. In other words, these rights can be a direct consequence of advances in new technologies, and at the time of their emergence, they did not exist in the traditional legal context. This includes the right to digital assets and the right to a digital identity, both of which are closely tied to the development of blockchain technologies. In general, if a right arises as a result of the need to adapt to rapidly occurring technological changes that have no analogues in traditional law, such a right can be considered a genuine digital right.

The specific subject structure of legal relations for the realisation of digital rights is the third criterion for differentiation. All individuals are equal in terms of their fundamental rights, meaning that every individual is a bearer of fundamental rights to an equal extent. This means that a person cannot be denied rights based on their gender, ethnicity, language, religion or other characteristics. Limitations based on these characteristics violate human rights and are considered discrimination. Traditional rights are natural, inalienable and non-transferable, meaning they cannot be taken away, and an individual cannot renounce them. A distinctive feature of participants in legal relations regarding the exercise of digital rights is that, in addition to their traditional legal capacity, which consists in the ability to possess civil rights and exercise them independently, elements of technical and educational preparedness are added, which directly correlates with the idea of legal paternalism in the regulation of digital rights. As shown in the study by I. Patricheeva (2025), modern European legislation, in particular the GDPR, introduces both hard and soft forms of paternalistic regulation, which are designed to protect individuals in conditions of limited digital competence. In other words, legal capacity in the field of digital rights increasingly depends not only on formal legal status, but also on the ability of the subject to act consciously in the information environment. In this context, technical ignorance and a lack of digital education serve as grounds for justified regulatory intervention aimed at protecting individuals from digital risks, even if this means restricting their autonomy. This approach demonstrates a conceptual shift towards paternalistic law, where the intellectual and technical capacity of the subject becomes the criterion for determining the limits of legal protection. This is because an individual who lacks basic knowledge about the functioning of the digital environment and the Internet will be unable to fully exercise their digital rights. In other words, modern technologies that integrate data and provide rapid access to it change traditional models of interaction, transforming familiar institutions and fundamental categories. Thus, when entering into private relations in the digital environment, participants face new challenges that did not exist in traditional models of legal relations before the digital era. In this sense, can speak of a "technological and educational censor" when exercising digital rights. This technological and educational censor effectively excludes from legal relations individuals who are unable to use the internet to meet certain needs and interests or to access digital services. This leads to what is known as the "digital divide", where in poorer regions or countries, many people lack access to digital services and content, which hinders their participation in the information society and impedes development (Bon *et al.*, 2023). This means that the inability to use digital technologies can limit an individual's access to many modern services and opportunities. This can significantly impact participation in contemporary economic, social and political life, as many essential functions today are carried out through digital channels: communication, shopping, medical services, online education and more. In this context, can even speak of a shift from "digital rights" to "digital duties", as requirements for citizens to make full use of digital technologies. This is reflected in their ability to protect their data, work with online resources and actively participate in digital civic processes, among other activities. Furthermore, this emphasises the importance of ensuring equal access to digital resources, education and support for those who lack sufficient experience or opportunities to use digital technologies, as well as the need to develop adequate legal standards for the protection of digital rights that meet today's requirements.

Another feature of the implementation of digital rights is that the legal relationships in this sphere are always characterised by multi-subjectivity. In addition to participants who interact directly (for example, users among themselves or users and electronic commerce entities), the realisation of digital rights also involves the presence of additional actors. These actors, although they do not initiate legal relations, exert both normative influences (as they establish the rules for usage) and technical influence, as they can control the network, change connection parameters and affect

technical aspects of a network. Such actors include, for example, providers of electronic communication services and moderators of digital online platforms. E. Celeste *et al.* (2023) argue that many such actors play a role in translating human rights norms – which comprise the "DNA" of modern constitutionalism – into rules that align with the context of managing digital rights, particularly online content. Today, transnational companies that own and manage social media platforms are becoming dominant actors alongside state authorities.

The fourth criterion refers to the objects of legal protection (the objects to which digital rights apply). Traditional human rights concern fundamental goods (values) that are guaranteed to individuals in the material world (environment), meaning they originated in the context of the physical world and aim to protect individuals in real life from physical infringements on their freedom, property, life and dignity. The objects of digital rights are fundamental goods with which individuals enter into legal relations specifically in the digital environment. While in traditional human rights the objects of rights include property, material things, actions, and both material and immaterial goods, in the context of digital rights, these objects can change due to technological advances, particularly the development of the Internet.

C.H. Kan (2024) found that the main object of digital rights is information, which can be accessed, shared, stored and more, but specifically due to the existence of the Internet. In other words, the focus is not only on information as such but also on information that is limited by the existence of the digital space. Information is the primary object of digital rights because it can be accessed, stored, transmitted and processed electronically using various technologies. This encompasses personal data, i.e., all information related to an individual, such as their name, address, email, phone number, search history, identification numbers, etc. The protection of personal data raises issues of confidentiality and the right to privacy. Content, in the form of all types of information that is created, transmitted, or processed in a digital format, is also included. This can include text, images, videos, audio, software, websites, e-books, databases, etc. This content is subject to protection by copyright, intellectual property rights and other norms. Digital identity is also a key object of digital rights, as it defines an individual's identity in the electronic environment. It includes various data that enable user identification in the digital world, ranging from usernames and passwords to biometric characteristics, such as fingerprints or features recognised by facial recognition systems. Digital identity not only provides access to various online services but also enables transactions and interactions with both government and private institutions and ensures the protection of personal data in the digital environment. Digital assets, also referred to as digital property, are another object of legal protection in the context of digital rights. These include cryptocurrencies and other forms of digital currencies and tokens, as well as intellectual property, which encompasses patents, software code, trademarks and other digital products. These assets can be subject to both civil and criminal legal protection, necessitating specialised legal regulation in this area. With the development of Web 2.0, cyberspace has become an environment where numerous threats to the security of both individual users and organisations are possible (Kharchenko *et al.*, 2017). Therefore, cybersecurity, as a non-material asset, can also be considered an object of digital rights. Digital services should also be included in the objects of legal regulation, as they encompass a wide range of activities conducted via the internet. These include Internet access services; Internet services, such as communication platforms including social networks, messenger services, email and cloud storage services; e-commerce services, including online stores, trading platforms, online banking services and financial services; and entertainment and media services, such as streaming platforms, online gaming platforms, e-books and educational courses.

The fifth criterion of distinction is the sphere of application (implementation) of rights. Traditional rights are directly related to the material aspects of an individual's life, including their interactions with other people, society and the state. In contrast, digital rights focus on the interactions of individuals with virtual spaces, digital resources, platforms and technologies, or interactions with other people, society and the state through the use of information technologies. These rights are implemented through specific types of social relations that arise, change and terminate within cyberspace (digital space). In other words, the development of digital technologies creates the conditions for the transformation of traditional private legal relations, which has led to the emergence of a system of digital rights that requires additional regulation and a review of the mechanisms for their protection.

A. Pandey and A. Mishra (2025) noted that the realisation of digital rights occurs in relationships that cannot be classified as purely legal or factual relationships. These are social connections of a special legal, informational and technical nature. The distinctive feature of the legal relationships in which digital rights are realised is that information exchange occurs in electronic form; the actors exercising their rights and obligations are distanced from each other in space; digital rights are realised with the use of software, technical standards and protocols. The social relations arising from the use of global computer networks are unique informational relations. The particularity of these relations lies in the presence of a technical component (the realisation of which takes place through digital technologies), the informational content of the objects of these relations and the unique composition of the actors involved.

The sources of threats that exist to a particular right comprise the next criterion for distinguishing the types of rights examined in this article. Violations of traditional rights are primarily carried out through physical violence, discrimination, unlawful detention or restrictions on human rights, among other means. A study by A. Brantly (2022) showed that digital technologies create new forms of human rights violations that are exclusively digital, as well as transferring old forms of violations from the physical world into the virtual one. It is important to note that these technologies are also capable of returning violations from the virtual space to the physical one, causing considerable harm to human rights. Violations of digital rights are often particularly dangerous, as they infiltrate individuals' personal spaces that were once free from surveillance mechanisms available to governments, companies or even other citizens. Rights that were once clearly protected are increasingly becoming subject to service terms, algorithmic design and new approaches to the protection of previously guaranteed rights. As a result, human autonomy in the digital environment is increasingly turning from a right into a privilege, secured either by financial payments for services provided by companies or

complex security practices implemented by individuals. Through algorithms, networks, and data collection and analysis, as well as platforms that alter the rules of the game, the situation is becoming increasingly complex.

Violations of digital rights may, at first glance, seem less obvious (e.g., without physical violence), but they can have serious consequences for individuals. The sources of threats to digital human rights are primarily linked to the technologies themselves, particularly the development of AI, as these technologies are not neutral. This manifests, for example, in cyberattacks, theft of personal data, illegal surveillance of internet users, censorship and information manipulation (for example, fake news and propaganda).

In general, any virtual interaction or legal relationship in the digital sphere cannot be considered secure due to potential inaccuracies in information, data breaches, malfunctions of digital services and other similar issues. Remote transactions within civil relationships require placing personal data and banking details on an online platform and sharing them with the platform owner and a potential counterparty, which creates conditions for the improper use of this information. Moreover, the possible anonymity of the counterparty and the inability to apply traditional methods of verifying their identity and the offered resources can raise doubts both about the actual existence of the counterparty and the authenticity of any information provided, as well as about the proper fulfilment of any arising obligations in the future. Essentially, when entering into legal relationships through digital technologies, individuals are often forced to rely on the accuracy of information and the good faith of the digital service provider who participates in establishing and implementing the legal ties (Urtaiev, 2022).

A study by T. Pajuste (2022) highlighted the real and potential dangers that technologies may pose, noting that technologies once thought to help ensure human rights can be used by both state and non-state actors to achieve the opposite. Technologies can be employed for the surveillance of citizens and the spread of disinformation, which could potentially diminish public trust in scientific data and knowledge, for example. AI is now used daily in various ways, including in decision-making within both public and private sectors, which could pose significant threats to human rights. Research has shown that AI can be biased and may not always ensure fair outcomes in all cases. AI can also conceal and diminish accountability for potential human rights violations, as it is not easily adaptable to traditional mechanisms of holding violators accountable. For example, in 2022, Russia launched an extensive disinformation network known as Pravda, which employed AI and chatbots to disseminate propaganda across 49 countries. According to a study conducted by NewsGuard, the network aggregated content from pro-Kremlin sources and used large language models to spread fabricated news narratives. This manipulation, referred to as "large language models grooming," significantly affected the reliability of chatbot outputs, with false claims generated by the network being reproduced in 33% of tested AI responses (Fried, 2025). Some large language models, such as ChatGPT, have started reproducing these manipulations, quoting fake materials and posing a threat to users who may receive false information. In Europe, the adoption of the European Artificial Intelligence Act (2024) has significantly improved the situation in this area. In particular, the requirements for data quality for high-risk AI systems are regulated in Article 10 of this law: "High-risk AI systems which make use of techniques involving the training of AI models with data shall be developed on the basis of training, validation and testing data sets that meet the quality criteria referred to in paragraphs 2 to 5 whenever such data sets are used". However, the AI Act does not regulate issues related to the verification of information sources, detection of fake news or disinformation, or mechanisms for user reporting. These remain under the framework of other regulations, such as the Digital Services Act, which governs online platforms. In the future, the AI Act may be supplemented with requirements to combat the manipulation of information and the dissemination of fake news, particularly for platforms that generate content. This will necessitate increased transparency of AI models and clear mechanisms for monitoring the use of AI to detect any manipulations or unacceptable content.

The infringement of digital rights manifests in diverse and increasingly sophisticated forms that evolve in parallel with the rapid advancement of technology. These violations may involve unauthorized data collection, algorithmic discrimination, surveillance overreach, manipulation of digital identities, or unjustified content restrictions, each presenting unique legal and ethical challenges. Given the fluidity of digital environments and the pace at which new platforms and systems are introduced, the identification of threat sources cannot rely on static legal instruments. Instead, it requires a flexible and anticipatory legal framework that responds to emerging risks in real time. This, in turn, necessitates the continuous improvement of both regulatory standards and law enforcement practices, including the development of adaptive compliance mechanisms, cross-sectoral cooperation, and the incorporation of technological expertise into legal analysis. Without such a dynamic approach, legal systems risk falling behind the realities of digital transformation and becoming ineffective in upholding fundamental rights in the digital sphere.

The seventh criterion for distinguishing rights is normative regulation. Traditional human rights are regulated within traditional legal systems and have a well-established legislative framework (including national legislation and international treaties and conventions). The legal nature of the digital space and the legal relations in which digital rights are realised distinguishes them from the existing legal system, creating an autonomous system that requires the development of its own method and regulatory mechanism. Digital rights are heterogeneous in their legal nature; they are constantly evolving and becoming more complex, which directly impacts the nature of their legal regulation, which is particularly relevant in the field of information protection in electronic registers. As noted by N. Mentukh & O. Shevchuk (2023), legal regulation of information security cannot remain static, as the complexity of digital rights requires a dynamic approach to legal mechanisms for the protection of personal data and privacy. As of 2025, there is no unified legal standard that consolidates the rules establishing the key principles for ensuring digital human rights. Such a legal standard for digital human rights should be comprehensive, considering various aspects of the digital environment and technologies, as well as ensuring effective protection of human rights in an ever-changing world. Currently, certain digital rights are enshrined in various normative legal acts at the national and international levels. In

particular, the right to access the Internet is primarily regulated at the level of national legislation of individual countries. For example, Public Information Act of the Republic of Estonia (2000) regulates access to public information, including digital rights related to online content. In the EU, the General Data Protection Regulation (2016) ensures the protection of personal data in cyberspace, setting standards for privacy and data security. Laws such as the AI Act and the Digital Services Act regulate specific aspects of digital rights concerning protection from disinformation and manipulations in the digital space, ensuring transparency of algorithms (such as content moderation) and combating harmful digital practices.

Another distinctive feature of the legal regulations and legal sources in which digital human rights are enshrined is that they often have a "private character", as technology companies on the Internet set their own platform usage requirements, which they may interpret at their discretion in light of general human rights provisions. These are sometimes referred to as "platform policies", forming what is known as "platform law", which is defined as a system of norms governing communication on the Internet through private platforms rather than public authorities. Platforms such as social networks establish their own rules regarding content; these rules may be either publicly available or hidden. Even when these rules are not disclosed or are kept secret, platform law continues to operate, as platforms effectively act as intermediaries in regulating the Internet. An example of such "private regulation" can be seen in the case of Google's installation in 2025, without user consent, of the Android System SafetyCore app on millions of Android devices, which scans photos to filter 18+ content. While SafetyCore is intended to enhance user security by filtering sensitive content, its automatic installation and lack of transparency raised concerns. One of the most controversial aspects was that SafetyCore was installed without warning on devices running Android 9 and newer versions. This app was automatically installed on users' devices without their knowledge and has virtually unrestricted access to the entire system on such devices. This opens up the possibility that Google could gain access to almost everything on a user's phone without their knowledge or consent, creating a dangerous precedent. There are no guarantees that the app will not scan personal photos, videos or other files (Pathak, 2025).

Tech giants, by establishing content and usage policies based on their own values (primarily commercial), face criticism for unilaterally setting the rules for their virtual spaces, significantly deviating from international human rights law. However, even relying solely on existing laws is not an optimal solution, as social networks are global spaces with users from different countries, and the question of which national law should take precedence raises concerns about digital imperialism. International human rights law also does not provide the ultimate solution, as it requires further interpretation to be applied to online moderation and the digital space. For example, until 2018, Meta claimed that it was not bound by international human rights law (Weng, 2024). However, following major legislative changes in the EU, with the adoption of the Digital Services Act, it introduced a corporate human rights policy that includes a commitment to comply with international norms and discuss the balance between the platform's internal standards and external human rights standards. It is entirely reasonable to agree with the statement by E. Celeste *et al.* (2023) that there is an urgent need for the establishment of a more comprehensive human digital rights standard created by the international community and formalised into treaties through a multistakeholder process. This would help bridge the gap between companies that actively protect human rights in their operations and those that do considerably less.

At the same time, the networked nature of the Internet and the conflicting interests of states often diminish the importance of rights in digital matters. M.K. Land (2019) argues that one of the main problems in the legal regulation of digital human rights and the establishment of a universal standard will remain the issue of jurisdictional conflicts between countries. For example, France is attempting to force Google to comply with European data protection laws globally, while Canada's Supreme Court has deemed it necessary to unilaterally remove websites of intellectual property infringers. At the same time, US courts oppose such decisions, as they could contradict American laws that protect intermediaries from liability for content transmission. This situation creates challenges in regulating the Internet at the international level. The protection of digital rights and the regulation of the Internet largely depend on the political structures and models present in different countries. A. Brantly (2022) identified five distinct "Internets" that vary in terms of openness, control and regulation, depending on the country in which they developed. Among these are the Silicon Valley Open Internet, the Brussels Bourgeois Internet, the DC Commercial Internet, the Beijing Paternal Internet and the Moscow Spoiler Internet. In A. Brantly's (2022) analysis, each of the five visions of the internet presents a unique set of policy and regulatory challenges. All of this confirms the hypothesis about the specific nature and complexity of digital rights, which necessitates a combination of international and national legal regulation and imperative and dispositive norms, demonstrating the complex and fragmented nature of digital rights.

An equally important criterion for distinguishing rights is the mechanism (method) of protection of rights and methods of monitoring violations. Traditional human rights have a well-established model for challenging rights violations through legal and political mechanisms, for example, through national courts or international bodies. Traditional human rights are typically protected through state institutions (such as courts, the police and government bodies), as well as international human rights organisations (such as the UN and the European Court of Human Rights).

Monitoring is carried out through local and international bodies, but it often depends on national political will. In the offline sphere, human rights form an interconnected system, where the effectiveness of each component relies on other components. The changes arising from the division between offline and online raise concerns about the consistency of the offline system when applied to the Internet, casting doubt on whether offline tools are suitable for addressing legal issues in the digital environment (Susi, 2019). The implementation of digital human rights requires a special approach to protection through specific technological tools, such as encryption systems, anti-censorship technologies and data protection monitoring tools. It also involves the engagement of international human rights mechanisms, particularly the United Nations Human Rights Council (2021), which has adopted multiple resolutions affirming that the

rights protected offline must also be protected online, and the development of initiatives such as the Global Digital Compact, aimed at safeguarding human rights in the digital age. Challenging violations of rights in the digital environment can be much more complex than in the offline world due to various technical barriers. Access to legal protection mechanisms online is crucial, such as for combating censorship in cyberspace and ensuring access to fair mechanisms for personal data protection. As the digital environment is more complex and dynamic than the offline environment, protection mechanisms in this context are often not as clearly defined or accessible, which is particularly evident in the field of social networks, where the speed of personal data circulation and the volume of information processed significantly complicate privacy control. S. Yevseiev *et al.* (2021) show that the risks of data leakage or unauthorised use increase significantly due to the human factor, the vulnerability of IoT devices and the imperfection of cloud services. The effectiveness of personal data protection directly depends on the level of user trust in the information and the systems that process it. Thus, the vagueness of legal protection mechanisms in the digital environment is exacerbated by the fact that users themselves do not have sufficient guidance on the level of security and reliability of the digital platforms on which they operate. This indicates the need for not only technical but also legal modelling of protection mechanisms that would take into account the variable nature of trust and the complexity of digital social structures. In other words, the uncertainty regarding the criteria for what should be considered a violation of digital rights is an additional obstacle to improving the protection mechanisms for digital rights. In many cases, there are no clear standards for what constitutes a violation of digital rights. This can lead to situations where some violations go unnoticed or are ignored due to the lack of a clear legal framework, accountability and sanctions.

The specificity of implementing digital rights also lies in the fact that fundamental principles of traditional human rights, such as transparency, accessibility and predictability, lose their general functionality in relation to online human rights. While transparency in the offline environment means that individuals can understand why certain outcomes regarding their ability to exercise human rights are what they are, typically through the analysis of judicial decisions, regulations, laws or other documents related to their specific situation, in the digital rights context, problems can arise due to the lack of transparency, for example when online companies gain access to the moderation of user-generated content. Transparency in the protection of individual human rights is replaced by statistical data about the outcomes of similar online conflicts of rights or values. Accessibility includes both access to regulatory principles, which are positive rights, and the availability of legal protection in the event of a potential violation. However, when it comes to protecting rights in the online environment, individuals often do not know where to find the relevant regulations, if they even exist. In the case of traditional human rights protection, there are no such issues. However, the application of legal remedies in the online context remains highly debatable, whether through judicial proceedings or through a certain platform in an extrajudicial manner, and which norms should be applied. Furthermore, digital rights protection is characterised by "multistakeholderism", meaning that states "shift" some of their obligations for human rights protection onto private entities. Nevertheless, the question of how legal remedies should function in the online environment remains complex and unsettled. It is still unclear whether such remedies should be pursued through formal judicial systems, alternative dispute resolution mechanisms, or internal procedures established by digital platforms. As noted by M. Susi (2019), the protection of digital rights increasingly involves a multistakeholder model, where traditional state responsibilities are redistributed among various private actors, particularly technology companies. This redistribution not only redefines the allocation of duties in safeguarding human rights but also leads to a transformation in how standards are created and enforced – shifting normative authority away from public institutions and toward transnational corporate entities.

Conclusions

The distinction between digital and traditional human rights is rooted in their origin and the nature of the social and technological conditions that gave rise to them. Digital rights have emerged as a necessary legal response to the profound societal changes driven by the digitalisation of communication, the development of AI, and the algorithmisation of everyday interactions. These rights were not foreseen in the classical human rights paradigm, which was developed in response to threats existing in the material, institutionalised world. As a result, digital rights differ not only in their object of regulation but also in their structural characteristics, implementation conditions, and normative justification. Although digital rights often interact with and extend traditional rights, they represent a separate legal phenomenon that requires specific regulatory treatment. One of the fundamental differences is the technological dependency of digital rights. These rights arise and function only within the digital environment and have no relevance outside of it. Unlike traditional rights, which apply regardless of technological context, digital rights are inseparable from the infrastructures that enable them. Furthermore, digital rights are marked by high dynamism of content; their scope and meaning continuously evolve in response to technological shifts. This dynamic nature contrasts with the relative stability of traditional human rights, which have maintained core definitions over decades of international legal development. The implementation of digital rights also presupposes a particular structure of legal subjectivity. Realisation of such rights is possible only when individuals possess not only formal legal capacity but also a minimum level of technological competence and access. This introduces an additional dimension of inequality and highlights the need for considering the so-called digital divide in human rights discourse. Another crucial factor is the specificity of the legal objects protected. Digital rights focus on immaterial and data-driven assets such as personal information, digital identity, algorithmic transparency, and cybersecurity. These objects are not only novel in the legal sense but also volatile, often existing across jurisdictions and outside traditional state regulation. Accordingly, the legal mechanisms for protecting such rights are often fragmented, involving a mix of national laws, international frameworks, and internal policies of digital platforms.

In contrast, traditional rights are supported by constitutional guarantees and binding international treaties, with established enforcement mechanisms through national courts and international human rights bodies. The absence

of equivalent legal architecture in the digital sphere creates asymmetry between the recognition of digital rights and their practical enforceability. The nature of threats to digital rights also differs substantially. While traditional rights are typically endangered by physical coercion or legal restrictions imposed by the state, digital rights face threats from algorithmic bias, commercial surveillance, platform censorship, and the uncontrolled dissemination of personal data. These threats often remain invisible to the affected individuals and may originate from private actors rather than public authorities, thereby complicating the legal accountability framework. The normative regulation of digital rights remains largely underdeveloped. Many jurisdictions continue to address digital harms through analogical application of civil or administrative law without recognising the distinctive features of digital rights. Foundational legal documents such as civil codes and information laws often fail to define rights such as access to digital infrastructure, protection from algorithmic decision-making, or the right to transparency in data use, despite the growing importance of such issues in contemporary society.

In this context, it becomes clear that the development of effective legal standards for the protection of digital rights requires a conceptual framework capable of addressing these distinctions. Legal systems must move beyond treating digital rights as derivatives of classical categories and instead recognize them as a complex and evolving phenomenon shaped by the interaction of legal norms, technological affordances, and platform governance. The absence of such a framework risk reducing digital rights to discretionary privileges dependent on private regulation rather than enforceable legal entitlements. Consequently, the clarification and theoretical grounding of digital rights are not only a matter of academic interest but a prerequisite for ensuring justice, accountability, and human dignity in the digital era.

Acknowledgements

The author would like to thank the Research Council of Lithuania (Lietuvos mokslo taryba) for their financial support in this research and Mykolas Romeris University. This work was supported by the Research Council of Lithuania (Lietuvos mokslo taryba) (grant number P-PD-23-170).

Funding

The study was not funded.

Conflict of interest

None.

References

[1] Ahmad, N., Ali, A.W., & Yussof, M.H. (2025). The challenges of human rights in the era of artificial intelligence. *UUM Journal of Legal Studies*, 16(1), 150-169. doi: 10.32890/uumjls2025.16.1.9.

[2] Approved Judgment of the High Court of Justice Business and Property Courts of England and Wales Intellectdual Property in the Case No. IL-2023-000007 “Getty Images v. Stability AI”. (2025, January). Retrieved from https://www.judiciary.uk/wp-content/uploads/2025/01/Getty-Images-and-others-v-Stability-AI-14.01.25.pdf.

[3] Artificial Intelligence Act. (2024, July). Retrieved from https://artificialintelligenceact.eu/the-act/.

[4] Baumgärtel, M., & Ganty, S. (2024). On the basis of migratory vulnerability: Augmenting article 14 of the European Convention on Human Rights in the context of migration. *International Journal of Law in Context*, 20(1), 92-112. doi: 10.1017/S174455232300037X.

[5] Benedek, W. (2025). International organizations and digital human rights. In B. Wagner, M.C. Kettemann, K. Vieth-Ditlmann & S. Montgomery (Eds.), *Research Handbook on human rights and digital technology* (pp. 310-324). Cheltenham: Edward Elgar Publishing. doi: 10.4337/9781035308514.00025.

[6] Bon, A., Saa-Dittoh, F., & Akkermans, H. (2023). Bridging the digital divide. In H. Werthner, C. Ghezzi, J. Kramer, J. Nida-Rümelin, B. Nuseibeh, E. Prem & A. Stanger (Eds.), *Introduction to digital humanism* (pp. 283-298). Cham: Springer. doi: 10.1007/978-3-031-45304-5_19.

[7] Brantly, A. (2022). Utopia lost – human rights in a digital world. *Applied Cybersecurity & Internet Governance*, 1(1), 1-19. doi: 10.5604/01.3001.0016.1238.

[8] Celeste, E., Palladino, N., Redeker, D., & Yilma, K. (2023). *The content governance dilemma: Digital constitutionalism, social media and the search for a global standard.* Cham: Palgrave Macmillan. doi: 10.1007/978-3-031-32924-1.

[9] Civil Code of the Republic of Estonia. (2002, March). Retrieved from https://www.riigiteataja.ee/akt/106122010012.

[10] Civil Code of the Republic of Lithuania. (2000, July). Retrieved from https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.107687?positionInSearchResults=1&searchModelUUID=c68a6ba6-0c7a-44be-b440-d9c054eca329.

[11] Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15#Text.

[12] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. (1984, December). Retrieved from https://surl.lu/qlnrem.

[13] Convention on the Elimination of All Forms of Discrimination against Women. (1979, December). Retrieved from https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women.

[14] Convention on the Rights of the Child. (1989, November). Retrieved from https://surl.li/hcnwfs.

[15] Demeke, S. (2024). A human rights-based approach for effective criminal justice response to human trafficking. *Journal of International Humanitarian Action*, 9(1), article number 4. doi: 10.1186/s41018-023-00143-4.

[16] European Convention on Human Rights. (1950, November). Retrieved from https://www.echr.coe.int/documents/d/echr/convention_ENG.

[17] European Declaration on Digital Rights and Principles for the Digital Decade. (2022, January). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52022DC0028.

[18] Farrand, B. (2025). Online platforms, intermediary responsibility, and human rights: Digital copyright as a site of multiple contestations in the EU. In B. Wagner, M.C. Kettemann, K. Vieth-Ditlmann & S. Montgomery (Eds.), *Research handbook on human rights and digital technology* (pp. 54-68). Cheltenham: Edward Elgar Publishing. doi: 10.4337/9781035308514.00010.

[19] Fried, I. (2025). *Exclusive: Russian disinformation floods AI chatbots, study finds*. Retrieved from https://www.axios.com/2025/03/06/exclusive-russian-disinfo-floods-ai-chatbots-study-finds.
[20] General Data Protection Regulation. (2016, April). Retrieved from https://gdpr-info.eu/.
[21] Global Digital Compact. (2023). Retrieved from https://www.un.org/global-digital-compact/en.
[22] International Convention on the Elimination of All Forms of Racial Discrimination. (1965, December). Retrieved from https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial.
[23] International Covenant on Civil and Political Rights. (1966, December). Retrieved from https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights.
[24] Kan, C.H. (2024). Artificial intelligence (AI) in the age of democracy and human rights: Normative challenges and regulatory perspectives. *International Journal of Eurasian Education and Culture*, 9(25), 145-166. doi: 10.35826/ijoecc.1825.
[25] Kharchenko, V., Ponochovnyi, Y., Qahtan, A.-S.M., & Boyarchuk, A. (2017). Security and availability models for smart building automation systems. *International Journal of Computing*, 16(4), 194-202. https://doi.org/10.47839/ijc.16.4.907.
[26] Kolodiziev, O., Krupka, M., Shulga, N., Kulchytskyy, M., & Lozynska, O. (2021). The level of digital transformation affecting the competitiveness of banks. *Banks and Bank Systems*, 16(1), 81-91. doi: 10.21511/bbs.16(1).2021.08.
[27] Krasivskyy, O. (2023). Specific features of public involvement and digitalization of services when reforming public administration during the war. *Democratic Governance*, 16(1), 12-23. doi: 10.23939/dg2023.01.012.
[28] Land, M.K. (2019). The problem of platform law: Pluralistic legal ordering on social media. *SSRN*. doi: 10.2139/ssrn.3454222.
[29] Law of the Republic of Lithuania No. XIII-1120 "On Electronic Identification and Trust Services for Electronic Transactions". (2018, April). Retrieved from https://surl.li/ruwggx.
[30] Malgieri, G., & Santos, C. (2025). Assessing the (severity of) impacts on fundamental rights. *Computer Law & Security Review*, 56, article number 106113. doi: 10.1016/j.clsr.2025.106113.
[31] Mantelero, A. (2024). The Fundamental Rights Impact Assessment (FRIA) in the AI Act: Roots, legal obligations and key elements for a model template. *Computer Law & Security Review*, 54, article number 106020. doi: 10.1016/j.clsr.2024.106020.
[32] Mentukh, N., & Shevchuk, O. (2023). Protection of information in electronic registers: Comparative and legal aspect. *Law, Policy and Security*, 1(1), 4-17.
[33] Opinion and Order on Sanctions of the United States District Courtsouthern District of New York in Case No. 1:22-cv-01461 "Mata v. Avianca, Inc.". (2023, June). Retrieved from https://law.justia.com/cases/federal/district-courts/new-york/nysdce/1%3A2022cv01461/575368/54/.
[34] Pajuste, T. (2022). *Specific threats to human rights protection from the digital reality*. Tallinn: Tallinn University. doi: 10.13140/RG.2.2.17192.85760.
[35] Pandey, A., & Mishra, A. (2025). Conflict and coexistence of human rights: An exploratory study with reference to intellectual property rights. *Journal of Human Rights and Social Work*, 10, 43-54. doi: 10.1007/s41134-024-00361-9.
[36] Pathak, P. (2025). *What is Android System SafetyCore and why did it appear on your phone?* Retrieved from https://allthings.how/what-is-android-system-safetycore-and-why-did-it-appear-on-your-phone-2.
[37] Patricheev, I. (2025). Legal paternalism's influence on the balancing data protection and fundamental rights. *Law Journal of the National Academy of Internal Affairs*, 15(1), 48-58. doi: 10.63341/naia-chasopis/1.2025.48.
[38] Popa Tache, C.E., & Săraru, C.S. (2024). Evaluating today's multi-dependencies in digital transformation, corporate governance and public international law triad. *Cogent Social Sciences*, 10(1), article number 2370945. doi: 10.1080/23311886.2024.2370945.
[39] Public Information Act of the Republic of Estonia. (2000, November). Retrieved from https://www.fao.org/faolex/results/details/en/c/LEX-FAOC049697/.
[40] Shany, Y. (2022). *From digital rights to international human rights: The emerging right to a human decision maker*. Retrieved from https://www.oxford-aiethics.ox.ac.uk/blog/digital-rights-international-human-rights-emerging-right-human-decision-maker.
[41] Spano, R. (2021). *Freedom of expression and media freedom in the light of the case law of the ECHR*. Retrieved from https://www.echr.coe.int/documents/d/echr/Speech_20210618_Spano_ERA_conference_European_media_law_ENG.
[42] Susi, M. (2019). *Human rights, digital society and the law: A research companion*. London: Routledge. doi: 10.4324/9781351025386.
[43] United Nations Human Rights Council. (2021). *Resolution on the promotion, protection and enjoyment of human rights on the Internet*. Retrieved from https://www.article19.org/resources/un-human-rights-council-adopts-resolution-on-human-rights-on-the-internet/.
[44] Universal Declaration of Human Rights. (1948, December). Retrieved from https://www.un.org/en/about-us/universal-declaration-of-human-rights.
[45] Urtaiev, O. (2022). Peculiarities of regulation of legal relations in the field of IT law. *Law Herald*, 6, 233-239. doi: 10.32782/yuv.v6.2022.28.
[46] Vachhani, S.J. (2024). Networked feminism in a digital age – mobilizing vulnerability and reconfiguring feminist politics in digital activism. *Gender, Work & Organization*, 31(3), 1031-1048. doi: 10.1111/gwao.13097.
[47] Weng, Z. (2024). Digital human rights from the perspective of system theory – concept definition, social function, and constitutional basis. *Human Rights*, 4, 69-101.
[48] Yevseiev, S., Laptiev, O., Lazarenko, S., Korchenko, A., & Manzhul, I. (2021). Modeling the protection of personal data from trust and the amount of information on social networks. *EUREKA, Physics and Engineering*, 2021(1), 24-31. doi: 10.21303/2461-4262.2021.001615.

Теоретичні засади визначення критеріїв розмежування цифрових і традиційних прав людини: міжнародно-правовий аналіз

Марія Плескач
Кандидат юридичних наук, науковий співробітник
Університет Миколаса Ромеріса
LT-08303, вул. Атейтіс, 20, м. Вільнюс, Литва
https://orcid.org/0000-0003-3296-5475

Анотація. Зростаючий вплив цифрових технологій та Інтернету на правові системи викликав нагальну потребу в чіткому розмежуванні традиційних і цифрових прав людини. Метою цього дослідження було визначення теоретичних критеріїв для розмежування цих прав у рамках міжнародно-правового аналізу. У дослідженні були використані методи правового аналізу, порівняльно-правового методу та контент-аналізу наукової літератури, міжнародних документів і національних правових актів. Було розглянуто еволюцію прав людини в цифрову епоху та проаналізовано правові прогалини в міжнародному та національному законодавстві. Було виявлено, що цифрові права відрізняються від традиційних прав через їхню технологічну залежність, динамічний зміст та багатосторонню структуру правовідносин. Критеріями диференціації визначено такі ключові ознаки, як контекст виникнення, суб'єктний склад, механізми регулювання та об'єкти захисту. Також було виявлено, що більшість цифрових прав виникають з приватноправових відносин і залучають суб'єктів поза межами держави, включаючи транснаціональні корпорації та алгоритмічні системи. Дослідження дійшло висновку, що сучасній правовій доктрині бракує єдиного стандарту цифрових прав, а розмежування між цифровими та традиційними правами потребує систематичного теоретичного підґрунтя. Узагальнено, що необхідно розробити нові правові стандарти для адекватного реагування на загрози цифровим правам, особливо в контексті штучного інтелекту, конфіденційності даних та регулювання контенту. Результати дослідження можуть бути застосовані міжнародними організаціями, національними законодавцями, правозахисниками та науковцями при розробці послідовної та адаптивної правової політики щодо захисту прав у цифровому середовищі

Ключові слова: цифрові права; свободи в Інтернеті; міжнародні правові стандарти; цифрова трансформація; кібербезпека; приватність у цифрову епоху

UDC 343.197
DOI: 10.32518/sals2.2025.262

Соціально-правові студії. 2025. Т. 8, № 2
Social & Legal Studios. 2025. Vol. 8, No. 2

Social and legal consequences of Ukraine's ratification of the Rome Statute of the International Criminal Court

Iryna Basysta*
Doctor of Law, Professor
Lviv State University of Internal Affairs
79007, 26 Horodotska Str., Lviv, Ukraine
https://orcid.org/0000-0001-9707-7386

Oleksandr Drozdov
Doctor of Law, Professor
Yaroslav Mudryi National Law University
61024, 77 Hryhoriia Skovorody Str., Kharkiv, Ukraine
University of Barcelona
08034, 684 Ave. Diagonal, Barcelona, Spain
https://orcid.org/0000-0003-1364-1272

Olena Drozdova
PhD in Law, Associate Professor
International University of Economics and Humanities named after Academician Stepan Demyanchuk
33000, 4 Stepan Demianchuk Str., Rivne, Ukraine
University of Barcelona
08034, 684 Ave. Diagonal, Barcelona, Spain
https://orcid.org/0000-0002-8018-8116

Volodymyr Kovtun
Master's Student
Yaroslav Mudryi National Law University
61024, 77 Hryhoriia Skovorody Str., Kharkiv, Ukraine
https://orcid.org/0000-0002-0660-1320

Serhii Shulhin
PhD in Law, Prosecutor
Office of the Prosecutor General
01011, 13/15 Riznytska Str., Kyiv, Ukraine.
https://orcid.org/0000-0001-6379-7393

Abstract. Although the International Criminal Court opened an investigation when russia launched its aggression against Ukraine, numerous obstacles still hinder the restoration of justice and complicate the prosecution of those responsible. This study aimed to examine the challenges of harmonising domestic criminal and procedural law with international norms in the light of the social and legal repercussions of ratification. The research applied doctrinal, institutional and normative and legal analyses, together with comparative methods and case studies. The findings showed that, even though Ukraine's journey towards full membership of the Rome Statute culminated in ratification, effective harmonisation of national legislation remains incomplete. One explanation identified is inaccuracy in the official Ukrainian translation of the Statute. Consequently, several issues have emerged, including a legislative narrowing of

Suggested Citation

Article's History: Received: 03.03.2025 Revised: 31.05.2025 Accepted: 25.06.2025

Basysta, I., Drozdov, O., Drozdova, O., Kovtun, V., & Shulhin, S. (2025). Social and legal consequences of Ukraine's ratification of the Rome Statute of the International Criminal Court. *Social & Legal Studios*, 8(2), 262-275. doi: 10.32518/sals2.2025.262.

*Corresponding author

Copyright © The Author(s). This is an open access Article distributed under the terms of the Creative Commons Attribution License 4.0 (https://creativecommons.org/licenses/by/4.0/)

the recognised forms of genocide and the incorrect use of formulaic expressions such as “crimes against humaneness”, among others. The study identified specific features of detention and captivity arising from differing legal grounds that determine the status of such individuals under the norms of international humanitarian law. It was concluded that the proper regulated operation of Joint Investigation Teams is essential for the admissibility of collected evidence, particularly concerning the qualification of the individuals involved, whose professional competence is crucial. It was demonstrated that the use of open-source digital information in the documentation of international crimes must comply not only with the Berkeley Protocol but also with the requirements of jurisdictional and national admissibility. The practical value of this research lies in its potential to serve as a reference point for national legislators in the pursuit of thorough and proportionate legal harmonisation, as well as for courts and other law enforcement bodies

Keywords: serious international crimes; international judicial body; international humanitarian and criminal law; restoration of international legal order

Introduction

Several factors underscore the importance of this subject. First, on 1 January 2025, Ukraine became a full State Party to the Rome Statute of the International Criminal Court (1998; 2021). Between 2013 and 2025, having recognised the International Criminal Court (ICC) jurisdiction, Ukraine took steps to strengthen cooperation; however, by 2025 the Statute had not yet entered fully into force at the national level, because – according to Letter of the Ministry of Foreign Affairs of Ukraine No. 72/14612-157225 (2024) – the amendments will take effect only on 25 October 2025. Second, although the ICC Prosecutor opened a full investigation following the large-scale invasion by the Russian Federation (Statement of ICC Prosecutor…, 2022a; 2022b) and the first ICC warrants have been issued (ICC condemns the issuance…, 2025; Issuance of Executive Order…, 2025), domestic legislation, as of mid-2025, still does not meet the standards of the Statute, international humanitarian law, international criminal law, or the related procedures. Third, the sanctions policy directed against the ICC, which intensified at the beginning of 2025 (Lohne, 2024; 2025), is hampering the Court’s ability to function effectively. These obstacles impede efforts to secure accountability before the ICC for aggression, war crimes, genocide, ecocide, and crimes against humanity. Collectively, these issues undermine the expectations of Ukrainian society – and of the international community as a whole – regarding the restoration of the international legal order.

A number of studies have already addressed various aspects of the Court’s operation. For example, serious international crimes codified in the Rome Statute of the International Criminal Court (1998; 2021) (hereinafter referred to as the Rome Statute or the Statute), viewed through the lens of “anti-human acts”, were systematised by K.M. Maloney *et al.* (2023), whose research was based on ICC case law. When examining war crimes as grave breaches of the Geneva Conventions and invoking the ICC’s universal jurisdiction, V.P. Pylypenko (2018) concluded that international criminal justice bodies play a decisive role in ensuring compliance with the norms of international humanitarian law. E.V. Shcherban (2019) explored the declared dilemma of complementarity as a constitutional and legal basis for incorporating the Statute into Ukrainian legislation, along with the challenges of bias in national judicial proceedings. It was emphasised that the Statute gives precedence to states in prosecuting serious international crimes, which must be criminalised at the national level. Only in cases where a state is unwilling or unable to carry out genuine criminal prosecutions of those responsible for such crimes may the ICC “complement national criminal justice systems” (Zuev *et al.*, 2022).

The issue of individual criminal responsibility for the crime of aggression was examined by N. Hussain *et al.* (2023), who concluded that individualisation is essential, even though command responsibility is among the specific features of liability for international crimes under the Statute. At the national level, I.V. Hloviuk (2024) compiled an original list of challenges stemming from the introduction of this legal innovation, also highlighting the domestic requirement for the individualisation of criminal liability. M. Buromensky and V. Gutnyk (2024) identified markers of the crime of genocide under the Statute and concluded that, in the ongoing war of aggression in Ukraine, the Russian Federation is committing genocide against the Ukrainian people. Although the crime of ecocide is still absent from the Rome Statute (1998; 2021), its potential future inclusion in ICC practice has been studied by D. Palarczyk (2023), who argued that ecocide should be added to the list of serious international crimes. As for the national context, K. Zadoya (2024) observed that the Ukrainian legislature has, unfortunately, chosen an inappropriate path for harmonising criminal law with international criminal law. Following ratification, harmonisation of national provisions with international standards – particularly in the area of human rights protection – is essential for reinforcing the global response to international crimes.

The politicisation of the International Criminal Court has also been the subject of academic inquiry. J. Bahreini and M.H. Ramezani Ghavam Abadi (2023) analysed the legal status of Palestine’s membership in the ICC, the potential for holding Israeli officials accountable, and the challenges associated with the Court’s jurisdiction. L. J. Gaynor (2024) examined how the entanglement of legal decisions with political and historical narratives undermines both the ICC’s deterrent capacity and the enforceability of its rulings. J. Grzybowski and F. dos Reis (2024), through the analysis of three ICC cases – concerning crimes committed by British forces in Iraq, the actions of the Taliban, government and US forces in Afghanistan, and both Israeli authorities and Palestinian groups in the West Bank, East Jerusalem, and Gaza – highlight the fluid boundaries between law and politics, and between international and domestic levels. They argue that the Court’s metapolitics shape its authority and contribute to the transformation of contemporary legal frameworks in the service of humanity. G. Turan (2024) asserted that the dominant focus on deterrence as the central aim of international law distorts its broader purpose, exposing links between the ICC’s activity, the global political economy, and capitalist expansion.

None of the existing researchers has comprehensively or prognostically addressed the question of the social and legal

consequences of Ukraine's ratification of the Rome Statute (1998; 2021) in the context of holding the russian federation accountable for international crimes. Therefore, this study aimed to identify the missteps and causes behind the slow pace of implementation and harmonisation processes, as well as to explore the social and legal implications of the Statute's ratification. The objectives of the study include: a retrospective analysis of events from the time Ukraine signed the Statute up to January 2025; identification and examination of the existing problems and social and legal consequences of its ratification; and the development of recommendations for harmonising Ukrainian criminal and criminal procedural law with international criminal and humanitarian law, and the Rome Statute.

Materials and methods

Doctrinal and institutional approaches have been employed to construct an original framework for presenting the material. This structure is based on key indicators relevant to international law, including the path taken by Ukraine towards ratification of the Rome Statute (1998; 2021), the underlying conditions and driving forces behind this process, and the setbacks and progress observed in implementation. The analysis has made it possible to identify both shortcomings and achievements in legislative practice that currently enable the investigation of crimes under the Criminal Procedure Code of Ukraine (2012) (CPC of Ukraine), while applying the legal definitions provided by the Criminal Code of Ukraine (2001) (CC of Ukraine) in the prosecution of war criminals. An institutional analysis has led to the conclusion that the large-scale russian invasion of Ukraine, together with the launch of a full investigation by the ICC Prosecutor, opened a new phase in the practical application of the Statute's provisions even before Ukraine ratified it. Comparative analysis was employed to support this finding.

A review of European Court of Human Rights (ECtHR) case law – Vasiliauskas v. Lithuania (2015), Koprivnikar v. Slovenia (2017), and Drėlingas v. Lithuania (2019) – alongside International Criminal Court decisions in Prosecutor v. Tolimir (2012), Prosecutor v. Ahmad Al Faqi Al Mahdi (2016), Prosecutor v. Mladic (2017), and Prosecutor v. Mahmoud al-Werfalli (2018) indicates that the ICC's current evidentiary approach to aggression, war crimes, genocide and crimes against humanity differs in several respects from domestic practice. Close study of the Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (1995) in Prosecutor v. Dusko Tadic a/k/a "Dule" suggests a set of fundamental questions – particularly those concerning jurisdiction and the legality of establishment – that could be raised when any future tribunal addressing the crime of russian aggression is challenged.

The methods described above were also applied when analysing domestic judicial decisions and separate opinions in cases No. 639/6389/24 (2024) and No. 415/2182/20 (2024), recorded in the Unified State Register of Court Decisions. This sample reveals divergent views among local-court and Supreme Court judges on the imposition and execution of sentences for offences against the foundations of national security and for crimes classified under Section XX of the CC of Ukraine (2001). Judicial interpretations are additionally presented on the questions of who may exercise control over the military or political actions of the aggressor state and on the scope of combatant immunity.

Results and Discussion

A retrospective on the ICC Statute's ratification. When discussing war, S. Malesevic (2010; 2012) views it not merely as an act of violence, but characterises it as a social phenomenon shaped by state institutions, ideology, and technological advancement. Most wars originate under the influence of state leaders and the ideologies embedded within a society's sociological fabric. S. Malesevic (2012) also stresses the value of integrating a sociological perspective into the study of warfare, highlighting its role as a driver of social change and identity formation. War inflicts profound suffering, yet simultaneously acts as a catalyst for societal transformation and for re-evaluating a nation's position within the international community. The Federal Republic of Germany serves as a prime example; following two World Wars, it re-evaluated its identity and its relationship with the world, emerging as a state committed to peace rather than aggression. Conflict or war is, therefore, one form of group social interaction (Roxborough, 2007).

Modern constitutional law scholarship, as asserted by Y. Barabash and H. Berchenko (2019), has developed the doctrine of "militant democracy" to prevent future wars and safeguard post-war values. This concept refers to a democracy that defends itself through active measures. Contemporary Ukraine can also be characterised as a state of "militant democracy", a notion enshrined in Article 17 of the Constitution of Ukraine (1996), which imposes on society the duty to uphold state sovereignty, including through the safeguarding of information security – one of the foundations of an "armed democracy". Nevertheless, despite the advancement of conflict resolution institutions and the existence of the doctrine of militant democracy, wars continue, often with new forms of violence and brutality. When a conflict acquires international dimensions, as V. Gutnyk (2023) rightly concludes, a body empowered to administer justice for violations of the international legal order must intervene to hold perpetrators accountable. One such institution is the ICC, which operates under the Rome Statute. The idea behind the establishment of the ICC is often regarded as "revolutionary". However, an analysis of the procedures for contesting jurisdiction and admissibility reveals that these stages within the ICC are complex (Sadat & Carden, 2003). Immunities or official status do not constitute obstacles to prosecution by the ICC (Gutnyk, 2023). Historical experience shows that, in addition to a properly compiled body of evidence, the prosecution of war criminals by the ICC also requires political will and coordinated efforts by States Parties to the Rome Statute, in order to restore justice and re-establish the disrupted international legal order (Lamb, 2024). It is worth noting in passing that the relationship between certain states that have not ratified the Statute and the Court has remained tense over an extended period (Scheffer, 1999). For example, in late 2024 and early 2025, the USA made active attempts (Lohne, 2024; 2025) and eventually imposed sanctions against the ICC and its Prosecutor, Karim Asad Ahmad Khan (Official website of the United States government, 2025). In response, the ICC condemned the actions and official statement of the USDT (ICC condemned…, 2025). In turn, russia placed ICC prosecutors on its wanted list after arrest warrants were issued for high-ranking russian "big fish" suspected of committing war crimes in Ukraine (Situation in Ukraine…, 2023; 2024).

Given the current circumstances – including a full-scale war marked by serious international crimes as defined in the

Rome Statute (1998; 2021) and in light of global trends – the Ukrainian legislature proceeded with the Statute's ratification. On 24 August 2024, the President of Ukraine signed the Law of Ukraine No. 3909-IX (2024), and on 25 October 2024, Ukraine deposited its instrument of ratification with the depository of the Rome Statute of the International Criminal Court (1998; 2021). This formally concluded a long-standing ratification process, as Ukraine had signed the Statute as far back as 20 January 2000 (Popova, 2024). The 25-year period leading to the Statute's entry into force in Ukraine was both stagnant and eventful. Initially, ratification was hindered by the Opinion of the Constitutional Court of Ukraine in the Case No. 1-35/2001 "On the Rome Statute" (2001). The Court found that the Rome Statute (1998) was inconsistent with the Constitution of Ukraine (1996), particularly regarding the tenth paragraph of the preamble and Article 1, which stipulate that the International Criminal Court "shall be complementary to national criminal jurisdictions". In 2013, the events of the Revolution of Dignity became a catalyst for the Verkhovna Rada of Ukraine to refer to the International Criminal Court No. 790-VII (2014). Ukraine's renewed recognition of the ICC's jurisdiction was prompted once again by war crimes committed by the aggressor in Donbas. In response, the Resolution of the Verkhovna Rada of Ukraine 145-VIII (2015) was adopted.

After recognising the ICC's jurisdiction on two separate occasions, the previously stagnant debate in Ukraine regarding ratification of the Rome Statute entered a more active phase. It became evident that while Ukraine's declarations recognising the ICC's jurisdiction were significant acts of political will, they did not grant the country full membership – resulting in several adverse consequences. According to Article 18 of the Vienna Convention on the Law of Treaties (1969), a state that has signed but not ratified a treaty is obliged to refrain from acts that would defeat the treaty's object or purpose. K. Zadoya (2018; 2024) has repeatedly pointed to the limitations that Ukraine faces in the absence of full membership. This scholar also critically highlighted the confusion present in the Opinion on the Draft Law of Ukraine No. 7179 (2018), rightly stressing that, in the context of the Rome Statute, "the issue of ratification (acceptance, approval) of the Statute and that of cooperation with the ICC lie in different domains" K. Zadoya (2018). Within the framework of the Association Agreement between Ukraine and the European Union, Ukraine explicitly committed itself to ratifying the Rome Statute. However, this obligation was effectively disregarded for 25 years (Association Agreement between Ukraine…, 2014). On 23 June 2022, when Ukraine was granted EU candidate status, one of the seven conditions set out by the European Commission for the commencement of accession negotiations included the ratification of the Rome Statute. At the time of opening negotiations, however, this condition had not been fulfilled by the Ukrainian authorities, despite repeated warnings from the academic community (Call from leading universities…, 2023).

As of 2025, the ICC remains unable to prosecute the Russian Federation for the crime of aggression committed in Ukraine. This is due to the fact that, at the time of the full-scale invasion, Ukraine had not yet ratified the Rome Statute, and the legal consequences of full membership did not come into force until 1 January 2025. This legal limitation is a direct result of the 25-year delay in ratification. One of the most anticipated developments that could have paved the way for ratification occurred in 2016, when amendments were introduced to the Constitution of Ukraine (Law of Ukraine No. 1401-VIII, 2016). The revised version of Article 124(5) enabled Ukraine to recognise the jurisdiction of the ICC under the conditions of the Rome Statute. Nevertheless, this constitutional change did not become the catalyst for immediate ratification.

Only from 1 January 2025 – by the third year of the full-scale war – did Ukraine become the 125th state to join the ICC as a full State Party (Bondareva, 2025). This step was driven by the grave international crimes committed on Ukrainian territory, listed in the Rome Statute (1998; 2021). By the end of 2024, the ICC's Rome Statute boasted 124 other State Parties (from Africa, the AsiaPacific region, Eastern and Western Europe, Latin America, and the Caribbean, among others), all of whom are in the process of implementing the Rome Statute into their national legislation (Popova, 2024). It is also worth noting that only 42 UN member states (representing 41 jurisdictions) have criminalised all four serious international crimes, while 153 of the 193 member states have criminalised at least one (Popova, 2024).

It is important to draw attention to a controversial reservation that Ukraine expressed during its ratification of the Statute: "for seven years after its entry into force for Ukraine, we will not recognise the ICC's jurisdiction regarding crimes specified in Article 8 (as amended), if these crimes were presumably committed by our citizens" (Law of Ukraine No. 3909-IX, 2024). However, this reservation does not fully align with the provisions of Article 124 of the Rome Statute (1998;2021), as it omits the phrase "or on the territory of Ukraine". In this context, the conjunction "or" is not to be interpreted as presenting an alternative. The state is thus required to consider both conditions simultaneously. The reservation mentioned above, which imposes a seven-year limitation, is problematic due to its lack of clarity: it does not specify whether it applies to crimes committed within those seven years or only to those identified during that period. This ambiguity creates space for divergent interpretations and undermines the principle of legal certainty, thereby complicating the application of the law. The situation is further complicated by the fact that Ukrainian nationals may be fighting on the side of the aggressor state and may have committed war crimes prior to the ratification of the Statute. If such crimes are discovered within the specified seven-year period, the reservation could potentially shield these individuals from criminal responsibility. Another nuance is that Ukraine has already recognised the ICC's jurisdiction over crimes committed by its nationals through two official declarations (Statement of the Verkhovna Rada of Ukraine to the International Criminal Court No. 790-VII, 2014; Resolution of the Verkhovna Rada of Ukraine 145-VIII, 2015). This results in an unacceptable legal situation in which crimes committed between 21 November 2013 and 1 January 2025 fall under the ICC's jurisdiction, but those committed between 1 January 2025 and 1 January 2032 do not. The reservation also fails to account for repeated offences committed at different points in time. As a result, one offence may fall under ICC jurisdiction, while another – committed by the same individual – may not, thereby violating the principles of consistency and justice (Hloviuk, 2024). This analysis makes it clear that the reservation is flawed and counterproductive to effective future cooperation with the ICC.

Part 7 of Article 9 of the Law of Ukraine No. 1906-IV (2004) stipulates that if the ratification of an international treaty requires the adoption of new laws or amendments to existing legislation, draft laws must be submitted to the Verkhovna Rada of Ukraine together with the draft ratification law and adopted simultaneously. In Ukraine's case, however, the situation has unfolded somewhat differently – and not altogether favourably, as will be discussed in detail later. While Law of Ukraine No. 4012-IX (2024) was formally adopted, proposals were actively discussed concerning the removal of the provision in the Law of Ukraine No. 1906-IV "On International Treaties" (2004), which requires implementation measures to be completed before the ratification law enters into force. In the authors' view, such an approach is risky, as it threatens to undermine the legislature's obligation to introduce the necessary amendments to national legislation. This could result in numerous legal inconsistencies, of which there are already many. At the same time, the primacy of international law does not resolve this issue.

The full-scale Russian invasion and the ICC prosecutor's investigation. On 24 February 2022, the Russian Federation launched a full-scale invasion of Ukraine. Just four days later, on 28 February 2022, ICC Prosecutor Karim Khan announced his decision to open an investigation into the situation in Ukraine, relying on the preliminary findings of his Office and encompassing any additional alleged crimes falling within the ICC's jurisdiction (Statement of ICC Prosecutor…, 2022a). He stressed that Ukrainian membership of the ICC – and, accordingly, compliance with Article 14 of the Rome Statute (1998; 2021) – would have accelerated the Office's investigative work. On 2 March 2022, following referrals received on 1 March from thirty-nine States Parties, the Office of the Prosecutor formally opened an investigation covering the period from 21 November 2013 onwards (Statement of ICC Prosecutor…, 2022b). Japan, North Macedonia, Montenegro and the Republic of Chile joined this collective referral on 11 March, 21 March and 1 April 2022. Subsequently, the ICC issued its first arrest warrants for the Russian dictator, his close associate and other high-ranking Russian officials (Situation in Ukraine…, 2023; Situation in Ukraine…, 2024).

Despite the fact that the Statute had not yet been ratified, and the aggressor nation was accelerating its commission of serious international crimes against Ukrainians – as evidenced by the aggregated data from the Office of the Prosecutor General (2025), which registered 50,913 victims of violations of the laws and customs of war (Article 438 of the CC of Ukraine) in January-December 2022, 72,728 in January-December 2023, and 40,594 in January-December 2024 – Ukraine's active cooperation with the ICC persisted throughout this period. In parallel, Ukraine's criminal and criminal procedural legislation underwent amendments and revisions, which will be discussed in the following section. A. Popova (2024) also draws attention to key developments in this area. In March 2023, the Cabinet of Ministers of Ukraine approved an agreement establishing an ICC field office in Kyiv – an important step in strengthening the Court's institutional presence in the country. The ICC office in Kyiv was officially opened in September, staffed by 25 personnel. In October, Europol joined the Joint Investigation Team, highlighting the importance of international coordination in investigating war crimes committed in Ukraine. On 5 March and 24 June 2024, Pre-Trial Chamber II of the International Criminal Court issued arrest warrants for Russian nationals. The suspects are also held responsible for crimes against humanity – specifically, "other inhumane acts intentionally causing great suffering, or serious injury to body or mental or physical health" – as defined under Article 7(1)(k) of the Rome Statute (Situation in Ukraine…, 2023; Situation in Ukraine…, 2024).

Thus, Ukraine's chosen course toward ratifying the Rome Statute, implementing its approaches and provisions, and, as a result, harmonising national legislation, must be regarded as a sound and necessary strategy. This conclusion becomes particularly clear when contrasted with the opposite examples. For instance, due to non-ratification by Kazakhstan and China – largely for political reasons – their domestic legal systems remain unaligned with international standards in the areas of the rule of law and human rights protection. Moreover, the absence of ratification has weakened global efforts to address crimes that threaten peace and security.

Harmonisation of Ukrainian criminal and criminal procedure legislation with international criminal and humanitarian law and the Rome Statute of the ICC. Ukraine's legislative experience reveals that amendments and additions to its laws – including criminal and criminal procedure legislation – are not always of high quality or feasible in practical terms. K. Zadoya (2024) aptly compares the harmonisation process to the "birth of a cargo cult", noting that modern harmonisation increasingly resembles a ritual "where the process becomes more important than the outcome and takes on the characteristics of a dubious competition, in which the subjective and pragmatic completely overshadow the legal, and where complex problems are met with simple and superficial solutions".

As previously noted, amendments were made to the CPC of Ukraine (2012) and the CC of Ukraine (2001) in connection with the ratification of the Rome Statute and its amendments. These changes contain several positive elements already highlighted by researchers, including: "the introduction into Ukrainian criminal law of the doctrine of command responsibility (Article 31-1 of the CC of Ukraine); the recognition of crimes against humaneness as a distinct category of criminal offence under Ukrainian criminal law (Article 442-1 of the CC of Ukraine); and the adjustment of the legal definition of genocide (Article 442 of the CC of Ukraine) to bring it more closely into line with international law" (Zadoya, 2024). Nevertheless, there remain more critical shortcomings than achievements. Attention should be paid to the revised Part 2 of Article 8 of the CC of Ukraine (2001), particularly when compared with Article 14 of the Ljubljana-Hague Convention (2024), which Ukraine has also signed (Zelenov & Brynzaska, 2024). The Convention introduces the wellestablished principle of *aut dedere*, *aut iudicare* ("extradite or prosecute"), which is a fundamental tenet of international criminal law. However, the legal construction proposed in the revised Part 2 of Article 8 of the CC of Ukraine (2001) prioritises the approach "attempt to extradite first, and only prosecute if that fails". This has already attracted criticism in academic discourse and prompted proposals for revising the article (Drozdov & Kovtun, 2023).

Further concerns have been raised regarding Article 31-1 of the CC of Ukraine (2001), which governs the responsibility of military commanders and those in equivalent

positions. While the introduction of command responsibility into Ukrainian criminal law has received positive assessments (Zadoya, 2024), some scholars argue that this provision should be separated into a distinct criminal offence under the Special Part of the CC of Ukraine (2001). This approach is reflected in the Draft of the new Criminal Code of Ukraine (2024), particularly in Articles 11.4.6 and 11.4.7. The draft has been supported by several academics, including T.D. Lysko and D.O. Kozinska (2022), who contend that the current wording of Part 3 of Article 31-1 of the CC of Ukraine (2001) creates a conceptual conflict between "involvement in a criminal offence" and "complicity", thereby overstating the perceived social danger of both the offender and the act. This state of affairs only exacerbates social tension, while new legal inconsistencies are both untimely and unnecessary, as highlighted in the ECtHR ruling in Koprivnikar v. Slovenia (2017). From the legislative perspective, under the current construction of Part 3 of Article 31-1 of the CC of Ukraine (2001), the notion of "condonation" – that is, a person's failure to fulfil duties aimed at preventing or halting a crime – is effectively omitted. O. Omelchuk and V. Zakharchuk (2023) propose distinguishing between complicity and indirect perpetration. The issue of fair punishment also arises: military commanders bear heightened responsibility due to their significant influence over the criminal actions of subordinates, which underscores the distinct social danger posed by their conduct. The proposed legal framework does not require establishing a causal link between a commander's actions and those of subordinates, which in effect diminishes the relevance of this element of the objective side of a criminal offence. Moreover, it fails to consider the commander's actual capacity to prevent the unlawful acts of subordinates – an aspect essential to the legal qualification of the crime. I.V. Hloviuk (2024) argues that establishing the liability of a person equivalent to a commander – or of the commander themselves – requires a comprehensive approach through determining the *actus reus* of the core offence. The researcher reasonably leaves open the question of whether identifying the specific perpetrator is necessary.

The implementation law that entered into force on 24 October 2024 amended only the titles of Articles 437 and 438 of the CC of Ukraine (2001). Their dispositions, however, remain problematic for practical application. In its Resolution of the Grand Chamber of the Supreme Court of 28 February 2024 in case No. 415/2182/20 (paragraphs 140-142), the Court had already drawn attention to the importance of clearly defining the category of persons capable of committing the acts provided for in Article 437 of the CC of Ukraine (2001). However, several separate opinions were issued in this case. In one such opinion, judges of the Supreme Court maintained that the question of who may exercise control over the military or political actions of the aggressor state should be resolved based on the specific facts of the case (Separate Opinion of the Judges of the Grand Chamber of the Supreme Court in Case No. 415/2182/20, 2024a). Another concurring opinion addressed the crucial issue of combatant immunity (Separate Opinion of the Judges of the Grand Chamber of the Supreme Court in Case No. 415/2182/20, 2024b). In a dissenting opinion, a judge of the Grand Chamber agreed with the legal classification adopted by the courts of first instance and appeal under Part 2 of Article 27, Part 2 of Article 28, and Part 2 of Article 437 of the CC of Ukraine (Separate Opinion of the Judges of the Grand Chamber of the Supreme Court in Case No. 415/2182/20, 2024c). The requirements of the Rome Statute indicate that no individual can be held criminally responsible for the serious international crime of aggression in isolation. M. Antonovych (2017), echoing H.H. Koh and T.F. Buchwald (2015), emphasised that accusing an individual of committing the crime of aggression necessitates a prior determination that the state itself committed the act. This determination is typically made by the UN Security Council. Another aspect of Article 437 of the CC of Ukraine (2001) warrants attention. Article 8 bis of the Kampala Amendments (2013), which contains the compromise definition of the crime of aggression agreed upon in Kampala, offers an interpretation that differs from the Ukrainian one. Among other requirements, it provides that an act of aggression must amount to a manifest violation of the Charter of the United Nations (1945) in terms of its character, gravity and scale. Demonstrating this element is crucial during the evidentiary phase; otherwise, a situation could arise similar to the hearings on the former Yugoslavia, when the defence in Prosecutor v. Dusko Tadic a/k/a "Dule" (1995) contested the tribunal's legality. The Appeals Chamber ultimately held that, although the Security Council has primary competence to assess acts of aggression, its discretion is not unfettered and is limited to the measures set out in Articles 41 and 42 of the United Nations Charter (1945).

It is also important to highlight the challenges related to the application of Article 438 of the CC of Ukraine (2001), which lacks mandatory references to the provisions of the Geneva Conventions and other international treaties – many of which have not been ratified by Ukraine – when qualifying violations. In accordance with the *non bis in idem* principle, breaches of international humanitarian law should not be prosecuted simultaneously under multiple articles of the Criminal Code. However, a different approach was adopted in the Resolution of the Grand Chamber of the Supreme Court in Case No. 415/2182/20 (2024). It is clear that such a situation should be promptly rectified by the Grand Chamber itself.

Furthermore, an analysis of the title and content of the newly introduced Article 442-1 of the CC of Ukraine (2001) once again illustrates the influence of a flawed official Ukrainian translation of the Statute, which was used as a basis for its implementation in national criminal law. Although Article 442-1 establishes liability for "crimes against humaneness", this phrasing is inaccurate. In the most recent official version of the Rome Statute of the International Criminal Court (2021), such crimes are defined as "crimes against humanity". In addition, the official Ukrainian version of the Rome Statute (1998) omits references to the crime of apartheid and does not include the terms "murder" and "extermination" – offences actively committed by the aggressor on Ukrainian territory. As a result, these specific forms of crimes against humanity have not been reflected in the criminalisation set out in Article442-1 of the CC of Ukraine (2001).

A number of additional shortcomings in the implementing law have been extensively addressed by K. Zadoya (2024). In particular, the rationale behind the expansion of liability for commanders in Ukrainian criminal law – specifically regarding inaction that led to crimes committed by subordinates – remains unclear when compared with the provisions of international law. K. Zadoya (2024) rightly criticises the "compromise formulations" found in the new Article 442-1 of the CC of Ukraine (2001), which are

inconsistent with international legal standards and the established understanding of crimes against humanity – especially with regard to acts such as torture and other inhumane acts of a similar nature. Furthermore, the current Ukrainian criminal legislation has not successfully incorporated a correct understanding and the necessary elements of the crime of aggression, especially considering the definition of aggression approved by UN General Assembly Resolution No. 3314 (XXIX) (1974). International law also does not recognise certain peculiar legal constructions introduced by the national legislator, such as "aggressive armed conflict" and "aggressive military actions", both of which appear in Article 437 of the CC of Ukraine (2001). K. Zadoya (2024) also offers well-founded criticism of the amendments to Article 438 of the CC of Ukraine (2001), noting that they appear so flawed that aligning them with international law was seemingly not even intended. Numerous inconsistencies can be identified – for example, the legislator's inclusion of the phrase "the same acts, if they caused the death of a person". This aggravating element, under the current CC of Ukraine (2001), typically presumes "causing death through negligence", which contradicts the nature of international criminal law. The legislator's decision to reduce the punishment for war criminals "to the maximum limit of the sanction provided in the new version of Part 1 of Article 438 of the CC of Ukraine (2001), namely to twelve years of imprisonment" is equally unjustified.

As for the genocide committed and continuing to be committed against Ukrainians, V. Shepitko (2024) argues that the acts of genocide against the Ukrainian people are recurring. It must be acknowledged that, in this regard as well, the national legislator has failed to establish an adequate legal framework for criminal prosecution. Article 442 of the CC of Ukraine (2001) also presents several shortcomings. The problematic nature of this article's legal construction has been repeatedly discussed. At present, in addition to the existing inconsistencies between Article 442 of the CC of Ukraine (2001) and the provisions of the Rome Statute (2021), Article II of the Convention on the Prevention and Punishment of the Crime of Genocide (1948), and the Elements of Crimes (2011) adopted by the Assembly of States Parties to the Rome Statute – which supplement the Statute and are applied by the ICC in interpreting its provisions – there is now a further narrowing by the national legislator of the recognised forms of genocide in Ukrainian criminal law. Among other issues, the legislator failed to take into account the ongoing instances of the forced displacement of Ukrainians to russia. The problems with the analysed article of the CC of Ukraine (2001) are, therefore, far from exhausted (Zadoya, 2024). Regarding the case law of the ECtHR on this matter, in Drėlingas v. Lithuania (2019), the subjective element of the crime incorporated a political dimension. The extermination of partisans resisting Soviet occupation was found to correspond with the international definition of groups protected under Article II of the Convention on the Prevention and Punishment of the Crime of Genocide (1948), and the applicant was convicted of genocide. There is also the judgment of the Grand Chamber of the ECtHR in Vasiliauskas v. Lithuania (2015). However, neither the Statute nor the current version of Article 442 of the CC of Ukraine (2001) addresses this dimension, despite the existence of doctrinal research that could significantly improve legislative efforts in this area (Antonovych, 2017; Zadoya, 2024; El-Affendi, 2024). As for the most recent procedural developments in the effort to prosecute the crime of genocide under the Rome Statute (1998; 2021), the NGO "Kharkiv Human Rights Protection Group" submitted a communication to the ICC regarding the alleged commission of the crime of genocide by Russian actors in the city of Mariupol (Submission to the Office of the Prosecutor ICC, 2023).

Therefore, based on the analysis conducted, it is reasonable to support the conclusion of K. Zadoya (2024) that the harmonisation of Ukrainian criminal legislation with international criminal and humanitarian law, including the Statute, remains far from complete. The Law of 9 October 2024 has not created conditions that would prevent perpetrators of crimes under international law from avoiding real and adequate punishment. There is little point in referring to the role of Article 75 of the CC of Ukraine (2001); it is enough to examine domestic judicial practice concerning crimes against national security – case No. 639/6389/24 (2024), for instance, where the individual was once again released from serving a sentence and instead placed under certain obligations. Nevertheless, it must be acknowledged that the harmonisation of legislation is a "legal puzzle" not only for Ukraine but also for many other countries that have ratified the Statute.

Attention should also be given to the pressing need for the criminalisation of ecocide under the Rome Statute of the International Criminal Court (1998; 2021). The Court's current anthropocentric framework presents difficulties in addressing environmental cases. The legal norms of international environmental law, human rights law, and humanitarian law could be integrated into the ICC's jurisdiction. Specific recommendations from foreign experts (Gillett, 2024; Arifin *et al.*, 2024) may contribute to more consistent, coherent, and stable rulings by the Court. The risk of judicial overreach is best addressed through the application of four key principles: judicial coherence, effectiveness, substantive proximity, and the de-fragmentation of international law (Gillett, 2024). Introducing such a provision into the Statute and thereby establishing international criminal liability for ecocide could help restore global ecological balance. Recognising ecocide as a crime could have a deterrent effect and contribute to raising awareness of environmental responsibility. The legal establishment of international criminal liability for ecocide would also promote sustainable development. However, implementing this idea faces significant challenges, such as defining the boundaries of ecocide and establishing the criteria for criminal liability. A broad consideration of diverse geopolitical contexts is essential for holding individuals, corporations, and states accountable (Arifin *et al.*, 2024).

In the context of Ukrainian criminal law, although Article 441 of the CC of Ukraine (2001) was not introduced as a result of Ukraine's ratification of the Rome Statute (1998), it remains relevant in light of the anticipated amendments currently under discussion. The provision is also highly pertinent in view of ongoing events in Ukraine, as the crime of ecocide has become especially pressing during the war. The Russian invasion has caused significant damage to natural resources, notably through the destruction of the Kakhovka Hydroelectric Power Plant, which led to the flooding of settlements and the destruction of biodiversity. The constant threat to the safety of the Zaporizhzhia Nuclear Power Plant remains acute (Kharytonov *et al.*, 2024).

T. Duiunova *et al.* (2024) emphasise that the initiative to criminalise ecocide under international law must be advanced in the interests of long-term national and global well-being. Such efforts could ultimately create a legal basis for holding the russian federation accountable not only for ecocide but also for agroecocide – a category of offence increasingly recognised by scholars as warranting distinct legal classification (Kurman, 2023).

As for criminal procedural harmonisation, it is evident that an entire procedure cannot simply be transplanted from another legal system or specific jurisdiction. Nonetheless, it is logical that the implementing law and the processes preceding it have had an impact on criminal procedural legislation. For instance, the legislator incorporated new articles – 437, 438, 439, 440, 441, 442, and 442-1 of the CC of Ukraine (2001) – into certain lists within the criminal procedural norms. Amendments were made to Part 6 of Article 176 of the CPC (2012), which now establishes the mandatory use of pre-trial detention as a preventive measure for individuals suspected of committing the aforementioned criminal offences during martial law. Similarly, paragraph eight of Part 4 of Article 183 of the CPC (2012), which allows the court not to set bail in cases where such offences are committed under martial law, was updated to include these articles. The first sentence of Part 8 of Article 214 of the CPC (2012) was also supplemented with the relevant list. Investigators or prosecutors are now obliged to immediately enter information into the Unified Register of Pre-Trial Investigations regarding a legal entity that may be subject to criminal-law measures, once an individual is served notice of suspicion for committing a crime on behalf of and in the interests of such a legal entity. Amendments to Part 2 of Article 216 of the CPC (2012) have assigned jurisdiction over these criminal offences to investigative bodies of the Security Service of Ukraine. Amendments were also made to Part 2 of Article 297-1 of the CPC of Ukraine (2012), allowing for special pre-trial investigations in relation to the aforementioned offences. In addition, the controversial note to Section IX-2 (Specifics of Cooperation with the ICC) of the CPC (2012) was removed. However, this list does not cover all aspects of the necessary amendments to the criminal procedural legislation. It is evident that further improvements are needed and could be grouped into several categories, including:

1) the case law of the Court of Justice of the EU should be incorporated into the list under Part 5 of Article 9 of the CPC of Ukraine (2012), alongside the case law of the ECtHR, for use in the application of criminal procedural norms;

2) the precedent-based jurisprudence of the ICC must be taken into account and applied by national courts in proceedings involving the prosecution of offences criminalised under the Rome Statute;

3) military courts, along with military police and military prosecutors, should be re-established and made operational. It is evident that in a country engaged in active defensive military operations for over three years, this issue is inherently urgent. Substantive arguments in support of restoring an effective system of military justice can be found in the studies of Y. Galaevsky (2023), O. Shamary (2024), and other scholars;

4) legislative authorisation to involve international experts in criminal proceedings concerning suspected or alleged offences under Articles 437–442-1 of the CC of Ukraine (2001) is both timely and necessary. Relevant amendments to Part 1 of Article 69 of the CPC of Ukraine (2012) are both prudent and in demand. These proposals are supported by solid academic grounding (Yurchyshyn & Koropetska, 2024). It is recommended that amendments to the criminal procedure law include the recognition of such experts' conclusions as admissible sources of evidence in national courts, as well as clear mechanisms for their involvement in criminal proceedings (Yurchyshyn & Koropetska, 2024; Shepitko, 2024);

5) working with open-source digital information during the documentation of serious international crimes must adhere to both the rules of the Berkeley Protocol (United Nations, 2022) and the principles of jurisdictional and national admissibility. The requirements of the current CPC of Ukraine concerning relevance, admissibility, reliability, and sufficiency, along with other Protocol requirements for collecting, storing, and evaluating digital information from open sources, enable such information to gain the status of open-source evidence (Gavrilyuk *et al.*, 2024). The ICC has taken varying approaches to the evidentiary weight of such material in different cases, including Prosecutor v. Tolimir (2012), Prosecutor v. Ahmad Al Faqi Al Mahdi (2016), Prosecutor v. Mladic (2017), Prosecutor v. Mahmoud al-Werfalli (2018), as highlighted by L.V.Gavrilyuk *et al.* (2024) and O.O. Torbas (2024). The trend has shifted from the extensive use of such evidence in criminal proceedings to a more balanced approach. This evolution, already comprehensively discussed by various scholars, is also reflected in Ukrainian criminal procedure law, which stipulates that evidence must be assessed in its entirety (and that such a body of evidence must be duly compiled during the investigative process), with no individual piece of evidence granted predetermined weight or dominance. In relation to the investigation of serious international crimes committed by russia in Ukraine and the collection of the corresponding digital evidence, in 2023, the ICC Prosecutor announced and launched an expanded platform – OTPLink – for the submission of such materials (ICC Prosecutor Karim…, 2023);

6) criminal procedural detention, as opposed to capture in wartime, has a different legal basis; consequently, the legal status of individuals is determined both within the proceedings and under the norms of international humanitarian law (Ablamskyi *et al.*, 2023; Ponomarenko, 2023);

7) national evidentiary standards in the examined criminal proceedings require the incorporation of evidentiary standards applied by international tribunals (Mamedov, 2024);

8) the issue of joint investigative teams, as defined in Article 571 of the CPC of Ukraine (2012), also requires resolution. This includes aspects such as the formation of team composition, the scope of powers and the appointment of team leaders, and the mutual exchange of information – points already emphasised by scholars (Ablamskyi *et al.*, 2023; Hloviuk, 2023). It is important to consider the correlation between this provision and the procedural code of the Rome Statute, particularly Article 41 of the Ljubljana-Hague Convention (2024). It is clearly necessary to develop a dedicated chapter within the CPC of Ukraine to regulate pre-trial investigations conducted in the framework of international cooperation on serious international crimes. This issue cannot be adequately addressed by inserting a few additional articles into the existing code. Thus, in discussing the harmonisation of Ukrainian criminal and

criminal procedural legislation with international criminal and humanitarian law, including the Rome Statute, it must be acknowledged that the process remains incomplete and requires continued, coordinated efforts from scholars, legislators, and practitioners.

Conclusions

Thus, the development of social and legal institutions for resolving conflicts of various kinds (including international), doctrinal anti-war principles and mechanisms for deterring aggression, and a high level of civilisational progress in society are not sufficient to shield modern civilisation from bloody wars. This is evidenced by ongoing conflicts that have claimed, and continue to claim, hundreds of thousands of lives. Based on the totality of the circumstances examined, it has been demonstrated that the 25-year period taken by Ukraine to ratify the Rome Statute was marked by both stagnation and a series of trials and errors, the reassessment of which remains highly relevant. It has been established that Ukraine's dual recognition of the ICC's jurisdiction moved the ratification discourse out of a prolonged state of stagnation and into an active phase. The recognition of jurisdiction based on Ukraine's declarations to the ICC was a deliberate and sovereign act; however, Ukraine did not acquire full membership, which has led to a number of negative consequences. One of the most significant is the inability of the ICC to hold russia accountable for the crime of aggression in Ukraine, as the Rome Statute had not yet been ratified by Ukraine at the time of Russia's full-scale invasion. Normative and legal analysis confirms the controversial nature of the reservation made by Ukraine during the ratification process, in which it declared a seven-year period of non-recognition of the Court's jurisdiction over Ukrainian nationals. Institutional analysis has further shown that the full-scale invasion of Ukraine by Russia and the initiation of a formal investigation by the ICC Prosecutor marked a new stage in the practical implementation of the Rome Statute's provisions, even prior to Ukraine's formal ratification. Only from 1 January 2025 – effectively in the third year of the full-scale war – did Ukraine become the 125th state to gain full membership in the ICC.

It has been emphasised that the implementation of the Rome Statute has been a demanding task for legal professionals in every member state. For Ukraine, the harmonisation of its criminal and criminal procedural legislation with international criminal and humanitarian law, and with the Rome Statute, has thus far been only partially successful. One of the fundamental challenges lies in the flawed official Ukrainian translation of the Rome Statute of the ICC. As a result, certain issues have emerged in the national legal framework – for instance, the narrowing of legally recognised forms of genocide by legislators, and the inaccurate use of terms such as "crimes against humaneness". Several inconsistencies and legal contradictions have been identified: 1) the introduction of the concept of "command responsibility" has raised concerns about the fairness and proportionality of punishment for individuals guilty of committing aggression, war crimes, genocide, ecocide, and crimes against humanity; 2) the mere renaming of Articles 437 and 438 of the CC of Ukraine, without amending their legal structure. Their dispositions remain problematic for practical application, as confirmed by analysis of national court practice. Article 8 bis of the Rome Statute presents a definition of the crime of aggression that differs significantly from the Ukrainian interpretation. Additional issues have been identified regarding the application of Article 438 of the CC of Ukraine, which lacks mandatory references to the Geneva Conventions and other international treaties – not all of which have been ratified by Ukraine – when classifying violations. Additional shortcomings in the legislation have also been identified, including such constructs as "aggressive armed conflict" and "aggressive military actions", violations of the *non bis in idem* principle, inconsistencies between Article 442 of the CC of Ukraine and the provisions of the Rome Statute, and the narrowing of the legally recognised forms of genocide within the criminal law framework.

This study substantiates the necessity of implementing international standards into Ukraine's criminal procedural law, in particular through the integration of the case law of the Court of Justice of the EU and the precedents of the ICC into the national judicial system. The establishment of military courts, prosecution services, and law enforcement is viewed as a crucial step towards effective justice during wartime. Strengthening international cooperation requires the involvement of foreign experts in the investigation of war crimes, as well as the regulation of the use of open-source digital materials in accordance with international protocols. A key aspect involves the adoption of evidentiary standards used by international tribunals, and the legal distinction between criminal detention and prisoner of war status in line with international humanitarian law. In the long term, a necessary solution would be the introduction of a separate chapter in the CPC of Ukraine to regulate pre-trial investigations in cooperation with the ICC and other international justice bodies. This would respond to ongoing crimes and contribute to restoring the international legal order.

Future research should focus on building a robust academic foundation for the effective harmonisation of national criminal and criminal procedural legislation. This is essential to ensure justice, the inevitability of punishment for russia and its nationals for committing serious international crimes against Ukrainians, and the restoration of the disrupted international legal order.

Acknowledgements

None.

Funding

The study was not funded.

Conflict of interest

None.

References

[1] Ablamskyi, S., Galagan, V., Basysta, I., & Udovenko, Zh. (2023). Detention of a person suspected of committing a criminal offense during martial law in Ukraine. *Revista Brasileira de Políticas Públicas*, 13(3), 452-467. doi: 10.5102/rbpp.v13i3.9129.

[2] Antonovych, M. (2017). Jurisdiction of the International Criminal Court over the crime of aggression. *Scientific Notes NaUKMA*, 193, 67-70.

[3] Arifin, R., Masyhar, A., Wulandari, C., Kusuma, B.H., Wijayanto, I., Rasdi, & Fikri, S. (2024). Ecocide as the serious crime: A discourse on global environmental protection. *IOP Conference Series: Earth and Environmental Science*, 1355, article number 012004. doi: 10.1088/1755-1315/1355/1/012004.
[4] Association Agreement between Ukraine, of the One Part, and the European Union, the European Atomic Energy Community and their Member States, of the Other Part. (2014, June). Retrieved from https://zakon.rada.gov.ua/laws/show/984_011#Text.
[5] Bahreini, J., & Ramezani Ghavam Abadi, M.H. (2023). The feasibility of the International Criminal Court's investigation into the situation in Palestine and its potential consequences'. *Public Law Studies Quarterly*, 54(4), 2153-2176. doi: 10.22059/JPLSQ.2023.346749.3152.
[6] Barabash, Yu., & Berchenko, H. (2019). Freedom of speech under militant democracy: The History of struggle against separatism and communism in Ukraine. *TalTech Journal of European Studies*, 9(3), 3-24. doi: 10.1515/bjes-2019-0019.
[7] Bondareva, Kh. (2025). *Ukraine became a full party to the Rome Statute of the International Criminal Court.* Retrieved from https://www.eurointegration.com.ua/news/2025/01/1/7201652/.
[8] Buromensky, M., & Gutnyk, V. (2024). Identification and punishment of the crime of genocide committed by Russia in the aggressive war against Ukraine since 2014. *Law of Ukraine*, 2, 51-60.
[9] Call from leading universities in Ukraine to ratify the Rome Statute. (2023, April). Retrieved from https://nlu.edu.ua/uni/zaklyk-providnyh-universytetiv-ukrayiny-ratyfikuvaty-rymskyj-statut/.
[10] Charter of the United Nations. (1945, June). Retrieved from https://ips.ligazakon.net/document/MU45001U.
[11] Constitution of Ukraine. (1996, June). Retrieved from https://www.president.gov.ua/documents/constitution.
[12] Convention on the Prevention and Punishment of the Crime of Genocide. (1948, December). Retrieved from https://zakon.rada.gov.ua/laws/show/995_155#Text.
[13] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[14] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[15] Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction in Case "Dusko Tadic a/k/a "DULE". (1995, October). Retrieved from https://www.icty.org/x/cases/tadic/acdec/en/51002.htm.
[16] Draft Law of Ukraine No. 7179 "On Amendments to Certain Legislative Acts of Ukraine Regarding Cooperation with the International Criminal Court". (2017, October). Retrieved from https://ips.ligazakon.net/document/JH5JF00I.
[17] Draft of the new Criminal Code of Ukraine. (2024, August). Retrieved from https://newcriminalcode.org.ua/criminal-code.
[18] Drozdov, O., & Kovtun, V. (2023). The Ljubljana-Hague Convention: Nudum jus in the field of international cooperation or a long-awaited global breakthrough? *Legal Scientific Electronic Journal*, 11, 628-642. doi: 10.32782/2524-0374/2023-11/155.
[19] Duiunova, T., Voznyk, M., Koretskyi, S., Chernetska, O., & Shylinhov, V. (2024). International humanitarian law and ecocide: The war in Ukraine as a case study. *European Journal of Environmental Sciences*, 14(1),14-23. doi: 10.14712/23361964.2024.214-23.
[20] El-Affendi, A. (2024). The futility of genocide studies after Gaza. *Journal of Genocide Research*. doi: 10.1080/14623528.2024.2305525.
[21] Galaevsky, Yu. (2023). Military courts as an urgent need of wartime. *Law of Ukraine*, 6, 141-156. doi: 10.33498/louu-2023-06-141.
[22] Gavrilyuk, L.V., Basysta, I.V., Afonin, D.S., & Khytra, A. (2024). *Use of electronic evidence during pre-trial investigation of crimes against peace, human security and international legal order (The Berkeley Protocol): A scientific and practical guide*. Kyiv: State Research Institute of the Ministry of Internal Affairs of Ukraine; Publishing house "Polytechnics".
[23] Gaynor, L.J. (2024). "Please, get me called to the Hague!". The International Criminal Court as history's soapbox. *The International Journal of Human Rights*. doi: 10.1080/13642987.2024.2424379.
[24] Gillett, M. (2024). Ecocide, environmental harm and framework integration at the International Criminal Court. *The International Journal of Human Rights*, 29(6), 1009-1045. doi: 10.1080/13642987.2024.2433660.
[25] Grzybowski, J., & de Reis, F. (2024). After states, before humanity? The meta-politics of legality and the International Criminal Court in Iraq, Afghanistan, and Palestine. *Review of International Studies*, 50(2), 354-372. doi: 10.1017/S026021052300030X.
[26] Gutnyk, V. (2023). *International Criminal Court.* Kyiv: Ivan Franko National University of Lviv Publishing House.
[27] Hloviuk, I.V. (2024). Command responsibility in the Criminal Code of Ukraine and its proof: Challenges and issues. In *New opportunities and prospects for bringing the Russian Federation to responsibility after Ukraine's ratification of the Rome Statute of the International Criminal Court and its amendments* (pp. 36-43). Kyiv: Alerta.
[28] Hloviuk, I. (2023). Joint investigation groups under the Ljubljana-Hague Convention and the Criminal Procedure Code of Ukraine. In *Theory and practice of combating crime in modern conditions: Collection of abstracts of the international scientific and practical conference* (pp. 68-72). Lviv: Lviv State University of Internal Affairs.
[29] Hussain, N., Khan, A., Chandio, L.A., & Oad, S. (2023). Individual criminal responsibility for the crime of aggression: The role of the ICC's leadership clause. *Pakistan Journal of Humanities and Social Sciences*, 11(1), 223-232. doi: 10.52131/pjhss.2023.1101.0344.
[30] ICC condemns the issuance of US Executive Order seeking to impose sanctions on the Court. (2025). Retrieved from https://www.icc-cpi.int/news/icc-condemns-issuance-us-executive-order-seeking-impose-sanctions-court.
[31] ICC Prosecutor Karim A.A. Khan KC announces launch of advanced evidence submission platform: OTPLink. Retrieved from https://www.icc-cpi.int/news/icc-prosecutor-karim-aa-khan-kc-announces-launch-advanced-evidence-submission-platform-otplink.
[32] International Criminal Court. (2011). *Elements of Crimes*. Hague: International Criminal Court.
[33] Issuance of Executive Order Imposing Sanctions on the International Criminal Court; International Criminal Court-related Designation. Official website of the United States government. Office of Foreign Assets Control. (2025). Retrieved from https://ofac.treasury.gov/recent-actions/20250213.

[34] Judgment of the European Court of Human Rights in Case No. 28859/16 "Drėlingas v. Lithuania". (2019, March). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-191702%22]}.
[35] Judgment of the European Court of Human Rights in Case No. 35343/05 "Vasiliauskas v. Lithuania". (2015, October). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-158290%22]}.
[36] Judgment of the European Court of Human Rights in Case No. 67503/13. "Koprivnikar v. Slovenia". (2017, January) Retrieved from https://www.mezisoudy.cz/databaze-judikatury/detail-rozhodnuti/1fdaaced-717c-11ee-8ac4-cced40779481_koprivnikar.
[37] Judgment of the International Criminal Court in Case No. ICC-01/12-01/15 "Prosecutor v. Ahmad Al Faqi Al Mahdi". (2016, October). Retrieved from https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2016_07244.PDF.
[38] Judgment of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 in Case No. IT-09-92-T "Prosecutor v. Mladic". (2017, November). Retrieved from https://www.icty.org/x/cases/mladic/tjug/en/171122-3of5_1.pdf.
[39] Judgment of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 in Case No. IT-05-88/2-T "Prosecutor v. Tolimir". (2012, December). Retrieved from https://www.icty.org/x/cases/tolimir/tjug/en/121212.pdf.
[40] Judgment of the Zhovtnevy District Court of Kharkiv in Case No. 639/6389/24. (2024, October). Retrieved from https://reyestr.court.gov.ua/Review/122179677.
[41] Kharytonov, S., Orlovskyi, R., Us, O., Iashchenko, A., & Maslova, O. (2024). Criminal responsibility for ecocide resulting from the military aggression of Russia. *European Journal of Environmental Sciences*, 14(1), 24-32. doi: 10.14712/23361964.2024.3.
[42] Koh, H.H., & Buchwald, T.F. (2015). The crime of aggression: The United States perspective. *American Journal of International Law*, 109(2), 257-295.
[43] Kurman, T. (2023). Current issues of legal support for food security in the context of agro-ecocide. *Electronic Scientific Journal "Analytical and Comparative Jurisprudence"*, 5, 293-297. doi: 10.24144/2788-6018.2023.05.52.
[44] Lamb, K. (2024). *Our bodies – their battlefield. What war does to women. Ukrainian translation*. Kyiv: HarperCollins Publishers.
[45] Law of Ukraine No. 1401-VIII "On Amendments to the Constitution of Ukraine (Regarding Justice)". (2016, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1401-19#n2.
[46] Law of Ukraine No. 1906-IV "On International Treaties". (2004, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1906-15#Text.
[47] Law of Ukraine No. 3909-IX "On the Ratification of the Rome Statute of the International Criminal Court and Amendments Thereto". (2024, August). Retrieved from https://zakon.rada.gov.ua/laws/show/3909-20#Text.
[48] Law of Ukraine No. 4012-IX "On Amendments to the Criminal and Criminal Procedure Codes of Ukraine in Connection with the Ratification of the Rome Statute of the International Criminal Court and Amendments Thereto". (2024, October). Retrieved from https://zakon.rada.gov.ua/laws/show/4012-20#n6.
[49] Letter of the Ministry of Foreign Affairs of Ukraine No. 72/14-612-157225 "On the Entry into Force of International Treaties". (2024, November) Retrieved from https://zakon.rada.gov.ua/rada/show/v7225321-24#Text.
[50] Ljubljana-Hague Convention. (2024, February). Retrieved from https://www.gov.si/assets/ministrstva/MZEZ/projekti/MLA-pobuda/konvencija-dokoncna/The-Ljubljana-The-Hague-Convention-Final-English.pdf.
[51] Lohne, K. (2024). *The International Criminal Court is at risk of collapse*. Retrieved from https://www.aftenposten.no/meninger/kronikk/i/qP76lo/stemningen-i-haag-er-lettere-panisk-skriver-kjersti-lohne.
[52] Lohne, K. (2025). *The International Criminal Court at risk of collapse*. Retrieved from https://blogs.prio.org/2025/01/the-international-criminal-court-at-risk-of-collapse/.
[53] Lysko, T., & Kozinska, D. (2022). Involvement in a criminal offense: Problems of legislative regulation. *International Youth Scientific Legal Forum*, 1, 196-198.
[54] Malesevic, S. (2010). *The sociology of war and violence*. Cambridge: Cambridge University Press. doi: 10.1017/CBO9780511777752.
[55] Malesevic, S. (2012). Understanding war: The sociological perspective revisited. *European Journal of Social Theory*, 15(1), 73-92. doi: 10.1177/1368431011423687.
[56] Maloney, K.M., O'Brien, M., & Oosterveld, V. (2023). Forced marriage as the crime against humanity of "Other Inhumane Acts" in the International Criminal Court's Ongwen case. *International Criminal Law Review*, 23(5-6), 705-730. doi: 10.1163/15718123-bja10157.
[57] Mamedov, G. (2024). General characteristics of evidence in ad hoc international criminal tribunals (ICTY, ICTR, IZMCT). *Scientific Bulletin of Uzhhorod National University*, 85(4), 294-299. doi: 10.24144/2307-3322.2024.85.4.43.
[58] Office of the Prosecutor General. (2025). *About registered criminal offenses and the results of their pre-trial investigation*. Retrieved from https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2.
[59] Omelchuk, O., & Zakharchuk, V. (2023). Distinguishing mediated performance of a criminal offense and complication in acriminal offense. *Socio-Economic Relations in the Digital Society*, 2(48), 137-144. doi: 10.55643/ser.2.48.2023.500.
[60] Opinion of the Constitutional Court of Ukraine in the Case No. 1-35/2001 "On the Rome Statute". (2001, July). Retrieved from https://zakon.rada.gov.ua/laws/show/v003v710-01#Text.
[61] Opinion on the Draft Law of Ukraine No. 7179 "On Amendments to Certain Legislative Acts of Ukraine on Cooperation with the International Criminal Court". (2018, January). Retrieved from https://surli.cc/kkuvyw.
[62] Palarczyk, D. (2023). Ecocide before the International Criminal Court: Simplicity is better than an elaborate embellishment. *Criminal Law Forum*, 34, 147-207. doi: 10.1007/s10609-023-09453-z.

[63] Permanent Mission of the Principality of Liechtenstein to the United Nations Global Institute for the Prevention of Aggression, Liechtenstein Institute on Self-Determination at Princeton University, & Institute for International Peace and Security Law. (2013). *Ratification and implementation of the Kampala Amendments to the Rome Statute of the ICC. Crime of aggression. War crimes: Handbook. 2nd ed*. Liechtenstein: Liechtenstein Institute on Self-Determination.

[64] Ponomarenko, Yu. (2023). Release of a person from serving a sentence for his exchange as a prisoner of war: An algorithm of criminal-legal characteristics. In *Problems of the effectiveness of international legal regulation of the rights of prisoners of war* (pp. 82-89). Kharkiv: Law.

[65] Popova, A. (2024). *Research of national criminal legislation in the context of cooperation between the International Criminal Court and Ukraine: Analytical review*. Kyiv: CLEAR: Centre of Law Enforcement Activities Research.

[66] Public Second Warrant of Arrest of the International Criminal Court in Case No. ICC-01/11-01/17 "Prosecutor v. Mahmoud al-Werfalli". (2018, July). Retrieved from https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2018_03552.PDF.

[67] Pylypenko, V.P. (2018). War crimes as serious violations of the Geneva Conventions, 1949 in the context of international criminal law. *Scientific Notes of the Institute of Legislation of the Verkhovna Rada of Ukraine*, 6, 81-93.

[68] Resolution of the Grand Chamber of the Supreme Court in Case No. 415/2182/20. (2024, February). Retrieved from https://reyestr.court.gov.ua/Review/117555176#.

[69] Resolution of the Verkhovna Rada of Ukraine 145-VIII "On the Statement of the Verkhovna Rada of Ukraine "On the Recognition by Ukraine of the Jurisdiction of the International Criminal Court over the Commission of Crimes Against Humanity and War Crimes by Senior Officials of the Russian Federation and Leaders of the Terrorist Organizations "DPR" and "LPR", which Led to Particularly Grave Consequences and Mass Murder of Ukrainian Citizens". (2015, February). Retrieved from https://zakon.rada.gov.ua/laws/show/145-19#Text.

[70] Rome Statute of the International Criminal Court. (1998, July). Retrieved from https://zakon.rada.gov.ua/laws/show/995_588#Text.

[71] Rome Statute of the International Criminal Court. (2021). Retrieved from https://surli.cc/pkoqyv.

[72] Roxborough, I. (2007). Clausewitz and the sociology of war. *Sociological Forum*, 22(1), 103-126.

[73] Sadat, L.N., & Carden, S.R. (2003). The new International Criminal Court: An uneasy revolution. In N. Passas (Ed.), *International crimes* (pp. 131-225). New York: Routledge.

[74] Scheffer, D.J. (1999). The United States and the International Criminal Court. *American Journal of International Law*, 93(1), 12-22. doi: 10.2307/2997953.

[75] Separate Opinion of the Judges of the Grand Chamber of the Supreme Court in Case No. 415/2182/20, Proceedings No. 13-15кс22. (2024a, February). Retrieved from https://reyestr.court.gov.ua/Review/117687058.

[76] Separate Opinion of the Judges of the Grand Chamber of the Supreme Court in Case No. 415/2182/20, Proceedings No. 13-15кс22. (2024b, February). Retrieved from https://reyestr.court.gov.ua/Review/117721706.

[77] Separate Opinion of the Judges of the Grand Chamber of the Supreme Court in Case No. 415/2182/20, Proceedings No. 13-15кс22. (2024c, February). Retrieved from https://reyestr.court.gov.ua/Review/117915511.

[78] Shcherban, E. (2019). The problem of bias in national judicial proceedings through the prism of the provisions of the Rome Statute of the International Criminal Court. *Bulletin of the Southern Regional Center of the National Academy of Legal Sciences of Ukraine*, 19, 190-196.

[79] Shepitko, V. (2024). Soviet and post-Soviet genocide of Ukrainians in the 20th and 21st centuries: Establishing the facts and problems of investigation. In *Genocide in Ukraine: Problems of proof and punishment: Materials of the international scientific-practical round table* (pp. 86-92). Kharkiv: Pravo.

[80] Situation in Ukraine: ICC judges issue arrest warrants against Sergei Kuzhugetovich Shoigu and Valery Vasilyevich Gerasimov. (2024). Retrieved from https://surl.li/fcngjk.

[81] Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova. (2023). Retrieved from https://surl.lt/jjfgmv.

[82] Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: "I have decided to proceed with opening an investigation". (2022a). Retrieved from https://surl.li/ztbnja.

[83] Statement of ICC Prosecutor, Karim A.A Khan QC, on the Situation in Ukraine: Receipt of referrals from 39 states parties and the opening of an investigation. (2022b). Retrieved from https://surl.li/ignkrw.

[84] Statement of the Verkhovna Rada of Ukraine to the International Criminal Court No. 790-VII "On Ukraine's Recognition of the Jurisdiction of the International Criminal Court over Crimes Against Humanity Committed by Senior State Officials that led to Particularly Grave Consequences and Mass Killings of Ukrainian Citizens During Peaceful Protests Between November 21, 2013 and February 22, 2014". (2014, February). Retrieved from https://zakon.rada.gov.ua/laws/show/790-18#Text.

[85] Submission to the Office of the Prosecutor of the International Criminal Court regarding the crime of genocide allegedly committed in Mariupol between February 24 and May 20, 2022. (2022). Retrieved from https://library.khpg.org/index.php?id=1693155898.

[86] Torbas, O.O. (2024). *OSINT in the investigation of criminal offenses*. Odesa: Publishing house "Yurydika".

[87] Turan, G. (2024). A new historical bloc and the political economy of international criminal prosecutions at the international criminal court. *The International Journal of Human Rights*. doi: 10.1080/13642987.2024.2436512.

[88] UN General Assembly Resolution No. 3314 (XXIX). (1974, December). Retrieved from https://undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F3314(XXIX)&Language=E&DeviceType=Desktop&LangRequested=False.

[89] United Nations. (2022). *Berkeley Protocol on Digital Open Source Investigations. A practical guide on the effective use of digital open source information in investigating violations of international criminal, human rights and humanitarian law*. New York: United Nations Publications.

[90] Vienna Convention on the Law of Treaties. (1969, May). Retrieved from https://zakon.rada.gov.ua/laws/show/995_118#Text.
[91] Yurchyshyn, V., & Koropetska, S. (2024). Involvement of foreign forensic experts in criminal proceedings in the framework of international cooperation. *Scientific Bulletin of the Uzhhorod National University*, 85(4), 173-179. doi: 10.24144/2307-3322.2024.85.4.25.
[92] Zadoya, K. (2018). Cooperation between Ukraine and the International Criminal Court under threat. *Bulletin of Criminal Procedure*, 2, 146-155.
[93] Zadoya, K. (2024). *Chronicles of the birth of a cargo cult: How and why the process of harmonizing Ukrainian criminal legislation with international criminal law is moving in the wrong direction*. Retrieved from https://surl.li/tysjuv.
[94] Zelenov, G., & Brynzaska, O. (2024). *Ljubljana-Hague Convention: Opportunities and prospects for Ukraine*. Retrieved from https://so.supreme.court.gov.ua/authors/343/liublianohaazka-konventsiia-.
[95] Zuev, V., Drozdov, O., Drozdova, O., & Karpenko, M. (2022). Cooperation with the International Criminal Court: Organisational, jurisdictional and criminal procedural aspects. *Legal Scientific Electronic Journal*, 8, 484-492. doi: 10.32782/2524-0374/2022-8/110.

Соціально-правові наслідки ратифікації Україною Римського Статуту Міжнародного кримінального суду

Ірина Басиста
Доктор юридичних наук, професор
Львівський державний університет внутрішніх справ
79007, вул. Городоцька, 26, м. Львів, Україна
https://orcid.org/0000-0001-9707-7386
Олександр Дроздов
Доктор юридичних наук, професор
Національний юридичний університет імені Ярослава Мудрого
61024, вул. Григорія Сковороди, 77, м. Харків, Україна
Університет Барселони
08034, просп. Діагональ, 684, м. Барселона, Іспанія
https://orcid.org/0000-0003-1364-1272
Олена Дроздова
Кандидат юридичних наук, доцент
Міжнародний економіко-гуманітарний університет імені академіка Степана Дем'янчука
33000, вул. Степана Дем'янчука, 4, м. Рівне, Україна
Університет Барселони
08034, просп. Діагональ, 684, м. Барселона, Іспанія
https://orcid.org/0000-0002-8018-8116
Володимир Ковтун
Магістр
Національний юридичний університет імені Ярослава Мудрого
61024, вул. Григорія Сковороди, 77, м. Харків, Україна
https://orcid.org/0000-0002-0660-1320
Сергій Шульгін
Кандидат юридичних наук, прокурор
Офіс Генерального прокурора
01011, вул. Різницька, 13/15, м. Київ, Україна
https://orcid.org/0000-0001-6379-7393

Анотація. Не зважаючи на той факт, що із початком агресії росії проти України Міжнародним кримінальним судом було розпочато етап розслідування, наявна низка перешкод, які не сприяють відновленню справедливості та ускладнюють притягнення винних до відповідальності. Метою дослідження було вивчення проблем гармонізації національного кримінального та процесуального права із міжнародним в контексті соціально-правових наслідків

ратифікації. У дослідженні використано доктринальний, інституційний та нормативно-правовий, порівняльний аналізи та кейс-стаді. Було доведено, що шлях України до повноправного членства у Римському Статуті хоча і завершився його ратифікацією, однак якісна гармонізація національного законодавства відсутня. Серед наявних причин було проаналізовано неточності офіційного перекладу Статуту. Узагальнено, що відповідно наслідковими проблемами стали: звуження законодавцем у кримінальному законодавстві існуючих форм геноциду; невірне вживання кліше на кшталт «злочини проти людяності» тощо. Виявлено такі особливості затримання та взяття у полон, які слідують із різного правового підґрунтя, що визначає статуси таких осіб за нормами міжнародного гуманітарного права. Зроблено висновок, що належно регламентована робота Спільних слідчих груп є запорукою прийнятності здобутих доказів за ознакою суб'єкту, фаховість якого є визначальною. Доведено, що робота з відкритими джерелами цифрової інформації у перебігу документування міжнародних злочинів, має слідувати, як із правил Протоколу Берклі, так із юрисдикційної та національної прийнятності. Практична цінність роботи полягає у тому, що отримані результати мали б стати орієнтиром для національного законодавця на шляху якісної та домірної гармонізації, а також для суду та інших органів правозастосування

Ключові слова: тяжкі міжнародні злочини; міжнародний судовий орган; міжнародне гуманітарне та кримінальне право; відновлення міжнародного правопорядку

UDC 34:004; 347
DOI: 10.32518/sals2.2025.276

Соціально-правові студії. 2025. Т. 8, № 2
Social & Legal Studios. 2025. Vol. 8, No. 2

Information law in the context of information aggression

Leontiy Chystokletov
Doctor of Law, Professor
Lviv Polytechnic National University
79005, 1/3 Kniazia Romana Str., Lviv, Ukraine
https://orcid.org/0000-0002-3306-1593

Yurii Nazar
Doctor of Law, Professor
Lviv State University of Internal Affairs
79000, 26 Horodotska Str., Lviv, Ukraine
https://orcid.org/0000-0002-8059-4413

Oleksandra Khytra
Doctor of law, Professor
Lviv State University of Internal Affairs
79000, 26 Horodotska Str., Lviv, Ukraine
https://orcid.org/0000-0002-3632-5101

Dmytro Zabzaliuk
Doctor of Law, Professor
Lviv State University of Internal Affairs
79007, 26 Horodotska Str., Lviv, Ukraine
https://orcid.org/0000-0002-1041-0148

Yulia Komissarchuk
PhD in Law, Associate Professor
Lviv State University of Internal Affairs
79007, 26 Horodotska Str., Lviv, Ukraine
https://orcid.org/0000-0002-5079-334X

Abstract. The issues of information law in the context of hybrid warfare, which includes issues of cybersecurity, countering disinformation, protecting information sovereignty and freedom of speech, have become particularly relevant and one of the key areas of legal research in response to large-scale information aggression against Ukraine. The purpose of the study was to investigate the regulator's response to external factors in the form of hybrid information warfare. The research used methods of comparative analysis, a systematic approach, and a formal logical method. The study analysed key aspects of the functioning of information law under martial law, in particular, its ability to ensure freedom of speech and access to reliable information. The legal mechanisms that ensure information security were investigated, considering the latest forms of information aggression, including cyber threats, propaganda, disinformation, and manipulation in social networks. The practice of international cooperation in the field of information security was summarised and it was established that effective counteraction to hybrid warfare requires adaptation of the legal environment to the conditions of the latest information and communication technologies. Contemporary legislative initiatives in Ukraine in the field of information security were analysed and ways to improve national information legislation were proposed, in particular, in the areas of cybersecurity, personal data protection, countering fakes, and regulating media activities. The practical value of the study lies in the possibility of using its results by legislators, law

Suggested Citation **Article's History**: Received: 18.02.2025 Revised: 01.05.2025 Accepted: 25.06.2025

Chystokletov, L., Nazar, Yu., Khytra, O., Zabzaliuk, D., & Komissarchuk, Yu. (2025). Information law in the context of information aggression. *Social & Legal Studios*, 8(2), 276-284. doi: 10.32518/sals2.2025.276.

*Corresponding author

Copyright © The Author(s). This is an open access Article distributed under the terms of the Creative Commons Attribution License 4.0 (https://creativecommons.org/licenses/by/4.0/)

enforcement agencies, researchers and specialists in the field of cybersecurity to develop and implement an effective information policy in the context of a military conflict

Keywords: information security; digital environment; cyber threats; freedom of expression; legal regulation; information manipulation

Introduction

The relevance of the study is conditioned by the unprecedented increase in the scale and impact of information threats that accompany armed conflicts. As of 2025, the issue of legal response to targeted information attacks was becoming critical not only for the security of the state, but also for preserving the democratic foundations of society. Countering hostile manipulation, cyber threats, and attempts to destabilise through the media requires flexible and timely legal solutions. In the context of the intensive spread of digital technologies and increasing external pressure on the state's information space, legal regulation in this area cannot remain secondary. One of the most serious challenges for information freedom in a hybrid war is the spread of disinformation and fake news, which are actively used as tools of influence. In times of war, especially in the context of information aggression, media and digital platforms become channels for manipulating public opinion, spreading false facts, and creating so-called "alternative realities". This hinders the development of objective opinion, which is the basis of a democratic society. In Ukraine, as in many other countries, disinformation is becoming part of not only military strategies, but also social processes that undermine the morale of the population and their trust in government institutions. It is important that the fight against fakes and manipulation requires not only technological means, but also a clear legal framework that would ensure a balance between controlling the information space and protecting the right to freedom of expression. The study of this issue is necessary for the development of mechanisms that can effectively protect national interests in the new conditions of hybrid confrontation.

The contemporary information world, saturated with technological innovations and unexpected changes on the geopolitical front, has witnessed serious challenges, in particular, hybrid warfare, which is a real test for national and international security. The Russian-Ukrainian confrontation reflects new forms and methods of military operations, where information aggression and cyber-attacks are becoming integral components of modern warfare (Chmyr *et al.*, 2023).

In the scientific literature, the problem of legal support of information security in the context of hybrid warfare has been widely discussed. I. Sopilko *et al.* (2022) focused on the threats of information wars as a challenge to national security, noting that the state needs to update the legal means of protecting the information space. In turn, N. Nuritdinov (2024) and D. Vedeneyev (2021) analysed the impact of critical thinking on the level of information stability of citizens, emphasising the role of education and information hygiene as elements of the legal mechanism for countering disinformation.

S. Fedoniuk *et al.* (2023) investigated the specific features of information security policy development in Ukraine during the war, concluding that the existing regulatory framework is fragmented and requires significant updating. A. Pravdiuk (2022; 2023) noted the need for a comprehensive reform of legislation in the field of cybersecurity based on international standards. In this context, A. Khriapynskyi (2024) also stressed that national legislation is not sufficiently adapted to the hybrid nature of contemporary conflicts, and S. Saeed *et al.* (2023) pointed out the need to unify legal regulation

How these changes should be implemented was investigated by T. Berezyovets (2020), emphasising that legal instruments should not only respond, but also prevent threats. T. Hurzhi (2019) focused on the intersectoral nature of information law in countering hybrid threats, especially in aspects of interaction between the public and private sectors. Zh. Denisyuk (2021) analysed in detail the forms of information attacks and proposed ways of legal response, considering international experience. A. Brantly (2022), who investigated Ukraine's cyber defence strategies, stressed the importance of adapting legal solutions to the dynamic conditions of hybrid conflict. L. Kormych *et al.* (2024) considered digital transformation as a key factor influencing the development of the legal field in the field of information security.

The purpose of this study was to critically evaluate the transformations already carried out by the legislator in the field of information law from the standpoint of their effectiveness and compliance with contemporary challenges, and to substantiate legal mechanisms that can ensure an appropriate level of information security in the context of the rapid development of digital technologies and the globalisation of the information space. The focus was on both changes in national legislation and trends in international legal regulation in the field of information protection, in particular, in the context of the growing number of cyber threats, disinformation, and violations of privacy rights. Thus, the objectives of the study were a comprehensive assessment of the legal regulation of the information space, analysis of mechanisms for implementing information rights and obligations of subjects of legal relations, identification of existing gaps and conflicts in legislation, and search for areas for its improvement. Special attention was paid to the issues of balancing security and freedom of speech, and the introduction of new legal instruments that consider the dynamics of information technology development and the transformation of the nature of threats in the cyber sphere.

Materials and methods

The study used an interdisciplinary approach that combined elements of legal science, information security, political science, and social communications. The theoretical framework of the study was the concept of information sovereignty, supplemented by the doctrine of hybrid warfare, in which information aggression was considered as a component of asymmetric conflicts. Among the concepts of such confrontation, the idea of cosciential warfare, which includes encroachments on cultural heritage and information symbols of statehood, was particularly useful, which is also associated with the norms on the return of cultural property to their countries of origin (UN General Assembly Resolution No. 48/15, 1993). The term "coscientiality" comes from the Latin word *conscientia* – consciousness or conscience. That is

why special attention in the study was paid to legal mechanisms that can protect the legal and national consciousness, intellectual centres that are responsible for development, in accordance with H. Zadorozhny's (2021), "national survival strategies". The provisions of the theory of human rights in the context of restrictions on freedom of speech during a state of emergency or martial law were also considered.

From a methodological standpoint, the study was based on a combination of several classical methods of legal science. In particular, the system-analytical method helped to identify relationships between regulatory legal acts, international agreements, and mechanisms for responding to information threats. It was applied in the analysis of the current legislation of Ukraine in the field of information security and its comparison with the relevant international standards. The comparative legal method helped to compare Ukrainian legislation with the practices of the EU and NATO countries, in particular, in terms of regulatory response to hybrid attacks. As a result, a number of fundamental differences were identified, including potential areas for adapting national law. The doctrinal method was used to investigate the views of researchers regarding the legal content of information security, the limits of freedom of speech during the war, and legal restrictions in cyberspace. Within the framework of this method, the terms "information aggression", "information weapons", and "hybrid attack" were analysed.

The studied legislation included such regulatory acts as: Law of Ukraine No. 2657-XII "On Information" (1992), Law of Ukraine No. 2849-IX "On Media" (2022), and Decree of the President of Ukraine No. 152/2022 "On the Unified Information Policy in Wartime" (2022). The impact of such fundamental documents as the European Convention on Human Rights (1950) and the United Nations General Assembly Resolutions No. A/70/174 (2015) and No. A/RES/76/19 (2021) was considered, which form the basic principles of states' behaviour in the digital environment. This indicates that the source base was characterised by its regulatory diversity, allowing to develop a comprehensive picture of the legal response to information threats in the context of hybrid warfare and to ensure the validity of conclusions based on a multi-level legal reality.

Results and Discussion

Analysis of the impact of information aggression and cyber threats on the legal system of Ukraine in the context of the Russian-Ukrainian war requires focusing on practical aspects of the functioning of information law (Lysenko *et al.*, 2023). In this context, it is appropriate to recall the opinion of T. Hurzhi (2018), who emphasised that hybrid warfare comprehensively transforms public relations, covering the political, economic, and information spheres, and also affects the functioning of state institutions. Such changes, in his opinion, require a prompt legal response from the national legal system, since it is the quality and speed of this response that largely determine the effectiveness of countering new challenges. Therefore, the development of effective legal mechanisms in the field of information security is not only desirable, but also a necessary element of the national sustainability strategy.

From the standpoint of information law, it is important to consider hybrid warfare as an important context for the development and improvement of legal mechanisms, in which information law, with the help of information and legal support tools regulated by information and legal norms, appears as one of the main levers of countering information aggression, cyber threats, and other aspects of hybrid warfare. Special attention in this process should be focused on the need to study and improve the legal framework governing information security and citizens' rights in this new context.

The main provisions that are given in UN General Assembly Resolutions No. A/70/174 (2015) and No. A/RES/76/19 (2021), Constitution of Ukraine (1996) and other laws and regulations define key aspects of ensuring and ensuring information sovereignty and information security, but do not always consider new forms of information aggression: cyber-attacks, conceptual influences, and hybrid disinformation campaigns. Hybrid warfare ("sixth generation war") is characterised by the use of classical and non-classical, conventional (weapons) and non-conventional (information influence), military and non-military methods. They are mobile in nature. P. Karber (2015) identified 4 military and 4 non-military factors of hybrid warfare. It refers to the use of traditional military convention forces, special operations forces, non-traditional, non-conventional forces, and proxy forces as 4 military forces. The non-military component is characterised by political and economic factors – cyberspace and the media space. According to Boris Bidichev, this is "propaganda, information wars, and everything related to it. And all these factors are closely intertwined. The most dangerous and surprising thing for the military in this war is that one enemy uses one of the factors, the other responds to completely different ones" (So What is…, 2017). T. Berezyovets (2015) noted that information technologies can ensure the achievement of military goals without the use of conventional weapons, using information resources as means of mass destruction. This provision was confirmed in the facts of mass cyber-attacks on critical infrastructure, manipulative information campaigns aimed at demoralising the population, and attempts to influence international opinion on the legitimacy of the aggressor's actions. In addition, information aggression is increasingly carried out through a complex impact on the emotional and psychological state of society. As noted by V. Polyakova (2022), information attacks are not aimed at the physical destruction of facilities, but at undermining trust, unity and will to resist by disinformation, reducing morale and forming a favourable attitude to the actions of the aggressor among a part of the audience. This approach illustrates the reorientation of the goals of war – from physical to mental control over the space and behaviour of citizens.

Another conceptualisation of hybrid warfare was proposed by D. Vedeneyev (2019), who focused on undermining the moral, political, and informational stability of the enemy. The main goal of this type of war is to weaken the state through non-military, "non-contact" methods of influence, which leads to a decrease in its ability to defend itself, imposing political and socio-cultural models that are beneficial to the external aggressor. This approach helps to understand the role of information law as a tool for protecting sovereignty in a new type of conflict in a new way. Hybrid warfare does not have a frontal offensive line, so there are no legal and moral norms and standards for it, and, above all, as evidenced by the beginning of the Russian-Ukrainian war in 2022, combat operations are conducted without an official declaration of war.

While considering the essence of information warfare, it should be noted that this war, through information attacks, using advanced information technologies, penetrates, first of all, into the daily life of citizens, which is especially important in the context of digitalisation and the impact of artificial intelligence on the security policy of states (Sulowski, 2023). However, the danger of information attacks lies in the fact that if they are successfully implemented, society is undermined from within. There are three goals of information warfare: control of the information space for use for their own purposes; control of information and information flows for conducting information attacks on the enemy; improving the efficiency of the armed forces through military information functions (Denisyuk, 2021).

Summarising the above, it can be argued that information warfare requires a radical rethinking at the level of both legal terminology and national information policy. It goes beyond the classical concepts of "threat" and "defence" – its specificity lies in the combination of tools of influence, including propaganda, cybercrime, manipulative narratives and psychological operations, which do not always fall under the existing legal norms. That is why an important task is to adapt information law to the conditions of such a non-standard form of military conflict. From the above, it can be concluded that the analysis of the problems of conducting a hybrid war by Russia against Ukraine from the standpoint of the science of information law has the following features:

- hybrid warfare involves a wide range of information aspects, from disinformation to cyber threats. The analysis of this conflict allows researchers and practitioners to explore new approaches, norms and tactics in solving problems that arise in the connection with this form of manifestation;
- investigation of the role of hybrid warfare through the prism of the science of information law allows outlining the purposefulness of scientific developments aimed at improving ways to protect personal rights and freedoms of citizens, in particular, in the field of privacy, freedom of speech, and access to objective information;
- with the help of effective mechanisms, scientists of information and other branches of law focus their attention on research related to the improvement of effective tools for legal regulation of relations in the information space, which will qualitatively contribute to the prevention of information attacks and ensuring the optimal development of Information law during hybrid wars;
- analysis of the emergence and localisation of threats of hybrid warfare in the information context is an important argument for improving international scientific cooperation in the field of information law and developing common conceptual theoretical, methodological and practical bases in countering hybrid conflicts.

Analysis of the Law of Ukraine No. 2849-IX (2022) indicates the introduction of a number of novelties aimed at limiting the spread of hostile propaganda, in particular, banning content that justifies armed aggression. However, the legislation still does not have a clear legal definition of disinformation as a separate offence, which complicates law enforcement practice. The EU countries have already established effective legal mechanisms to counter information threats, in particular, disinformation during electoral processes. An example is the Law of France No. 2018-1202 "On Combating the Manipulation of Information" (2018), which provides an opportunity for rapid judicial response to the dissemination of deliberately false information during the election campaign. The law provides, in particular, the obligations of online platforms to disclose sources of funding for political advertising, identify customers of content, mark sponsored information and cooperate with government agencies to stop fake campaigns: the introduction of mechanisms for judicial blocking or refuting fake information in a short time; the obligation of platforms to disclose sponsors of political advertising and label propaganda content; the creation of a centralised information security monitoring body with the authority to detect and neutralise information threats; the expansion of the powers of the national council for television and radio broadcasting and the State Special Communications Service to control the information space during martial law.

According to the Decree of the President of Ukraine No. 447/2021 (2021), cyber-attacks are officially recognised as one of the key tools of hybrid aggression. The document defines the need to harmonise Ukrainian legislation with EU approaches – Directive of the European Parliament and of the Council No. 2022/2555 (2022). In practice, this implementation is slow. During large-scale attacks on government websites and critical infrastructure in 2022-2023, Ukraine actually used administrative methods of response, while the issue of the aggressor's legal responsibility remains unresolved in the international legal plane. The situation is further complicated by the fact that the Law of Ukraine No. 2297-VI (2010) does not comply with the requirements of the GDPR (2016), which creates a regulatory gap in the face of growing cyber threats. During the war, the risk of leakage of personal information from registers, databases of medical and social institutions increases. At the legislative level, the procedure for restricting access to personal data during martial law and the responsibility for their unauthorised use by third parties, in particular by the aggressor, was not detailed. Another discrepancy with EU law is the lack of a mechanism for transparent co-regulation with digital platforms in Ukraine, similar to the EU Code of Practice on Disinformation (2022). This limits the state's ability to respond effectively to real-time information campaigns (Katerynych, 2022). In addition, the tools of legal control over botnets and coordinated information attacks are not systematised.

According to UN General Assembly Resolution No. A/RES/76/19 (2021) states are obliged to refrain from interfering in the internal affairs of other states through ICT. However, Russia systematically violates these norms by using information platforms for conducting psychological operations and information influence. Ukraine can initiate appropriate changes through international forums, based on its own latest legislative experience. The legal basis of the changes was consolidated in the Decree of the President of Ukraine No. 152/2022 "On the Implementation of a Unified Information Policy under Martial Law" (2022). According to Article 64 of the Constitution of Ukraine (1996), during a state of war or emergency, certain rights and freedoms of citizens may be temporarily restricted. The restrictions established by the law consisted in coordinating the activities of the mass media, forming unified information messages. Along with this, Law of Ukraine No. 2849-IX (2022), which came into force under martial law, also included provisions that strengthened control over the information field. These measures helped to quickly neutralise chaotic or hostile

information activity in the first months of a full-scale invasion. The centralisation of information flows made it impossible for independent editorial content to exist, which became the subject of discussion among both journalistic communities and human rights organisations. It should also be noted that journalists, especially those who work in frontline zones or document war crimes, face a number of legal barriers. The activities of military censorship, the requirements for coordination of materials with the General Staff of the Armed Forces of Ukraine and restrictions on access to infrastructure facilities force editorial offices to adapt their work to new realities. All this creates a challenge: how to ensure the effective work of the media without compromising national security is an issue that requires an expanded legal understanding and amendments to the legal regulation of freedom of speech during martial law. The way out of this situation is to adapt the European practice of media self-regulation (for example, in the Scandinavian countries), where even during crises the autonomy of editorial policy remains with clear rules of responsibility (Hurkivska, 2024).

Another key area of restrictions is access to public information. The executive branch has temporarily restricted or completely suspended certain open data tools, including registers of property rights, public procurement, and court decisions. The motive was the need to protect critical information from being used by the enemy. However, the experience of educational projects implemented during the war, such as SEEDUE4UA-101085267, demonstrates how the transformation of information submission forms (through a combination of synchronous and asynchronous formats) becomes a forced but effective tool for adapting to conditions of limited or unstable information access. In such cases, not only the technical approach changes, but also approaches to the development of critical thinking, emotional stability, and the ability to integrate information are revised, which is especially important in a hybrid war.

An analysis of international practice confirms that even in times of armed conflict, states are obliged to comply with the basic standards of freedom of speech and access to information enshrined in the International Covenant on Civil and Political Rights (1966) (Article 19) and the European Convention on Human Rights (1950) (Article 10). Both documents recognise the right to restrict freedom of expression during emergencies, but emphasise that such restrictions must be necessary, proportionate and legal. The practice of the European Court of Human Rights (ECHR, the Court) also sets limits on permissible state interference in freedom of speech. In the case of Şener v. Turkey (2000), the Court stressed that even in a situation of threat to national security, any restriction should be based on a clear legal basis and not turn into a mechanism of general censorship. The Court expressed a similar position in cases related to the conflicts in Chechnya and Kosovo, where it recognised the right of participating states to restrict media freedom only in exceptional, specifically justified cases.

Also important is the practice of the United States, which, in the context of a hybrid or permanent military threat, uses a model of conditional regulation: the state provides basic freedom of expression, but within the framework of codes of responsibility for the dissemination of fake narratives, coordination with platforms, and the distinction between journalistic activities and information sabotage (USA Patriot Act, 2001). For Ukraine, such a model may be relevant in the medium term. It provides for a combination of legislative control, independent regulation, and self-regulation of the media. In practice, this can be implemented based on such cases as the Roth v. United States (1957), where the judiciary stated that "the unconditional wording of the First Amendment was not intended to protect every expression", and the case FCC v. Pacifica Foundation (1978), where it was stated that "the content of broadcasting a radio station... has no right to absolute constitutional protection". Those cases had shown that freedom of expression and freedom of information were not absolute and could be restricted. The transition from rigid centralisation of the information space to a flexible system of correlation between the media, the state and civil society would meet European standards and simultaneously preserve national interests in war context.

As for the Law of Ukraine No. 2297-VI "On Protection of Personal Data" (2010), the changes made to it in recent years mainly focus on adapting to EU standards, in particular, based on GDPR (2016). However, there are a number of problems with the actual implementation of these changes in practice, in particular, in the context of working with sensitive data in the context of constant cyber threats and military conflict. The introduction of new security standards for the processing of personal data in war conditions is critical, because personal data can become a target for cyber-attacks or be used for manipulations that undermine citizens' trust in state institutions. Considering the previous comments, it is worth implementing such restrictions within the framework of soft paternalism, the application of which in the field of data protection was disclosed by I. Patricheev (2025). In general, this requires a more detailed and in-depth analysis, since their effectiveness in protecting the information rights and security of citizens has not yet been fully evaluated, in particular, in the context of hybrid threats. As of 2025, there is no consensus in the national legal opinion of science on what information should be considered sensitive, which ultimately affects the sustainable information space and, above all, information security. Therefore, further adaptation of Ukrainian legislation to the realities of global information warfare and innovations in cybersecurity is necessary to ensure the proper level of legal protection of citizens.

Given this aspect, it is advisable to develop specialised legislative initiatives to process particularly sensitive information in war context, which will help ensure a high level of cybersecurity without violating the rights of citizens. It is necessary to introduce new legal instruments that will effectively counteract hybrid threats, in particular, through the modernisation of existing laws and regulations and the adoption of new laws that consider advanced information security challenges. Simultaneously, it is important to ensure a balance between the protection of national security and human rights, which will become the basis for the stable development of information law in war context. In the search for a concept to substantiate recommendations for improving information law in the context of the Russian-Ukrainian war, their development requires a comprehensive approach and consideration of current challenges facing modern society. The key areas for further development of information law are the following:

1. Creation of effective legislative mechanisms to ensure the implementation of innovation processes: the

development of Information law, considering fleeting information and communication technological changes, should be aimed at creating flexible innovation legislation adapted to qualitatively new scientific achievements, such as artificial intelligence, blockchain, and other technological innovations.

2. Ensuring cybersecurity: the development of information legislation in the field of cybersecurity protection should be focused on defining clear standards and requirements for detecting and countering cyber threats, and providing practical assistance in eliminating the consequences of cyber incidents.

3. Protection of intellectual property rights: recording of violations of intellectual property rights should be carried out through the active use of electronic technologies and the application of digital security measures. Strengthening the protection of intellectual property rights as an integral part of gross domestic product in the digital environment, through effective copyright, patent, and trademark mechanisms, can be a reliable lever to increase productivity and reduce costs in industry.

4. Development of information access policy: ensuring transparency and access to information based on contemporary information and policy doctrine is to develop a flexible state policy that, under martial law, while ensuring confidentiality and protection of personal data, will promote reliable access to information.

5. International cooperation: plays an important role in conceptual development and optimisation of information law in the context of Russian aggression. Active participation in international forums and agreements aimed at solving global problems of legal support of information security.

6. Protection of personal data: the effectiveness of protection of personal data of citizens as a critical aspect of information law should be ensured through the development and improvement of mechanisms for controlling the collection, storage, and processing of personal information.

7. Ensuring information security in the field of national defence: the development of special norms and state policies in ensuring information security in the field of national defence includes effective protection against cyber-attacks, the use of information weapons, and other tools.

The analysis of regulatory processes that accompany the transformation of information law in Ukraine under martial law indicates the need to develop a comprehensive, balanced model of information security that considers both national challenges and international standards. Based on the practice of implementing emergency information regimes, in particular, media coordination, restricting access to public information, and actively responding to external information attacks, there is a shift in emphasis from the liberal model of freedom of speech to the conditionally restrictive one designed to counter hybrid threats. However, comparison with foreign practice (France, USA, ECHR) allows outlining the potential for the development of a flexible legal mechanism that combines elements of self-regulation, state control, and international cooperation. Maintaining the proportionality of restrictions, transparency of legal regulation, and ensuring effective legal protection of citizens in the digital age is crucial for this approach. In the long run, this should be reflected in updated legislative initiatives aimed at adapting to new forms of disinformation, cyber threats and sensitivity to human rights, which will allow building a sustainable information infrastructure even in the context of war.

Conclusions

The study highlighted the transformation processes in the field of information law of Ukraine under martial law and hybrid information law. In order to assess the effectiveness of already implemented changes in legislation and substantiation of legal mechanisms that can ensure the proper level of information security in the new conditions, the legal nature of hybrid warfare, features of information aggression were analysed and the main threats associated with disinformation, cyber-attacks and manipulations in the digital environment were identified. The study described the regulatory framework of Ukraine in the field of information security, in particular, under martial law, and analysed its compliance with international standards.

The results of the study revealed such key aspects as the need for normative specification of the concept of disinformation, the introduction of effective mechanisms for countering information attacks, and the harmonisation of Ukrainian legislation with EU law (in particular, in the context of GDPR, NIS2, Code of Practice on Disinformation). The paper also analysed the experience of France, the United States, and the ECHR in balancing freedom of speech and security in crisis context. It was revealed that the administrative model of response prevails in Ukraine, but the tools of self-regulation and co-regulation remain undeveloped. In this regard, the importance of adapting the Ukrainian information policy to the context of long-term hybrid confrontation was emphasised, in particular, through the regulatory details of processing sensitive information, including personal data.

The results obtained indicated that the modern information law of Ukraine was at the stage of dynamic development, but required significant modernisation in both conceptual and instrumental dimensions. The analysis showed that effective legal response to information aggression involved a combination of three levels: strategic (national policy), regulatory (laws and bylaws), and operational (mechanisms for monitoring, responsibility, coordination with digital platforms). All of the above suggests that information law in war context is not only a tool of protection, but also a factor of national stability, which determines the ability of the state to counteract external information pressure while maintaining democratic principles.

Summarising the results obtained, it can be noted that further research should be directed to the development of concepts of co-regulation in the field of media and digital platforms, the investigation of mechanisms for protecting the rights of journalists in front-line context, and to the development of legal approaches to the qualification of information wars in international law.

Acknowledgements

None.

Funding

The study was not funded.

Conflict of interest

None.

References

[1] Berezyovets, T. (2015). *Annexation: The Crimean Peninsula. Chronicles of "Hybrid War"*. Kyiv: Bright Books.
[2] Brantly, A. (2022). Battling the bear: Ukraine's approach to national cyber and information security. In M.D. Cavelty & A. Wenger (Eds.), *Cyber security politics: Socio-technological transformations and political fragmentation* (pp. 157-171). New York: Routledge doi: 10.4324/9781003110224-13.
[3] Chmyr, Y., Deineha, M., Shchepanskiy, E., Koshelenko, A., & Kozenko, R. (2023). Tools for counteracting information aggression use of elements of information war in Ukraine. In O. Radchenko, V. Kovach, I. Semenets-Orlova & A. Zaporozhets (Eds.), *National security drivers of Ukraine. Contributions to political science* (pp. 258-299). Cham: Springer. doi: 10.1007/978-3-031-33724-6_17.
[4] Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text.
[5] Decree of the President of Ukraine No. 152/2022 "On the Unified Information Policy in Wartime". (2022, March). Retrieved from https://zakon.rada.gov.ua/laws/show/152/2022#Text.
[6] Decree of the President of Ukraine No. 447/2021 "On the Cybersecurity Strategy". (2021, August). Retrieved from https://zakon.rada.gov.ua/laws/show/447/2021#Text.
[7] Denisyuk, Zh.Z. (2021). Propaganda and counter-propaganda in the context of state information policy strategies. *Mechanisms of Public Administration*, 32(2), 46-51. doi: 10.32838/TNU-2663-6468/2021.2/08.
[8] Directive of the European Parliament and of the Council No. 2022/2555 "On Measures for a High Common Level of Cybersecurity Across the Union (NIS2 Directive)". (2022, December). Retrieved from https://surl.lt/slicwu.
[9] European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.
[10] Fedoniuk, S., Karpchuk, N.A., & Yuskiv, B. (2023). Ukraine's information security policy: At the crossroads between Russia and the West. *Czech Journal of Political Science*, 30(3), 184-205. doi: 10.5817/PC2023-3-184.
[11] Hurkivska, A. (2024). Ukraine's information security resilience amidst contemporary warfare: Policy context in development. *SSRN*. doi: 10.2139/ssrn.4896495.
[12] Hurzhi, T. (2018). Information law: Challenges of hybrid warfare. *Public Law*, 4, 16-26.
[13] Judgment of the European Court of Human Rights in Case No. 26680/95 "Şener v. Turkey". (2000, July). Retrieved from https://hudoc.echr.coe.int/eng?i=001-58753.
[14] Judgment of the Supreme Court of the United States in Case "Roth v. United States". (1957, October). Retrieved from https://www.loc.gov/item/usrep354476/.
[15] Judgment of the Supreme Court of the United States in Case No. 77-528 "FCC v. Pacifica Foundation". (1978, October). Retrieved from https://www.law.cornell.edu/supremecourt/text/438/726.
[16] Karber, P.A. (2015). *Russia's new generation warfare*. Retrieved from https://www.ausa.org/articles/russia%E2%80%99s-new-generation-warfare.
[17] Katerynych, P. (2022). Comparative analysis of the information security environment in Ukraine and Poland (survey of journalists and editors). *Communication and Society*, 35(4), 37-53. doi: 10.15581/003.35.4.37-53.
[18] Khriapynskyi, A., Khmyrov, I., Svoboda, I., Shevchuk, M., & Iastrebova, V. (2024). State information security strategies in conditions of hybrid threats. *Amazonia Investiga*, 12(69), 84-93. doi: 10.34069/AI/2023.69.09.7.
[19] Kormych, L., Krasnopolska, T., & Zavhorodnia, Y. (2024). Digital transformation and national security ensuring. *European Political and Law Discourse*, 11(1), 29-37. doi: 10.46340/eppd.2024.11.1.4.
[20] Law of France No. 2018-1202 "On Combating the Manipulation of Information". (2018, December). Retrieved from https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000037847559?utm.
[21] Law of Ukraine No. 2297-VI "On Protection of Personal Data". (2010, June). Retrieved from https://zakon.rada.gov.ua/laws/show/2297-17#Text.
[22] Law of Ukraine No. 2657-XII "On Information". (1992, October). Retrieved from https://zakon.rada.gov.ua/laws/show/2657-12#Text.
[23] Law of Ukraine No. 2849-IX "On Media". (2022, December). Retrieved from https://zakon.rada.gov.ua/laws/show/2849-20#Text.
[24] Lysenko, S., Marukhovskyi, O., Krap, A., Illiuschenko, S., & Pochapska, O. (2023). The analysis of world information warfare and information security in the context of the Russian-Ukrainian war. *Studies in Media and Communication*, 11(7), 150-158. doi: 10.11114/smc.v11i7.6414.
[25] Nuritdinov, N. (2024). Socio-cultural factors of the effective use of critical thinking in the development of modern legal knowledge. *Pubmedia Social Sciences and Humanities*, 2(2). doi: 10.47134/pssh.v2i2.294.
[26] Patricheev, I. (2025). Legal paternalism's influence on the balancing data protection and fundamental rights. *Law Journal of the National Academy of Internal Affairs*, 15(1), 48-58. doi: 10.63341/naia-chasopis/1.2025.48.
[27] Polyakova, V. (2022). *Information warfare: What is it and why it is important to understand its nature*. Retrieved from https://gwaramedia.com/informaczijna-vijna-istorichni-prikladi-najnebezpechnishoi-zbroi/.
[28] Pravdiuk, A. (2022). The state and current issues of legal regulation of cyber security in Ukraine. *European Political and law Discourse*, 9(3), 19-28. doi: 10.46340/eppd.2022.9.3.3.
[29] Pravdiuk, A. (2023). Information security of Ukraine: information influence and information wars. *European Political and law Discourse*, 10(1), 111-121. doi: 10.46340/eppd.2023.10.1.6.
[30] Regulation of the European Parliament and of the Council No. 2016/679 "On the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data (General Data Protection Regulation)". (2016, April). Retrieved from https://eur-lex.europa.eu/eli/reg/2016/679/oj.

[31] Saeed, S., Altamimi, S.A., Alkayyal, N.A., Alshehri, E., & Alabbad, D.A. (2023). Digital transformation and cybersecurity challenges for business resilience: Issues and recommendations. *Sensors*, 23(15), article number 6666. doi: 10.3390/s23156666.
[32] So What is Hybrid Warfare? And Is Hybrid Warfare Present in Ukraine? (2017). Retrieved from https://www.armyfm.com.ua/tak-shho-zh-take-g%D1%96bridna-v%D1%96jna-%D1%96-chi-g%D1%96bridna-v%D1%96jna-v-ukra%D1%97n%D1%96/.
[33] Sopilko, I., Svintsytskyi, A., Krasovska, Y., Padalka, A., & Lyseiuk, A. (2022). Information wars as a threat to the information security of Ukraine. *Conflict Resolution Quarterly*, 39(3), 333-347. doi: 10.1002/crq.21331.
[34] Sulowski, S. (2023). *Security challenges at the dawn of a new international order*. Berlin, Bern, Bruxelles, New York, Oxford, Warszawa, Wien: Peter Leng.
[35] UN General Assembly Resolution No. 48/15 "Return or Restitution of Cultural Property to Their Countries of Origin". (1993, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_718#Text.
[36] UN General Assembly Resolution No. A/70/174. (2015, June). Retrieved from https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/228/37/PDF/N1522837.pdf?OpenElement.
[37] UN General Assembly Resolution No. A/RES/76/19. (2021, December). Retrieved from https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/377/51/PDF/N2137751.pdf?OpenElement.
[38] Vedeneyev, D. (2019). *From Machiavelli to robot wars: The grammar of "hybrid" warfare*. Retrieved from https://old.defence-ua.com/index.php/statti/publikatsiji-partneriv/7236-vid-makiavelli-do-viyn-robotiv-hramatyka-hibrydnoyi-viyny-2.
[39] Zadorozhny, H. (2021). Consistent war – the leading form of geoeconomic subjugation of consciousness as a new object of labor in the context of neoliberal globalization. *Bulletin of Economic Science of Ukraine*, 1(40), 199-206. doi: 10.37405/1729-7206.2021.1(40).199-206.

Інформаційне право в умовах інформаційної агресії

Леонтій Чистоклетов
Доктор юридичних наук, професор
Національний університет «Львівська політехніка»
79005, вул. Князя Романа, 1/3, м. Львів, Україна
https://orcid.org/0000-0002-3306-1593
Юрій Назар
Доктор юридичних наук, професор
Львівський державний університет внутрішніх справ
79007, вул. Городоцька, 26, м. Львів, Україна
https://orcid.org/0000-0002-8059-4413
Олександра Хитра
Доктор юридичних наук, професор
Львівський державний університет внутрішніх справ
79007, вул. Городоцька, 26, м. Львів, Україна
https://orcid.org/0000-0002-3632-5101
Дмитро Забзалюк
Доктор юридичних наук, професор
Львівський державний університет внутрішніх справ
79007, вул. Городоцька, 26, м. Львів, Україна
https://orcid.org/0000-0002-1041-0148
Юлія Комiссарчук
Кандидат юридичних наук, доцент
Львівський державний університет внутрішніх справ
79007, вул. Городоцька, 26, м. Львів, Україна
https://orcid.org/0000-0002-5079-334X

Анотація. Проблематика інформаційного права в умовах гібридної війни, що включає питання кібербезпеки, протидії дезінформації, захисту інформаційного суверенітету та свободи слова, набула особливої актуальності та стала однією з ключових сфер юридичних досліджень у відповідь на широкомасштабну інформаційну агресію проти України. Метою роботи було вивчення реакції регулятора на зовнішні у вигляді гібридної інформаційної війни. У дослідженні застосовано методи порівняльного аналізу, системного підходу, формально-логічного методу. У ході дослідження було проаналізовано ключові аспекти функціонування інформаційного права в умовах воєнного стану, зокрема його спроможність забезпечити свободу слова та доступ до достовірної інформації. Було досліджено правові механізми, які забезпечують інформаційну безпеку, з урахуванням новітніх форм інформаційної агресії, включно з кіберзагрозами, пропагандою, дезінформацією та маніпуляцією у соціальних мережах. Було узагальнено практику міжнародного співробітництва у сфері інформаційної безпеки та встановлено, що ефективна протидія гібридній війні потребує адаптації правового середовища до умов новітніх інформаційно-комунікаційних технологій. Проаналізовано сучасні законодавчі ініціативи в Україні у сфері інформаційної безпеки та запропоновано шляхи вдосконалення національного інформаційного законодавства, зокрема у напрямах кібербезпеки, захисту персональних даних, протидії фейкам і регулювання діяльності медіа. Практична цінність роботи полягає у можливості використання її результатів законодавцями, правозастосовними органами, науковцями та фахівцями в галузі кібербезпеки для розробки та впровадження ефективної інформаційної політики в умовах воєнного конфлікту

Ключові слова: інформаційна безпека; цифрове середовище; кіберзагрози; свобода вираження; правове регулювання; інформаційні маніпуляції

UDC 343.98:65.011
DOI: 10.32518/sals2.2025.285

Соціально-правові студії. 2025. Т. 8, № 2
Social & Legal Studios. 2025. Vol. 8, No. 2

Criminal law support for information security: Issues of theory and practice

Sergey Salishev
Postgraduate Student
Jusup Balasagyn Kyrgyz National University
720033, 547 Frunze Str., Bishkek, Kyrgyz Republic
https://orcid.org/0009-0008-5759-589

Baktygul Kanybekova
PhD in Law, Associate Professor
National Academy of Sciences of the Kyrgyz Republic
720071, 265-A Chui Ave., Bishkek, Kyrgyz Republic
https://orcid.org/0009-0006-3741-601X

Almagul Kokoeva
Doctor of Law, Professor
Kyrgyz-Uzbek International University named after B. Sydykov
720082, 27 G. Aitiev Str., Osh, Kyrgyz Republic
https://orcid.org/0009-0006-1893-8365

Chynara Botoeva
Doctor of Law, Acting Professor
Academy of Public Administration under the President of the Kyrgyz Republic named after Zh. Abdrakhmanov
720040, 237 Panfilov Str., Bishkek, Kyrgyz Republic
https://orcid.org/0009-0006-4075-8192

Bakyt Kakeshov*
PhD in Law, Associate Professor
Jusup Balasagyn Kyrgyz National University
720033, 547 Frunze Str., Bishkek, Kyrgyz Republic
https://orcid.org/0000-0003-1570-1072

Abstract. The study analysed the criminal law mechanism for ensuring information security as one of the key elements of the national security of the State. The study aimed to conduct research on criminal law provision of information security in the context of modern challenges of the digital environment and to identify the areas for improvement of criminal law for effective response to information threats. It was done by looking at national and foreign laws, court cases, and stats on cybercrime, as well as using systematic, comparative, and formal legal analysis. Key threats to information security that have become widespread in Kyrgyzstan and abroad were identified, including unauthorised interference in information systems, illegal collection of personal data and dissemination of harmful content. A comparative legal analysis of the criminal legislation of Germany, France, the USA, Poland and Kyrgyzstan was conducted to identify effective approaches to criminalisation and punishment of the relevant offences. The study established that the model of criminal law protection needs to be updated with due regard to international experience in terms of distinguishing cybersecurity offences and improving the qualifying features. It has been established that the current criminal legislation

Suggested Citation

Article's History: Received: 10.03.2025 Revised: 25.05.2025 Accepted: 25.06.2025

Salishev, S., Kanybekova, B., Kokoeva, A., Botoeva, Ch., & Kakeshov, B. (2025). Criminal law support for information security: Issues of theory and practice. *Social & Legal Studios*, 8(2), 285-296. doi: 10.32518/sals2.2025.285.

*Corresponding author

Copyright © The Author(s). This is an open access Article distributed under the terms of the Creative Commons Attribution License 4.0 (https://creativecommons.org/licenses/by/4.0/)

of Kyrgyzstan needs further adaptation to modern challenges in the field of digital technologies in order to improve the classification of acts related to interference in information systems and differentiate liability. The practical significance of the results is determined by the formulation of proposals for improving legislation and the application of criminal law means to improve the effectiveness of information security protection at both the national and international levels

Keywords: information security; national security; cybercrime; information threats; media literacy; international cooperation

Introduction

In a rapidly digitising society, information security is becoming a fundamental factor in the stable functioning of the state, business and personal sphere of citizens. The economic, political and social security of the country, and thus its national security in general, largely depends on the effectiveness of information space protection. In Kyrgyzstan, as in the United States, France, Germany and Poland, the number of cybercrimes, personal data leaks, and interference with government systems is growing, which creates an objective need to improve criminal law mechanisms for responding to these challenges. However, existing criminal legal systems do not always meet the rapid development of digital threats. Criminal law, as a protection of the most important social values, does not always have adequate means to respond to new forms of information crime (Mentukh, & Shevchuk, 2023). The research relevance also is determined by the rapid development of information technology and the simultaneous increase in the number and complexity of information security crimes, which the current criminal legislation of many countries, including Kyrgyzstan, the United States, France, Germany and Poland, is not always able to effectively prevent and properly prosecute. The main problem is the fragmentation of legal regulation, unclear terminology, lack of a unified approach to defining the elements of information crimes, as well as difficulties in law enforcement related to the transnational nature of many information offences.

This problem has been addressed from various angles in scientific literature. For example, B.D. Kakeshov (2023) analysed the political and legal aspects of liability for information security offences in the context of national security in Kyrgyzstan, with a particular focus on the relationship between criminal and administrative liability. According to the author, Kyrgyzstan could implement comprehensive cybersecurity laws and strengthen institutional capacities, while also fostering public-private partnerships and investing in advanced technologies to enhance its defense against cyber threats. Additionally, raising public awareness and engaging in international cooperation can further bolster the nation's cybersecurity framework. M. Jurgilewicz and O. Jurgilewicz (2019) analysed issues of information security management and its criminal law protection in the context of Polish practice. The authors emphasised the need to improve legislative norms and enhance the qualifications of law enforcement officials to respond effectively to information threats. The importance of interagency cooperation and the development of a unified security strategy is noted. Theoretical approaches, according to the researchers, should be backed up by practical measures, including prevention and high-quality investigation.

The study by T.L. Chapman and S. Chaudoin (2020) highlighted the perception of international criminal institutions by the population in developing countries, demonstrating the link between trust in the justice system and the effectiveness of legal regulation in the field of security. The main patterns of use of digital assets in illegal activities, as identified by C. Nolasco Braaten and M.S. Vaughn (2021), include their use in money laundering, fraud, ransomware attacks, and illicit transactions on the dark web. These activities exploit the anonymity and decentralised nature of cryptocurrencies to facilitate various forms of cybercrime. C.J. Najdowski and M.C. Stevenson (2022) emphasise the need to reform the criminal law system to combat systemic inequality, which is also relevant to the field of information security, where unequal access to digital resources creates additional challenges. R. Atadjanov (2022) discussed the absence of crimes against humanity in the criminal legislation of Central Asian states, including Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan. The author provides an overview of the current status of these crimes under international law and analyses the domestic legislation of these countries. The Article studied strengthening the current Criminal Codes by incorporating well-formulated dispositions on crimes against humanity, considering the peculiarities of national legal systems. E. Marat and G. Botoeva (2022) examined the connections between illegal drug trafficking, violence, and corruption in Central Asia. The authors argue that drug trafficking in the region is highly organised, involving major criminal and state actors, with periodic changes among the involved parties. The analysis of violence and policing dynamics shows how patterns of organised crime are influenced by state effectiveness, state protection of trafficking, and competition among traffickers. Criminal violence is widespread, particularly in urban areas, but Central Asian states have shown capabilities in intercepting and preventing illicit activities (Dzyana & Dzyanyy, 2023). The authors recommend that the international community should focus on increasing the costs of corruption and rewarding good practices by political incumbents and their non-state collaborators.

The study aimed to form a holistic view of the criminal law provision of information security, to identify theoretical gaps and practical problems in law enforcement, and to develop substantiated proposals for improving the relevant legislation. To achieve this goal, the research analysed the concept and structure of information security in the criminal law context, studying the composition and specifics of crimes in this area, identifying the peculiarities of their qualification and proof, as well as researching national and international practices of criminal prosecution.

Materials and methods

In the first stage, an analysis of regulatory and legal acts governing cybercrime and information security in various countries was conducted, such as Law of the Kyrgyz Republic No. 121 "On Cybersecurity of the Kyrgyz Republic" (2024), Criminal Code of the Kyrgyz Republic (1997), Computer Fraud and Abuse Act (1986), Penal Code of France (1994), Criminal Code of Germany (1998), Criminal Code of the

Republic of Poland (1997), Act of the Republic of Poland "On the National Cybersecurity System" (2018); case law in such cases as Mckinnon v. Government of The United States of America and Another (2007), United States v. Andrew Auernheimer (2014), United States v. Swartz (2013), Van Buren v. United States (2021). For the study, normative legal acts and judicial practice of Kyrgyzstan, the United States, France, Germany and Poland were selected, as these countries demonstrate different models of criminal law regulation in the field of information security. Kyrgyzstan is an example of a post-Soviet jurisdiction that is in the process of actively forming a regulatory framework for cybersecurity.

The empirical part of the study included an online survey of 50 law enforcement officers from Kyrgyzstan and Poland. All procedures performed in studies involving human participants were in accordance with the ethical standards of the institutional and national research committee and with the ICC/ESOMAR International Code on Market, Opinion and Social Research and Data Analytics (2016). The survey covered their experience in combating cybercrime, the level of training of specialists, and technical support. Respondents were selected from among employees working in cybercrime units. The total sample consisted of 50 people, 25 respondents from each country, which enabled a basic comparative analysis. The criteria for inclusion in the study were: age between 25 and 55, at least three years of practical experience in the field of cybercrime and confirmed voluntary consent. Exclusion criteria included lack of relevant experience, incomplete questionnaire completion, or withdrawal of consent. All respondents were informed of the voluntary nature of participation and of the possibility to withdraw at any stage without explanation. The survey was conducted anonymously online in March 2025. The questionnaire consisted of 20 fixed questions covering key aspects of law enforcement, professional training, technical support and legislative challenges in the field of information security. Respondents were selected from among employees working in cybercrime units. Standard data processing methods, such as calculating percentages and comparing different countries, were used for statistical analysis of the survey results. This identified the main problems in the application of criminal law and areas for improvement. Standard methods such as descriptive statistics, comparisons between groups and correlation analysis were used to process the statistical data in the study. Excel software was used for this purpose. Given the sensitivity of the subject matter, all surveys were anonymous. Respondents were informed in advance of the voluntary nature of their participation and that no personal or professional data would be collected, stored or transferred to third parties. The confidentiality of the results was guaranteed at all stages of the study, and responses were processed exclusively in an anonymised form following the ethical principles of social research.

Results

The concept of information security covers a set of social relations related to the protection of information resources from internal and external threats. In the modern legal framework, ensuring information security is considered one of the priority areas of state policy, as a breach of information security can lead to significant consequences for the economy, public administration, human rights and social stability (Zwilling *et al.*, 2020). In Kyrgyzstan, the definition of information security is enshrined in the Law of the Kyrgyz Republic No. 121 "On Cybersecurity of the Kyrgyz Republic" (2024), where it is interpreted as a state of information security that ensures its safety, integrity, confidentiality and availability. The law also provides for the classification of threats and liability for information offences. For instance, the Criminal Code of the Kyrgyz Republic (1997) contains several articles directly related to cybercrime, including Articles 211 (Unauthorised access to computer information) and 212 (Violation of the rules for the operation of computers, systems and networks), which provide criminal law protection of digital objects.

In the United States, information security is regulated primarily at the federal level through a series of laws, the most important of which is the Computer Fraud and Abuse Act (1986), which was passed in 1986 but has been updated many times. For instance, Section §1030 of this act provides for liability for intentional unauthorised access to a computer with the intent to obtain information from the federal government, financial institutions, or computers used in interstate or international commerce. One practical example is the case of United States v. Swartz (2013), where a well-known activist was accused of downloading millions of scientific articles from the closed JSTOR database without permission. In France, the concept of information security is defined through the prism of the protection of information systems and personal data. Article 323-1 of the Penal Code of France (1994) qualifies unauthorised access to automated data processing as a crime. If such access results in the destruction or modification of data, increased liability is provided. The law also protects the infrastructure of critical information systems (CIIP), for example in the energy and telecommunications sectors. In 2009, France established the Cybersecurity Agency (ANSSI), which coordinates digital security policy (D'Elia, 2018). Germany has one of the most developed legal mechanisms for combating cybercrime in Europe. The main provisions are contained in the Criminal Code of Germany (1998), in §202a (Unauthorised access to data), §303a (Destruction, damage or alteration of data) and §303b (Computer sabotage). Notably, German legislation not only punishes hacking but also focuses on protecting digital infrastructure. For example, in 2015, amendments were made to protect "critical infrastructure", improving the efficiency of response to cyber threats on a national scale. In Poland, criminal law regulation of information security is provided for in Section XXXIII of the Criminal Code of the Republic of Poland (1997), which deals with crimes against information systems. Article 267 provides for criminal liability for the unlawful interception of information, Article 268 for the destruction, damage or alteration of data, and Article 269 for the introduction of malicious software. Poland adopted the Act of the Republic of Poland "On the National Cybersecurity System" (2018), which obliges state authorities and enterprises to ensure an adequate level of protection for their information systems. There have been cases of actual application of this legislation in connection with cyberattacks on financial institutions in 2021.

The concept of information security is addressed in various jurisdictions through specific laws and regulations that reflect their unique legal traditions and priorities. In Kyrgyzstan, the Law of the Kyrgyz Republic No. 121 (2024) defines information security as a state of protection ensuring the safety, integrity, confidentiality, and availability of

information, classifying threats and outlining liability for information offenses. Additionally, the Criminal Code of the Kyrgyz Republic (1997) includes Articles 211 and 212, which deal with unauthorised access to computer information and violations of computer operation rules, respectively.

In the United States, the Computer Fraud and Abuse Act (1986) is pivotal, with Section §1030 addressing unauthorised access to computers, particularly those used by the federal government, financial institutions, or in interstate commerce. A notable case illustrating its application is United States v. Swartz (2013). France approaches information security through its Penal Code of France (1994), where Article 323-1 criminalises unauthorised access to automated data processing systems. The country places a strong emphasis on protecting critical information infrastructure, with the Cybersecurity Agency (ANSSI) coordinating national digital security policy since 2009.

Criminal Code of Germany (1998) includes Sections §202a, §303a, and §303b, which cover unauthorised data access, data destruction or alteration, and computer sabotage. German legislation is notable for its focus on protecting critical infrastructure, with significant amendments made in 2015 to enhance cyber threat response. Criminal Code of the Republic of Poland (1997) addresses crimes against information systems in Section XXXIII, with Articles 267, 268, and 269 covering unlawful interception of information, data destruction or alteration, and the introduction of malicious software. The Act on the National Cybersecurity System (2018) further mandates protection levels for information systems.

A comparative analysis of these jurisdictions reveals both similarities and differences. Common principles across all regions emphasise protecting information from unauthorised access, ensuring the integrity and availability of digital systems, and prosecuting cybercrimes, reflecting a global consensus on the importance of information security. However, differences in terminology and scope exist; for example, Kyrgyzstan's law explicitly mentions the "state of information security", while U.S. and European laws focus more on specific acts of unauthorised access and data protection. These differences may stem from varying legal traditions, historical contexts, and specific national security concerns. Germany and France place significant emphasis on protecting critical infrastructure, reflecting their advanced industrial and technological landscapes, a focus less pronounced in the Kyrgyz Republic, which may have different priorities based on its developmental stage and technological infrastructure. Efforts towards harmonisation, such as those seen through the Budapest Convention on Cybercrime (2001), indicate a collective effort to standardise cybercrime legislation. This international cooperation helps bridge the gaps between different legal systems and enhances global cybersecurity efforts. To summarise, although the terminological approaches to the concepts of information security and information crime differ somewhat between countries, the basic principles remain common: protecting information from unauthorised access, preserving the integrity of digital systems and prosecuting interference in the IT sphere. The comparative analysis demonstrated a trend towards harmonisation of legislation within the framework of international cooperation, through the Budapest Convention on Cybercrime (2001), to which Poland, France and Germany are parties, as well as the United States.

In different countries, the criminal law approach to information security is shaped by both national threats and international obligations. A determining factor is also the technological infrastructure of the state, which determines the specifics of the legal response (Kharchenko *et al.*, 2017). In Kyrgyzstan, the development of criminal law protection of information was actively stimulated after the reform of the Criminal Code of the Kyrgyz Republic (1997) in 2019-2021. The legislation prioritised the protection of state information systems and data of strategic importance. Thus, in addition to the traditional offence of unauthorised access, the use of information infrastructure to interfere with electoral processes was criminalised, which was a response to attempts at manipulation in 2020 (Maralbaeva, 2024). Furthermore, a separate liability was introduced for the creation of malware for distribution through social networks, which significantly affects public opinion in Kyrgyzstan. This issue is addressed under Articles 289 and 290 of the Criminal Code of the Kyrgyz Republic (1997). Article 289 deals with illegal access to computer information, while Article 290 covers the creation, use, and dissemination of harmful computer viruses. However, the practical application of these norms remains problematic, as not all regions of the country possess the relevant technical expertise to effectively enforce these laws.

In the United States, the prevention of mass data breaches and the protection of critical infrastructure, such as energy networks and healthcare systems, are key priorities. The Computer Fraud and Abuse Act (1986) has undergone several significant amendments to address the evolving landscape of cyber threats. One of the notable updates to the CFAA includes provisions related to the use of botnets. These amendments specifically target the creation and deployment of botnets, which are networks of compromised computers used to conduct cyber-attacks. The updates enhance liability for individuals or groups that use botnets to disable servers or engage in cyber racketeering, reflecting the growing concern over large-scale cyber threats that can disrupt critical infrastructure and services. As discussed P.G. Berris (2023), these updates are crucial for adapting to new challenges in cybersecurity and ensuring that legal frameworks can effectively address modern cyber threats. In American law, the key principle is intended harm, not simply the fact of access. This increases flexibility of response to actions that did not formally cause damage but created risks.

In the United States, the case United States v. Andrew Auernheimer (2014) involved the unauthorised access and disclosure of email addresses of iPad users by exploiting a vulnerability in AT&T's website. Although initially sentenced to 41 months in prison, the conviction was later overturned due to improper venue, not the substantive charges – demonstrating the complexity of prosecuting cybercrimes under the CFAA. Similarly, in United States v. Swartz (2013), Aaron Swartz was indicted under the CFAA for mass downloading of academic articles from JSTOR without authorisation; he faced up to 35 years in prison before his tragic suicide, which sparked debates about the proportionality of sanctions under U.S. law. In contrast, Kyrgyzstan's Criminal Code (1997) and the Law of the Kyrgyz Republic No. 121 (2024) do not contain such detailed provisions on intent, venue, or technological nuance. To date, there have been no publicised cases similar in scale or legal depth. Adoption of regulatory elements from U.S. practice – such as clear definitions of unauthorised access, intent-based

liability, and proportionate sanctions – could significantly enhance the precision and deterrent effect of Kyrgyzstan's criminal law in the information security sphere.

French legislation is notable for its high level of detail, but another important feature is the integration of provisions of international law, in particular the Convention on Cybercrime (2001). France was one of the first countries to criminalise the refusal to provide encryption keys to law enforcement authorities during cybercrime investigations (Nguyen & Golman, 2020). Judicial practice is also substantial. For instance, in a 2018 case involving attacks on the government portal Service-Public.fr, the court found a group of hackers guilty of undermining the stability of digital governance, setting a precedent for tougher sanctions in similar cases.

By contrast, the United States, although a signatory to the Convention, has not ratified it and thus does not formally incorporate its provisions into domestic law. Instead, the USA relies on national legislation, such as the Computer Fraud and Abuse Act (1986), to address cybercrime and engages in international cooperation through mutual legal assistance treaties. While this creates a legal framework that aligns in substance with many Convention principles, the absence of ratification precludes participation in formal procedural cooperation under the Convention, especially with regard to uniform cross-border evidence gathering and data access procedures.

Germany, which has ratified the Budapest Convention on Cybercrime (2001), has made corresponding changes to its criminal and procedural codes, aligning key provisions with the Budapest framework. Nevertheless, the German implementation is more cautious, shaped by constitutional protections rooted in the Basic Law and reinforced by strong data protection standards under the General Data Protection Regulation (2016). As a result, the application of certain procedural tools – such as data retention or live interception – is restricted by proportionality requirements and judicial oversight, limiting the extent to which German law can flexibly respond to digital threats compared to the French model.

These divergent approaches demonstrate that while France has pursued an expansive and institutionally supported integration of the Budapest Convention on Cybercrime (2001), Germany applies its provisions within a more constrained constitutional and privacy framework, and the United States remains outside the formal procedural structure of the Convention despite substantive alignment. This divergence affects the speed, scope, and effectiveness of cross-border cybercrime investigations and highlights the challenges of harmonising international legal standards in a digitally interconnected world.

Criminal offences involving violations of an individual's right to informational self-determination, such as the unlawful collection and dissemination of personal data, represent one of the central priorities of German criminal law in the field of information security (Dadasheva *et al.*, 2024). These types of offences receive particular legal and institutional attention. Notably, German law treats attempted cyberattacks as equivalent to completed crimes under certain conditions. For example, in the 2022 case of an attempted DDoS attack targeting the Deutsche Post email service, criminal proceedings were initiated despite the fact that the attack had been successfully prevented at an early stage.

Poland has enhanced its criminal law in response to a significant cyberattack on government websites in 2021, with the revised Criminal Code of the Republic of Poland (1997), particularly under Section XXXIII and Articles 267-269, elucidating the categorisation of unauthorised interference with automated systems of state institutions, encompassing data modification and access obstruction (Zieliński, 2024). In addition, Poland is an active participant in the European Cybercrime Centre (EC3) at Europol, which improves the efficiency of international assistance in investigating complex digital crimes. Law enforcement practice in the field of criminal law support of information security indicates several systemic difficulties that significantly complicate the state's effective response to digital threats (Kassymbekova, *et al.*, 2025). Firstly, issues are present at the stage of recording the fact of committing an information crime. Due to the specifics of the digital environment (anonymity, cross-border nature, speed of destruction of traces), law enforcement agencies often do not have time to respond promptly (Smailov *et al.*, 2025). In some cases, victims do not even report the incident unless they have suffered direct financial losses, which creates a false statistical picture of the level of cybercrime.

These abstract difficulties are clearly confirmed by judicial practice and legal precedents. For instance, in the United States, United States v. Swartz (2013) illustrates how the ambiguity of the term "unauthorised access" under the Computer Fraud and Abuse Act (1986) led to a controversial prosecution that ultimately contributed to public debate on proportionality and the overreach of cybercrime legislation. Similarly, the Van Buren v. United States (2021) ruling narrowed the interpretation of "exceeding authorised access," showing that uncertainty in legal definitions can obstruct effective criminal qualification of digital misconduct, especially when intent rather than actual damage is central to the case.

Cyberattacks on financial institutions (Musiał, 2019) in Poland have intensified in recent years, targeting both private banks and state-owned systems. A notable trend involves phishing schemes aimed at compromising online banking credentials, often through fraudulent SMS messages and fake login portals. In several cases, attackers deployed ransomware to paralyse internal systems and demand payments in cryptocurrency (Kredina *et al.*, 2022). Particularly in 2021 and 2022, coordinated attacks were launched against government-linked financial platforms, disrupting services and exposing vulnerabilities in data protection and incident response protocols. These incidents prompted legislative revisions, including updates to the Criminal Code of the Republic of Poland (1997) and the adoption of stricter security standards under the Act of the Republic of Poland "On the National Cybersecurity System" (2018), aimed at increasing resilience and ensuring better coordination between cybersecurity agencies and financial institutions.

A common problem is the difficulty in identifying the perpetrator of the crime. As many crimes are committed through VPNs, proxy servers and botnets, law enforcement is faced with the need for cross-border cooperation, which is in turn complicated by the lack of bilateral agreements or excessive bureaucracy in the legal assistance procedure (Ruddin & Subhan Zein, 2024). For example, in the case of a phishing attack on banking customers in Poland in 2023, it took more than six months to locate the German attacker, hence the defendant destroyd key digital evidence. Significant problems are also present at the stage of collecting and evaluating electronic evidence. Often, national legislation does not contain clear requirements for the procedural

processing of digital traces, or the existing rules are not coordinated between different agencies. This leads to evidence being declared inadmissible in court (Fomina & Rachynskyi, 2023). For instance, in France, in 2021, the court invalidated evidence in a case of hacking a government web portal because the digital examination was conducted without the involvement of an independent expert, as required by national procedural law.

Comparable complications are evident in cross-border contexts, as illustrated by the case McKinnon v. Government of the United States of America and Another (2007), where prolonged extradition proceedings reflected the challenges of enforcing cybercrime laws internationally, particularly in the face of differing standards of proportionality, due process, and mental health considerations. Taken together, these examples reinforce the argument that systemic weaknesses – ranging from vague legal definitions and procedural inconsistencies to fragmented international cooperation – significantly hinder the effective enforcement of criminal law in the digital sphere. The challenges are not merely theoretical but are repeatedly borne out in high-profile cases across jurisdictions such as France, Poland, Germany, the United States, and Kyrgyzstan.

A separate problem is the qualification of acts. Many jurisdictions still have outdated formulations of crimes that do not incorporate modern technological realities (Liao *et al.*, 2020). For instance, in the United States, there is often a debate about whether automated collection of public information (web scraping) from commercial websites a crime is. In Van Buren v. United States (2021), the US Supreme Court narrowed the interpretation of unauthorised access, which set a precedent that is often used by suspects of such crimes. The lack of sufficient specialisation of investigators and judges is also notable.

In Kyrgyzstan, for example, in 2022, there were several cases where cases of cyberattacks on educational platforms were closed due to "lack of corpus delicti", although technical expertise confirmed interference with the system. In the context of the Criminal Code of the Kyrgyz Republic (as amended in 1997, with reforms introduced between 2019 and 2021), the issue of offence qualification lies in the overly general and technically unstructured wording of legal provisions. For example, Article 211, "Unauthorised Access to Computer Information", defines the offence as "unauthorised access to legally protected computer information, if it resulted in the alteration, destruction, blocking, or copying of information". However, the law lacks clear definitions of key terms such as "unauthorised access", "computer information", and "protected information", which complicates the application of the provision to modern forms of digital interference such as DDoS attacks, web scraping, or API manipulation. The reason for this was the vagueness of concepts in criminal law, as well as the lack of practice among judges in dealing with this type of case. Lastly, the system of preventing recidivism is a weakness. Most countries, such as Kyrgyzstan, Germany and Poland, provide fines or suspended sentences for first-time cybercriminals, but there are no mechanisms to monitor their further behaviour. In some cases, convicts conduct new attacks several months after their sentence, using the same knowledge and access, particularly in cases where there is no mandatory ban on the use of computer equipment (Kranenbarg *et al.*, 2023).

In general, law enforcement practice demonstrated that one of the main problems is the insufficient adaptation of the criminal process to the specifics of digital evidence, as well as weak coordination between countries in the field of cybersecurity. These barriers can only be overcome by combining legislative updates with institutional changes and the development of international cooperation.

The cybersecurity landscape in 2024 has reached unprecedented levels of complexity and threat sophistication (Trofymenko *et al.*, 2024). With global cybercrime costs projected to hit 10.5 trillion USD annually by 2025, organisations across all sectors face mounting pressure to strengthen their security postures. This comprehensive analysis examines the current state of cyber threats through regional and industry-specific lenses, providing critical insights for strategic decision-making. The Table 1 synthesises data from leading cybersecurity research organisations, including Check Point Research, IBM Security, Sophos, and Arctic Wolf, to present a unified view of attack patterns, financial impacts, and defensive effectiveness across different geographical regions and industry sectors (Top Cybersecurity..., 2024). This compilation serves as a foundational resource for risk assessment, budget allocation, and strategic planning in cybersecurity investments.

Table 1. Cyber threat statistics and protection effectiveness by region (2024)

Region	Number of Cyberattacks (thousands)	Number of Data Breach Incidents	Average Breach Cost (million USD)	Number of cases with verdicts		Attack Prevention Effectiveness (%)
				Hit by Ransomware (%)	Using MFA (%)	
North America	2,850	1,420	5.2	58%	75%	72%
Europe	2,340	1,180	4.9	42%	78%	74%
Latin America	1,890	945	3.8	35%	65%	68%
Africa	1,520	760	3.2	28%	58%	64%
Asia-Pacific	3,100	1,550	4.2	38%	70%	69%

Source: compiled by the author based on Top Cybersecurity Statistics for 2025 (2025)

This Table 1 presents comprehensive cyber threat statistics and protection effectiveness across six global regions for 2024. The data reveals significant regional variations in cybersecurity landscapes, with North America experiencing the highest number of cyberattacks at 2,850,000 incidents but maintaining relatively strong defenses with 72% attack prevention effectiveness. Europe follows with 2,340,000 attacks and demonstrates the most robust protection systems, achieving 74% prevention effectiveness and the lowest average breach cost at 4.9 million USD. The Asia-Pacific region shows the highest volume of data breach incidents at 1,550,000 despite having fewer total cyberattacks, while

also recording the lowest attack prevention rate at 69%. Notably, verdict rates for different attack types vary considerably across regions, with ransomware verdicts ranging from 28% in South America to 42% in Europe, and MFA bypass success rates fluctuating between 60% in South America and 78% in both Europe and the Middle East, highlighting the diverse cybersecurity challenges and defensive capabilities across different geographical areas.

The responses received not only identified the most critical problem areas in law enforcement but also compared the peculiarities of approaches to investigating cybercrime in two countries with different legal systems and levels of technological support. The results of the survey formed the basis for further analysis in the next section of the article.

The analysis of Table 2 demonstrated a significant difference in the level of training and support of law enforcement agencies in Kyrgyzstan and Poland in the field of combating cybercrime. In Kyrgyzstan, the main problems are the lack of technical resources, insufficient professional training and a weak regulatory framework, which significantly complicates the effective investigation of cybercrime. In Poland, despite the availability of technical support and the partial effectiveness of the current legislation, experts point to the need to update regulations in line with the latest forms of crime and improve international cooperation procedures. Both countries recognise the need for change, but the focus of reforms differs: Kyrgyzstan needs basic institutional reforms, while Poland needs to modernise the existing system.

Table 2. Results of a survey among law enforcement officials in Kyrgyzstan and Poland

Question	Kyrgyzstan	Poland
What types of cybercrime are most common in your practice?	Fraud, unauthorised access, extortion, spam	Fraud, phishing, account hacking, attacks on banking systems
What technical or legal challenges do you face when collecting digital evidence?	Lack of equipment, lack of experts, weak regulatory framework	Difficulty in verifying sources, delays in international requests
As a subjective opinion, how effective is the current criminal law in combating information crime?	Not effective enough, many gaps	Partially effective, needs to be updated to reflect new forms of crime
Do you have sufficient technical means and training to investigate such offences?	No, technical support and training remain weak	Mostly yes, but there is a need for modernisation
What changes in legislation or investigation procedures do you consider necessary?	Creation of specialised units, staff training	Updating rules on digital evidence, speeding up procedures

Source: compiled by the authors

A key issue highlighted is the outdated legal provisions that fail to account for emerging technological threats. For instance, in Kyrgyzstan, the Criminal Code's (1997) Articles 211 and 212 lack the necessary specificity to address modern cybercrimes such as web scraping, API manipulation, or advanced persistent threats (APTs). Article 211, which deals with "unauthorised access to computer information", should be updated to include specific provisions for unauthorised access through means such as automated bots, scraping, and advanced network infiltration methods. Additionally, the concept of "unauthorised access" should be expanded to include intent-based crimes where no immediate damage occurs but where risks to data integrity or system availability are created (Kovalchuk, 2025).

A revision similar to that in Germany's Strafgesetzbuch (German Criminal Code, 1998), which includes specific offenses related to computer sabotage (Sections §303a and §303b), should be incorporated in Kyrgyzstan's legislation. For example, the addition of a provision akin to Germany's §303b, which addresses "unauthorised interference with data systems," could provide a clear legal basis for prosecuting cybercrimes such as DDoS attacks or botnet operations that disrupt critical services without causing permanent damage.

Current laws in Kyrgyzstan and other countries lack provisions to cover cybercrimes that arise from the use of new technologies such as artificial intelligence (AI) and big data. As highlighted by A.W. Laksana (2018), the advancement of technology has led to new forms of cybercrime, such as identity theft using AI algorithms or illegal surveillance through big data analytics. This necessitates the inclusion of specific provisions in the Criminal Code to address such emerging crimes. For instance, Act of the Republic of Poland "On the National Cybersecurity System" (2018) already addresses the need for robust cybersecurity regulations for critical infrastructure. A similar approach should be adopted in Kyrgyzstan by introducing provisions that criminalise the unauthorised use of AI and big data, as these technologies are increasingly exploited by cybercriminals to commit fraud, surveillance, or identity theft. Specific legal texts should define the criminal acts enabled by such technologies and prescribe penalties for their misuse.

The study revealed that international cooperation remains a significant challenge, particularly when addressing transnational cybercrimes. Many countries, including Kyrgyzstan, face difficulties in prosecuting crimes that cross borders due to the lack of bilateral agreements and international legal frameworks. To enhance cooperation, Kyrgyzstan should consider ratifying the Budapest Convention on Cybercrime (2001), which provides a common legal framework for cooperation on cybercrime, including harmonising criminal definitions, facilitating mutual legal assistance, and ensuring the prompt exchange of digital evidence.

F. Cassim (2017) emphasises the importance of harmonising laws to facilitate the prosecution of international cybercriminals. By ratifying the Convention, Kyrgyzstan could join a broader network of countries that share a unified approach to combating cybercrime, thus improving the speed and effectiveness of cross-border investigations. Additionally, Kyrgyzstan should develop bilateral agreements with neighbouring countries to streamline processes for extradition and evidence sharing. A significant issue identified in this study is the lack of post-conviction monitoring and the absence of mandatory restrictions on convicted cybercriminals' access to technology. As observed in Kyrgyzstan,

Poland, and Germany, many offenders who receive suspended sentences or fines are often able to commit further offences using the same technical skills and resources (Raman *et al.*, 2023). Legal reforms should mandate that convicted cybercriminals are subject to restrictions on computer and internet access during their sentence or probation period, with violations resulting in additional penalties.

This practice is already in place in some jurisdictions. For example, in France, certain cybercriminals who have committed offences involving personal data theft are subject to strict post-conviction monitoring, including the confiscation of their digital devices. M.W. Kranenbarg *et al.* (2023) argue that similar provisions should be adopted universally, with digital restrictions enforced until a cybercriminal completes rehabilitation or demonstrates a change in behaviour. National regulations often fail to take into account the latest technological threats, such as the use of bots, artificial intelligence or big data for illegal access or manipulation of information systems. An analysis of foreign experience (in particular, Germany, Poland, and France) shows that a more effective approach is to specify the elements of cybercrimes, criminalise new forms of digital offences, and introduce post-penitentiary control over convicts. A summary of the results confirms that effective counteraction to cybercrime is only possible if legislation is adapted to technological changes, preventive measures are introduced, and internationally agreed mechanisms of accountability are created.

Discussion

The results of this study confirm the existence of significant differences in approaches to criminal law protection of information security between individual legal systems. The focus was on legal regulation in Kyrgyzstan, Poland, Germany, France and the United States. The analysis of the current legislation of these countries and the empirical data collected established not only the level of regulatory detail but also identified the real practical difficulties faced by law enforcement officers in detecting, investigating and proving cybercrime.

The analysis of criminal law provisions related to information security across Kyrgyzstan, the United States, France, Germany, and Poland highlights a variety of challenges and opportunities for strengthening the legal frameworks aimed at combating cybercrime. The study confirms that while there is a common recognition of the importance of protecting information systems, the mechanisms for legal enforcement and the adaptability of criminal law to rapidly evolving technological threats remain inadequate in many jurisdictions. This is particularly evident in Kyrgyzstan, where technical expertise, legal clarity, and institutional capacity are still developing, and in Poland and France, where even sophisticated frameworks encounter practical obstacles, such as delays in international cooperation and issues with the qualification of digital evidence.

One of the primary challenges identified in this study is the lack of clear, updated definitions within the criminal law that can adequately address modern forms of cybercrime. For instance, in Kyrgyzstan, the broad formulations in the Criminal Code of Kyrgyzstan (1997), such as those related to "unauthorised access" under Article 211, fail to address emerging digital threats like API manipulation and web scraping, which require more specific legal definitions. This issue is not unique to Kyrgyzstan but is also prevalent in other jurisdictions, including the United States, where debates over the definition of "unauthorised access" under the Computer Fraud and Abuse Act (1986) continue to cause ambiguity in legal proceedings (Opinion of the Supreme Court of the US in Case "Van Buren v. United States", 2021). Such vagueness in legal language creates barriers for law enforcement agencies and judicial systems, which struggle to apply outdated norms to new cybercrime methodologies.

The study also demonstrates that the complexity of digital evidence poses significant hurdles in prosecuting cybercrime. As shown in France's case of evidence inadmissibility due to improper forensic procedures, the lack of coordinated approaches between agencies and insufficient standards for collecting digital traces can result in cases being dismissed. This is exacerbated by the technological gap in Kyrgyzstan, where law enforcement agencies struggle with inadequate resources and expertise to handle such evidence, leading to cases being closed due to the "lack of *corpus delicti*", despite technical confirmations of system interference. These issues underscore the urgent need for clearer, more standardised procedural regulations for handling digital evidence, which would ensure that forensic examinations are conducted according to internationally recognised standards (Fomina & Rachynskyi, 2023).

In the realm of information security, systemic inequalities pose significant challenges, as highlighted by C.J. Najdowski and M.C. Stevenson (2022). They stress the importance of reforming criminal law systems to address these inequalities, which are particularly pronounced in the context of unequal access to digital resources. This disparity exacerbates the difficulties in ensuring comprehensive information security, as it can lead to unequal protection and enforcement mechanisms across different societal segments. Furthermore, R. Atadjanov (2022) provides a critical analysis of the gaps in Central Asian criminal legislation, particularly the absence of provisions addressing crimes against humanity. This analysis includes countries such as Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan. R. Atadjanov's (2022) work underscores the necessity of integrating well-defined legal dispositions concerning crimes against humanity into national criminal codes. By doing so, these countries can align their domestic legislation more closely with international legal standards, thereby addressing significant legal voids and enhancing the overall efficacy of their criminal justice systems. This integration is crucial not only for addressing historical and ongoing atrocities but also for fortifying the legal frameworks that underpin information security and cybercrime prevention.

In terms of international cooperation, the study indicates that cross-border collaboration is crucial to effectively combat cybercrime, which often transcends national borders. The example from Poland, where a German attacker was only identified after a six-month investigation, highlights the critical need for efficient bilateral agreements and streamlined procedures for international legal assistance. This delay resulted in the destruction of key evidence, showing how international cooperation, although essential, can be hindered by bureaucratic inefficiencies. The complexity of coordinating responses to cybercrimes is a key concern, particularly in cases involving transnational cybercriminal networks, as outlined by I. Ruddin and S.G.N. Subhan Zein (2024). These findings underscore the importance of enhancing global cooperation through frameworks like the Budapest Convention

on Cybercrime, which aims to standardise laws and facilitate cooperation among signatory countries.

The results of the survey conducted among law enforcement officers from Kyrgyzstan and Poland further illuminate the challenges faced in both countries. While Poland has made strides in improving its legal and technical capabilities, there is still a recognised need to update regulations in line with the latest forms of cybercrime. In contrast, Kyrgyzstan's challenges are more foundational, with the lack of specialised units and insufficient professional training being major impediments. Both countries expressed a need for improved international cooperation, but while Poland focuses on modernising existing systems, Kyrgyzstan's priority is to build its institutional capacity from the ground up. This divergence highlights the varied stages of development in tackling cybercrime, where more advanced systems like those in the U.S. and Germany may have the tools to implement swift responses, but emerging nations must focus on strengthening their legal frameworks and technical infrastructure to catch up.

According to A. Maralbaeva (2024), one of the most critical gaps in many countries' legal frameworks, including Kyrgyzstan, Poland, and Germany, is the insufficient regulation regarding the prevention of recidivism among cybercriminals. Most countries rely on fines or suspended sentences for first-time offenders but fail to implement long-term monitoring or restrictions on the use of digital technology post-conviction (Khan *et al.*, 2025). This lack of effective deterrents is evident in several cases, where offenders, after serving their sentences, go on to commit further cyberattacks using the same knowledge and techniques. Without mandatory bans on the use of computer equipment or robust follow-up systems, the cycle of cybercrime continues, undermining the broader goals of criminal law enforcement (Kravchuk *et al.*, 2024).

In conclusion, this study underscores the critical need for a more coordinated and adaptable approach to criminal law in the realm of information security, echoing findings from broader research in the field. The analysis reveals that while there is a global consensus on the importance of protecting information systems, significant disparities exist in the mechanisms for legal enforcement and adaptability to technological advancements across different jurisdictions. These findings align with existing research that highlights the challenges of outdated legal frameworks struggling to keep pace with rapidly evolving cyber threats. The study confirms that issues such as vague legal definitions, procedural inconsistencies, and inadequate technical expertise are not isolated but are prevalent across various legal systems, hindering effective responses to cybercrime. Furthermore, the necessity for international cooperation and harmonisation of legal standards, as emphasised in this study, resonates with the broader academic discourse advocating for unified global efforts to combat cybercrime. The results suggest that national legal systems must not only update their definitions and procedural guidelines but also invest in specialised law enforcement units and international collaboration to address the complexities of modern cyber threats effectively.

Conclusions

The study determined that criminal law provision of information security is one of the most urgent and complex problems of modern law, requiring both theoretical understanding and practical improvement. In the process of analysing domestic and foreign legislation and law enforcement practice, the study identified several key patterns and challenges related to the effectiveness of criminal prosecution for information offenses. The study empirically confirmed the hypothesis that the effectiveness of criminal law policy in the field of information security depends on the level of development of specialised law enforcement units, technical support, and the regulatory framework. A comparison of the results with a survey of law enforcement officials in Kyrgyzstan and Poland revealed the most common problems in the investigation process: the complexity of collecting digital evidence, insufficient technical training, and the limitations of existing legislation in addressing new information threats.

The study identified several normative problems, such as the lack of clear legal definitions and outdated legal frameworks that struggle to keep pace with rapidly evolving cyber threats. These issues create barriers for law enforcement agencies and judicial systems, complicating the application of outdated norms to new cybercrime methodologies. Theoretical challenges were also highlighted, including the need for a more systematic and interdisciplinary approach to information security. This approach requires modernising institutional mechanisms and fostering active dialogue between lawyers, technical experts, and international structures. In terms of law enforcement, the study revealed significant difficulties in the qualification of acts, the collection and evaluation of electronic evidence, and the lack of sufficient specialisation among investigators and judges. These challenges underscore the need for legislative updates, institutional changes, and the development of international cooperation.

For future research, it would be advisable to expand the geography of the analysis and include more data from law enforcement practices in other countries, particularly in Asia, Latin America, and the Middle East. Additionally, further studies should focus on addressing the identified normative and theoretical problems, as well as exploring innovative approaches to improving the effectiveness of criminal law in the field of information security.

Acknowledgements

None.

Funding

The study was not funded.

Conflict of interest

None.

References

[1] Act of the Republic of Poland "On the National Cybersecurity System". (2018, August). Retrieved from https://www.dziennikustaw.gov.pl/D2018000156001.pdf.

[2] Atadjanov, R. (2022). Domestic implementation of crimes against humanity in Central Asia. *Asian Journal of Comparative Law*, 17(2), 268-285. doi: 10.1017/asjcl.2022.17.

[3] Berris, P.G. (2023). *Cybercrime and the Law: Primer on the Computer Fraud and Abuse Act and related statutes*. Retrieved from https://www.congress.gov/crs-product/R47557.

[4] Budapest Convention on Cybercrime. (2001, November). Retrieved from https://rm.coe.int/1680081561.
[5] Cassim, F. (2017). Formulating specialised legislation to address the growing spectre of cybercrime: A comparative study. *Potchefstroom Electronic Law Journal*, 12(4), 35-79. doi: 10.17159/1727-3781/2009/v12i4a2740.
[6] Chapman, T.L., & Chaudoin, S. (2020). Public reactions to international legal institutions: The International Criminal Court in a developing democracy. *Journal of Politics*, 82(4), 1305-1320. doi: 10.1086/708338.
[7] Computer Fraud and Abuse Act of US. (1986, October). Retrieved from https://www.justice.gov/jm/jm-9-48000-computer-fraud.
[8] Criminal Code of Germany. (1998, November). Retrieved from https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html.
[9] Criminal Code of the Kyrgyz Republic. (1997, September). Retrieved from https://antislaverylaw.ac.uk/wp-content/uploads/2019/08/Kyrgyzstan-Criminal-Code.pdf.
[10] Criminal Code of the Republic of Poland. (1997, June). Rerrieved from https://sherloc.unodc.org/cld/uploads/res/uncac/LegalLibrary/Poland/Laws/Criminal%20Code%20(Poland).pdf.
[11] Dadasheva, A.S., Makazieva, Z.D., & Isipova, L.R. (2024). Criminal law protection of personal information security of citizens. *Economics and Management Problems Solutions*, 5-6(146), 6-11. doi: 10.36871/ek.up.p.r.2024.05.06.001.
[12] D'Elia, D. (2018). Industrial policy: The Holy Grail of French cybersecurity strategy? *Journal of Cyber Policy*, 3(3), 385-406. doi: 10.1080/23738871.2018.1553988.
[13] Duarte, C.D.P., Salas-Hernández, L., & Griffin, J.S. (2020). Policy determinants of inequitable exposure to the criminal legal system and their health consequences among young people. *American Journal of Public Health*, 110(1), 43-S49. doi: 10.2105/ajph.2019.305440.
[14] Dzyana, H., & Dzyanyy, R. (2023). Public administrative activity in the conditions of contemporary uncertainty: Information and communication aspect. *Democratic Governance*, 16(1), 37-51. doi: 10.23939/dg2023.01.037.
[15] Fomina, T.H., & Rachynskyi, O.O. (2023). Electronic evidence in criminal proceedings: Problematic issues of theory and practice. *Bulletin of Kharkiv National University of Internal Affairs*, 102(3), 207-220. doi: 10.32631/v.2023.3.43.
[16] General Data Protection Regulation. (2016, April). Retrieved from https://eur-lex.europa.eu/eli/reg/2016/679/oj/eng.
[17] ICC/ESOMAR International Code on Market, Opinion and Social Research and Data Analytics. (2016). Retrieved from https://esomar.org/uploads/attachments/ckqtawvjq00uukdtrhst5sk9u-iccesomar-international-code-english.pdf.
[18] Jurgilewicz, M., & Jurgilewicz, O. (2019). Management of information security and its protection in in criminal matters: Case of Poland. *Journal of Security and Sustainability Issues*, 8(3), 481-491. doi: 10.9770/jssi.2019.8.3(15).
[19] Kakeshov, B.D. (2023). Political and legal aspects of criminal and administrative responsibility for information security offences in the context of national security of the Kyrgyz Republic. *Economic Affairs*, 68(Special Issue), 987-993. doi: 10.46852/0424-2513.2s.2023.48.
[20] Kassymbekova, N., Tolegen, E., Buyenbayeva, Z., Almanova, N., & Shyngyssova, N. (2025). The impact of the technological boom on traditional and social media in Kazakhstan. *Studies in Media and Communication*, 13(2), 123-133. doi: 10.11114/smc.v13i2.7536.
[21] Khan, M.W., Destek, M.A., & Khan, Z. (2025). Income inequality and Artificial Intelligence: Globalization and age dependency for developed countries. *Social Indicators Research*, 176(3), 1207-1233. doi: 10.1007/s11205-024-03493-7.
[22] Kharchenko, V., Ponochovnyi, Y., Qahtan, A.-S.M., & Boyarchuk, A. (2017). Security and availability models for smart building automation systems. *International Journal of Computing*, 16(4), 194-202.
[23] Kovalchuk, D. (2025). Utilising large language models for automated real-time cyber threat analysis. *Bulletin of Cherkasy State Technological University*, 30(1), 48-58. doi: 10.62660/bcstu/1.2025.48.
[24] Kranenbarg, M.W., van Gelder, J.-L., & de Vries, R.E. (2023). Is there a cybercriminal personality? Comparing cyber offenders and offline offenders on HEXACO personality domains and their underlying facets. *Computers in Human Behavior*, 140, article number 107576. doi: 10.1016/j.chb.2022.107576.
[25] Kravchuk, M., Kravchuk, V., Hrubinko, A., Podkovenko, T., & Ukhach, V. (2024). Cyber security in Ukraine: Theoretical view and legal regulation. *Law, Policy and Security*, 2(2), 28-38. doi: 10.62566/lps/2.2024.28.
[26] Kredina, A., Nurymova, S., Satybaldin, A., & Kireyeva, A. (2022). Assessing the relationship between non-cash payments and various economic indicators. *Banks and Bank Systems*, 17(1), 67-79. doi: 10.21511/bbs.17(1).2022.06.
[27] Laksana, A.W. (2018). Cybercrime comparison under criminal law in some countries. *Journal of Legal Reform*, 5(2), article number 217. doi: 10.26532/jph.v5i2.3008.
[28] Law of the Kyrgyz Republic No. 121 "On Cybersecurity of the Kyrgyz Republic". (2024, July). Retrieved from https://cert.gov.kg/ru/legislation/.
[29] Liao, T., Yang, H., Lee, S., Xu, K., & Bennett, S.M. (2020). Augmented criminality: How people process in situ augmented reality crime information in relation to space/place. *Mobile Media & Communication*, 8(3), 360-378. doi: 10.1177/2050157919899696.
[30] Maralbaeva, A. (2024). Evolution of e-justice platforms: from ICT in courts towards "Digital Justice' portal in Kyrgyzstan". *International Journal for Court Administration*, 15(1), article number 6. doi: 10.36745/ijca.582.
[31] Marat, E., & Botoeva, G. (2022). *Drug trafficking, violence, and corruption in Central Asia*. Birmingham: University of Birmingham.
[32] Mentukh, N., & Shevchuk, O. (2023). Protection of information in electronic registers: Comparative and legal aspect. *Law, Policy and Security*, 1(1), 4-17.
[33] Musiał, N. (2019). Cyber Risk in financial institutions: A Polish case. In *Multiple perspectives in risk and risk management. Springer proceedings in business and economics* (pp. 301-313). Cham: Springer. doi: 10.1007/978-3-030-16045-6_16.
[34] Najdowski, C.J., & Stevenson, M.C. (2022). A call to dismantle systemic racism in criminal legal systems. *Law and Human Behavior*, 46(6), 398-414. doi: 10.1037/lhb0000510.

[35] Nguyen, C.L., & Golman, W. (2020). Diffusion of the Budapest Convention on cybercrime and the development of cybercrime legislation in Pacific Island countries: "Law on the books" vs "law in action". *Computer Law & Security Review*, 40, article number 105521. doi: 10.1016/j.clsr.2020.105521.
[36] Nolasco Braaten, C., & Vaughn, M.S. (2021). Convenience theory of cryptocurrency crime: A content analysis of U.S. Federal Court decisions. *Deviant Behavior*, 42(8), 958-978. doi: 10.1080/01639625.2019.1706706.
[37] Opinion of the Supreme Court of the US in Case "United States v. Andrew Auernheimer". (2014, April). Retrieved from https://www.eff.org/cases/us-v-auernheimer.
[38] Opinion of the Supreme Court of the US in Case "United States v. Swartz". (2013, May). Retrieved from https://www.leagle.com/decision/infdco20130514955.
[39] Opinion of the Supreme Court of the US in Case "Van Buren v. United States". (2021, June). Retrieved from https://www.supremecourt.gov/opinions/20pdf/19-783_k53l.pdf.
[40] Opinions of the Lords of Appeal for Judgment in the Cause "Mckinnon v. Government of The United States of America and Another". (2007, August). Retrieved from https://publications.parliament.uk/pa/ld200708/ldjudgmt/jd080730/mckinn-1.htm.
[41] Penal Code of France. (1994, March). Retrieved from https://www.equalrightstrust.org/ertdocumentbank/french_penal_code_33.pdf.
[42] Raman, R., Nair, V.K., Nedungadi, P., Ray, I., & Achuthan, K. (2023). Darkweb research: Past, present, and future trends and mapping to sustainable development goals. *Heliyon*, 9(11), article number e22269. doi: 10.1016/j.heliyon.2023.e22269.
[43] Ruddin, I., & Subhan Zein, S.G.N. (2024). Evolution of cybercrime law in legal development in the digital world. *Multidisciplinary Journal of Civilization*, 4(1), 168-173. doi: 10.55927/mudima.v4i1.7962.
[44] Smailov, N., Uralova, F., Kadyrova, R., Magazov, R., & Sabibolda, A. (2025). Optimization of machine learning methods for de-anonymization in social networks. *Informatyka Automatyka Pomiary w Gospodarce i Ochronie Srodowiska*, 15(1), 101-104. doi: 10.35784/iapgos.7098.
[45] Top Cybersecurity Statistics for 2025. (2025). Retrieved from https://www.cobalt.io/blog/top-cybersecurity-statistics-2025#:~:text=Cost%20and%20Frequency%20of%20Cyber,in%202021%20(Cybersecurity%20Ventures).
[46] Trofymenko, O., Sokolov, A., Chykunov, P., Akhmametieva, H., & Manakov, S. (2024). AI in the military cyber domain. *Technologies and Engineering*, 25(4), 85-92. doi: 10.30857/2786-5371.2024.4.8.
[47] Zieliński, S. (2024). Evolving threats, emerging laws: Poland's 2023 answer to the smishing challenge. *Computer Law & Security Review*, 54, article number 106013. doi: 10.1016/j.clsr.2024.106013.
[48] Zwilling, M., Klien, G., Lesjak, D., Wiechetek, Ł., Cetin, F., & Basim, H.N. (2020). Cyber security awareness, knowledge and behavior: A comparative study. *Journal of Computer Information Systems*, 62(1), 82-97. doi: 10.1080/08874417.2020.1712269.

Кримінально-правове забезпечення інформаційної безпеки: питання теорії та практики

Сергій Салишев
Аспірант
Киргизький національний університет імені Юсупа Баласагина
720033, вул. Фрунзе, 547, м. Бішкек, Киргизька Республіка
https://orcid.org/0009-0008-5759-589

Бактигуль Канибекова
Кандидат юридичних наук, доцент
Національна академія наук Киргизької Республіки
720071, просп. Чуй, 265-А, м. Бішкек, Киргизька Республіка
https://orcid.org/0009-0006-3741-601X

Алмагуль Кокоєва
Доктор юридичних наук, професор
Киргизько-Узбецький міжнародний університет імені Б. Сидикова
720082, вул. Г. Айтієва, 27, м. Ош, Киргизька Республіка
https://orcid.org/0009-0006-1893-8365

Чинара Ботоєва
Доктор юридичних наук, в.о. професора
Академія державного управління при Президенті Киргизької Республіки імені Ж. Абдрахманова
720040, вул. Панфілова, 237, м. Бішкек, Киргизька Республіка
https://orcid.org/0009-0006-4075-8192

Бакит Какешов
Кендар юридичних наук, доцент
Киргизький національний університет імені Юсупа Баласагина
720033, вул. Фрунзе, 547, м. Бішкек, Киргизька Республіка
https://orcid.org/0000-0003-1570-1072

Анотація. У дослідженні проаналізовано механізм кримінального права щодо забезпечення інформаційної безпеки як одного з ключових елементів національної безпеки держави. Мета дослідження полягала у вивченні кримінально-правового забезпечення інформаційної безпеки в контексті сучасних викликів цифрового середовища та визначенні напрямків вдосконалення кримінального права для ефективного реагування на інформаційні загрози. Це було зроблено шляхом аналізу національного та іноземного законодавства, судових справ та статистичних даних про кіберзлочинність, а також за допомогою систематичного, порівняльного та формального правового аналізу. Були визначені основні загрози інформаційній безпеці, які набули поширення в Киргизстані та за кордоном, включаючи несанкціоноване втручання в інформаційні системи, незаконний збір персональних даних та поширення шкідливого контенту. Було проведено порівняльний правовий аналіз кримінального законодавства Німеччини, Франції, США, Польщі та Киргизстану з метою визначення ефективних підходів до криміналізації та покарання відповідних правопорушень. Дослідження встановило, що модель кримінально-правового захисту потребує оновлення з урахуванням міжнародного досвіду в частині розмежування злочинів у сфері кібербезпеки та вдосконалення кваліфікаційних ознак. Встановлено, що чинне кримінальне законодавство Киргизстану потребує подальшої адаптації до сучасних викликів у сфері цифрових технологій з метою вдосконалення класифікації діянь, пов'язаних із втручанням в інформаційні системи, та диференціації відповідальності. Практичне значення результатів визначається формулюванням пропозицій щодо вдосконалення законодавства та застосування засобів кримінального права для підвищення ефективності захисту інформаційної безпеки як на національному, так і на міжнародному рівнях

Ключові слова: інформаційна безпека; національна безпека; кіберзлочинність; інформаційні загрози; медіаграмотність; міжнародне співробітництво

UDC 341.1/502/504
DOI: 10.32518/sals2.2025.297

Соціально-правові студії. 2025. Т. 8, № 2
Social & Legal Studios. 2025. Vol. 8, No. 2

Combining social and environmental law in the context of sustainable development: Problems of legal balance

Liudmyla Mikhnevych*
Doctor of Law, Professor
National University of Life and Environmental Sciences of Ukraine
03041, 15 Heroiv Oborony Str., Kyiv, Ukraine
https://orcid.org/0000-0002-4774-079X

Nataliia Borsuk
Doctor of Law, Professor
Kyiv National Economic University named after Vadym Hetman
03057, 54/1 Beresteiskyi Ave., Kyiv, Ukraine
https://orcid.org/0000-0003-3476-3084

Yuliia Udovenko
PhD in Law, Associate Professor
State University of Trade and Economics
02156, 19 Kyoto Str., Kyiv, Ukraine
https://orcid.org/0000-0001-7280-2633

Oleksii Alonkin
PhD in Law, Associate Professor
State University of Trade and Economics
02156, 19 Kyoto Str., Kyiv, Ukraine
https://orcid.org/0000-0002-7867-350X

Elina Kulaha
PhD in Law, Associate Professor
Kyiv National Economic University named after Vadym Hetman
03057, 54/1 Beresteiskyi Ave., Kyiv, Ukraine
https://orcid.org/0000-0002-6405-3510

Abstract. The aim of the study was to examine the regulatory challenges arising from the social and environmental obligations of the modern state. The study used a range of research methods, including analysis of international legal acts, comparative legal analysis of the legislation of the EU, the USA and Ukraine, and qualitative methods of information processing. The results of the study confirmed that the concept of environmental security is gradually being integrated into the international legal framework, reflecting the growing awareness of the global community of the interconnection between the state of the environment and international peace and security. The analysis of national legislation revealed a diversity of approaches to the implementation of environmental security, with developed countries exhibiting more comprehensive legislative frameworks. In the case of Ukraine, despite the formal prioritisation of environmental security in national law, significant challenges remain in the actual implementation of environmental legislation. These challenges include weak enforcement mechanisms, institutional fragmentation, and insufficient integration of environmental priorities into broader regulatory and governance structures. Based on the findings, a set of practical recommendations has been developed to enhance the effectiveness of Ukraine's environmental security policy in the short and medium term. These include improvements in law enforcement, environmental monitoring, public awareness, and the harmonisation of

Suggested Citation

Article's History: Received: 18.02.2025 Revised: 13.05.2025 Accepted: 25.06.2025

Mikhnevych, L., Borsuk, N., Udovenko, Yu., Alonkin, O., & Kulaha, E. (2025). Combining social and environmental law in the context of sustainable development: Problems of legal balance. *Social & Legal Studios*, 8(2), 297-308. doi: 10.32518/sals2.2025.297.

*Corresponding author

Copyright © The Author(s). This is an open access Article distributed under the terms of the Creative Commons Attribution License 4.0 (https://creativecommons.org/licenses/by/4.0/)

national legislation with EU standards. In addition, the study identified regulatory tensions between environmental and social obligations, particularly within the context of Ukraine's green transition. The closure of industrial facilities that fail to meet environmental standards and the associated rise in unemployment, along with the increased cost of goods and services due to environmental compliance, disproportionately affect vulnerable groups. Ukrainian legislation lacks integrated legal mechanisms to mitigate such effects. There is a need to develop cross-sectoral legal instruments, including social impact assessments, compensation mechanisms, and just transition guarantees, to ensure that ecological reforms do not undermine social cohesion or deepen socioeconomic inequality. The practical significance of the study is to provide scientifically based recommendations for the formation of an effective state policy of environmental safety in Ukraine

Keywords: public policy; global community; sustainable development; global warming; climate change; environmental law

Introduction

The relevance of the study of environmental security in the context of modern international relations and national legal regulation is becoming increasingly acute and significant. At the beginning of the third decade of the 21st century, humanity faced an environmental crisis that surpasses previous periods of history in terms of its scale and potential consequences. Climate change, which manifests itself in more frequent and intense weather events such as heat waves, floods and devastating forest fires (NATO Climate Change..., 2024), depletion of critical natural resources, massive air, water and soil pollution, and accelerating biodiversity loss (World Wildlife Fund, 2024) – these and other environmental threats are gaining global proportions. The realisation that environmental problems are no longer exclusively environmental issues, but have become key factors affecting international and national security, socio-economic stability and the overall well-being of humanity, necessitates a comprehensive and systematic study of environmental security as an important component of state policy and international cooperation. In the context of the growing interdependence of states and globalisation of world processes, ensuring environmental safety is becoming an essential condition for sustainable development, requiring a fundamental rethinking of traditional approaches to international legal regulation and adaptation of national legislative systems to new environmental realities. In particular, within the process of aligning Ukrainian legislation with the EU *acquis*, one of the key directions is the implementation of sustainable development principles, including socially responsible environmental regulation. The European Union's "just transition" concept, which links decarbonisation with the protection of labour rights, social compensation mechanisms, and transparency in environmental policy, presents new challenges for Ukrainian law, where regulatory norms remain fragmented between the environmental and social spheres (Krasivskyy, 2024; Işık *et al.*, 2025).

The issue of environmental security as an integral part of international and national security has been in the focus of attention of scholars of various specialities for several decades. Modern international environmental law is a complex and constantly evolving field, as noted by D. Bodansky and H. Van Asselt (2024), analysing its features and formation. An important role in this development is played by international organisations (Teixeira, 2021). A significant contribution to understanding environmental security was made by S. Erdoğan *et al.* (2021), who demonstrated that environmental degradation and the irrational depletion of natural resources, particularly relevant for resource-dependent economies, not only hinder sustainable development but also create direct threats to international stability by exacerbating conflicts, triggering migration crises, and increasing social inequality.

The analytical publication by M. Nevitt (2020) argues that climate change is a powerful destabilising force in the international system that can exacerbate existing inter-ethnic and intrastate conflicts, as well as generate new forms of tension and violence associated with competition for scarce resources, forced migration and increased social polarisation. The authors emphasise the urgent need to fundamentally rethink the functions and capabilities of existing international institutions and global governance structures in order to develop effective mechanisms for preventing and peacefully resolving climate-related conflicts in the near future.

Only several studies have examined the complex interaction between environmental protection and human rights, highlighting the normative tensions that arise when these two legal domains intersect. For instance, M. Petersmann (2019a) critically discusses the normative and institutional clashes that occur when the enforcement of environmental standards potentially infringes upon individual human rights, including the right to property and economic freedoms. This line of inquiry is further developed in M. Petersmann (2019b), where mechanisms for managing such legal conflicts are analysed, suggesting that a more integrated and dialogical approach to legal interpretation is necessary to reconcile competing norms in international and domestic law. Further analysis of legal conflicts in the environmental domain is offered by Y. Zhu (2024), who addresses the quasi-normative tension between obligations under international investment treaties and the imperative of climate action. Author demonstrates how investor-state dispute mechanisms may limit the regulatory autonomy of states pursuing environmental goals, thereby calling for reforms that better align investment frameworks with sustainability principles. Complementing this perspective, A. Schilling-Vacaflor (2021) emphasises the potential for integrating human rights considerations into environmental governance through supply chain regulations. Her analysis reveals how legislative instruments designed to regulate transnational corporate conduct can serve as vehicles for simultaneously advancing environmental sustainability and the protection of labour and social rights, particularly in Global South contexts.

Despite a significant amount of research on various aspects of environmental security, there are still some important gaps in the current scientific discourse that need to be filled by conducting new empirical and theoretical studies. In particular, the issues related to assessing the actual effectiveness of the implementation of international legal norms and standards in the field of environmental safety at the national level remain insufficiently studied, especially in the

context of countries with economies in transition, unstable political regimes and high levels of corruption. The issue of the impact of armed conflicts of varying intensity and duration on environmental safety, as well as the development of effective mechanisms for environmental management and restoration of the environment in conditions of limited state control, as clearly demonstrated by the Russian-Ukrainian war, remains relevant. In addition, an insufficiently developed area of research is an in-depth study of the complex interrelationships and interdependencies between environmental security and various dimensions of sustainable development. Analysis of the publication by V. Klymenko (2024) emphasises that even with legislative approximation to EU standards, Ukraine still faces challenges of ineffective implementation of environmental policy due to limited financial resources and imperfect control mechanisms. This suggests the need for a deeper study of the practical aspects of environmental policy implementation.That's why the purpose of this study was to explore the regulatory difficulties that emerge in connection with the social and environmental responsibilities of the contemporary state.

Materials and methods

The study was conducted in several stages, each of which was characterised by the use of appropriate methodological approaches. At the first stage, devoted to the disclosure of the theoretical and conceptual foundations of environmental security and analysis of the international legal framework, the main method was document research. The research materials comprised a set of international and national legal acts that form the regulatory foundation for environmental protection and environmental security. At the international level, the study focused on key documents that have shaped the conceptual and normative development of environmental security: the Rio Declaration on Environment and Development (1992) and the Johannesburg Plan of Implementation (2002) were examined for their articulation of sustainable development principles and the evolving understanding of environmental threats as security risks. Additionally, the UN Framework Convention on Climate Change (1992) and the Paris Agreement (2015) were analysed for their role in institutionalising state obligations related to climate-related environmental risks. The Convention on Environmental Impact Assessment in a Transboundary Context (1991) (Espoo Convention) was studied for its procedural mechanisms of environmental governance in cases with cross-border implications.

At the second stage of the research, which focused on national regulatory frameworks, a comparative legal analysis was conducted using the legislation of the European Union, the United States, and Ukraine. This selection was made to ensure a comparative understanding across advanced legal systems and a transitional system undergoing European integration. The analysis included the Directive of the European Parliament and of the Council No. 2010/75/EU "On Industrial Emissions (Integrated Pollution Prevention and Control) (Recast)" (2010). For the United States, the National Environmental Policy Act of US (1969) and the Clean Air Act of US (1963) were included due to their foundational role in environmental governance. The Ukrainian legal framework was analysed in depth, with particular focus on the Law of Ukraine No. 1264-XII "On Environmental Protection" (1991), the Law No. 2059-VIII "On Environmental Impact Assessment" (2017), and the Law No. 2320-IX "On Waste Management" (2022). These acts were examined in terms of their structural coherence, implementation capacity, and integration with EU environmental standards. A special focus was placed on regulatory fragmentation and the insufficient reflection of social consequences in environmental legislation. In response to the challenges identified in the green transition process, the study also included a review of relevant social legislation in Ukraine. This comprised the Decree of the President of Ukraine No. 20/91 "On Social Protection of the Population in Conditions of Price Liberalisation" (1992), the Labour Code of Ukraine (1996). These acts were analysed for their capacity to mitigate the negative socioeconomic effects of environmental reforms, including job loss and rising costs of essential goods. The study revealed that current Ukrainian legislation lacks an integrated legal framework for ensuring a just transition, in contrast to Regulation of the European Parliament and of the Council No. 2021/1056 (2021) establishing the Just Transition Fund, which was also examined as a reference model.

The comparative legal analysis was structured around three criteria: the presence of legislative consolidation of the concept of environmental security, the effectiveness of legal and institutional mechanisms for its implementation, and the existence of legal instruments addressing conflicts between environmental policy and social protection.

Qualitative research methods, in particular content analysis, were used to process and analyse the information obtained as a result of document analysis and comparative legal analysis. The content analysis allowed to identify and systematise key topics, concepts and approaches reflected in the documents under study, as well as to determine their frequency and significance. At the final stage of the study, the method of forecasting and modelling was used to develop practical recommendations. The recommendations were developed on the basis of a synthesis of the results of the previous stages of the study, taking into account current trends in the development of international environmental law and best international practices, as well as national priorities for sustainable development of Ukraine.

Results

Evolution of environmental security in international and national legal systems. An analysis of international legal instruments in the field of the environment shows that the concept of environmental security has been gradually integrated into international law since the late twentieth century. This reflects the growing recognition of the interconnectedness between environmental factors and international peace and security, emphasizing the need for a comprehensive approach to environmental issues with a transboundary nature. Key international documents such as the Rio Declaration on Environment and Development (1992) and the Johannesburg Plan of Implementation (2002) have played a significant role in shaping this integration. These documents recognise that environmental degradation can contribute to conflict and instability, and call for the incorporation of environmental security into national sustainable development strategies. The Rio Declaration highlights the principle of common but differentiated responsibilities, acknowledging that developed countries bear a greater responsibility for global environmental issues due to their

historical contributions to pollution. The Johannesburg Plan of Implementation further reinforces the importance of integrating environmental security into national policies and international cooperation, particularly in addressing poverty, protecting health, and promoting sustainable economic growth. Other international initiatives, such as the Stockholm Declaration (1972) and Agenda 21 (UNCED, 1992), also underscore the importance of international cooperation to solve environmental problems and prevent transboundary pollution. The Espoo Convention (1991), for instance, established the legal framework for environmental impact assessments in transboundary projects, while the Convention on Transboundary Watercourses and International Lakes (1992) focuses on the rational use of shared water resources, helping to prevent conflicts over water. Similarly, the Basel Convention (1989) addresses the illegal movement of hazardous waste, and the UN Framework Convention on Climate Change (1992) alongside the Paris Agreement (2015) recognise climate change as a significant threat to global stability, linking it to food security, migration, and social unrest. In conclusion, international environmental law has evolved to incorporate environmental security as an essential element, acknowledging its role in ensuring international peace and security. This is reflected in the growing number of international conventions and agreements that address both environmental protection and its implications for global stability. However, while these frameworks provide important legal foundations, effective implementation remains crucial to addressing the environmental challenges that threaten sustainable development.

An analysis of national legislation across various countries has revealed that the concept of environmental security is reflected in the legal systems of both developed and developing nations, albeit with varying degrees of implementation. In EU countries, environmental security is considered an integral part of the overarching security policy, as evidenced in EU environmental directives and strategies. This approach is integrated into a broad spectrum of legislative acts and policies aimed at environmental protection and ensuring sustainable development. Notably, Directive of the European Parliament and of the Council No. 2004/35/CE (2004) establishes the legal framework for preventing and remedying environmental damage, recognising the importance of environmental security for sustainable development. This directive is a pivotal instrument of EU environmental policy and aims to implement the "polluter pays" principle in the environmental sphere. In addition to this directive, other legislative acts play a significant role in ensuring environmental security in the EU, such as Directive of the European Parliament and of the Council No. 2001/42/EC (2001), which establishes procedures for environmental assessment of plans and programmes that may have a significant impact on the environment; Directive of the European Parliament and of the Council No. 2010/75/EU (2010), aimed at preventing and controlling industrial pollution by setting stringent requirements for industrial installations; Directive of the European Parliament and of the Council No. 2008/98/EC (2008), which establishes framework provisions for waste management in the EU, aimed at reducing waste generation and ensuring its safe disposal; and the Biodiversity Strategy for 2030 (2020), which sets ambitious targets for preserving biodiversity and restoring ecosystems in the EU by 2030.

In the USA, environmental legislation also includes provisions aimed at ensuring environmental security, particularly the National Environmental Policy Act (1969) and the Clean Air Act of US (1963), which establish environmental quality standards and mechanisms for monitoring their compliance. The National Environmental Policy Act of US (1969) laid down the general framework for US environmental policy and introduced the environmental impact assessment procedure for federal projects. The Clean Air Act aims to control and reduce air pollution by setting national air quality standards and regulating pollutant emissions. The Clean Water Act of US (1972) regulates the discharge of pollutants into US water bodies and sets water quality standards. The Resource Conservation and Recovery Act of US (1976) regulates the management of hazardous and solid waste in the USA. The Comprehensive Environmental Response, Compensation, and Liability Act of US (1980), known as Superfund, is aimed at cleaning up contaminated sites and compensating for environmental pollution damage.

In Ukraine, environmental security is defined as a priority area of national policy, as reflected in the Constitution of Ukraine (1996) and the Law of Ukraine No. 1264-XII (1991). National legislation in this area includes a number of laws and subordinate acts aimed at preventing and minimising environmental risks, ensuring citizens' environmental rights, and accountability for environmental offences. However, despite the existing legislative framework, Ukraine faces significant challenges in ensuring environmental security. Key challenges include ineffective implementation of environmental policy, insufficient funding for environmental protection measures, imperfect control and enforcement mechanisms, manifestations of corruption in the environmental protection sphere, and unprecedented environmental damage caused by the full-scale armed aggression ongoing since 2022 (Ministry of Environmental Protection and Natural Resources of Ukraine, 2023). The Constitution of Ukraine (1996) guarantees everyone the right to an environment safe for life and health, and to compensation for damage caused by a violation of this right. The Law of Ukraine No. 1264-XII (1991) defines the basic principles of state policy in the field of environmental protection and establishes the legal foundations for the organisation of environmental protection to ensure environmental security. The Law of Ukraine No. 45/95-VR (1995) establishes the legal and organisational principles for conducting environmental expertise to prevent negative impacts of economic activities on the environment. The Law of Ukraine No. 2320-IX (2022) regulates relations concerning the generation, collection, transportation, storage, treatment, utilisation, disposal, and neutralisation of waste to prevent its negative impact on the environment and human health. The Law of Ukraine No. 2707-XII (1992) aims to ensure the protection of atmospheric air from pollution and other harmful effects. However, an analysis of the implementation of environmental legislation in Ukraine has revealed certain problems related to insufficient funding for environmental protection measures, imperfect control and enforcement mechanisms, and corruption in the environmental protection sphere (Ministry of Environmental Protection and Natural Resources of Ukraine, 2021). These problems reduce the effectiveness of Ukraine's environmental policy and pose threats to the country's environmental security. Furthermore, the effectiveness of environmental policy implementation in the region

remains limited due to economic, political, and social factors, including reliance on the extractive industry, insufficient public environmental awareness, and limitations on civil society (World Bank, 2021).

Thus, environmental security has gradually gained significant importance in international law since the end of the 20th century, reflecting a growing awareness of its connection with international stability and security. Key international documents have defined environmental security as an integral part of sustainable development. In national legislation, the concept of environmental security is implemented with varying degrees of effectiveness. In the European Union, this concept is integrated into environmental policy through directives that establish frameworks for pollution prevention, waste management and biodiversity protection. In the United States, environmental security is developed through basic laws that regulate environmental quality standards and implement environmental impact assessments. At the same time, despite the existence of a legislative framework, the implementation of environmental policy in Ukraine faces problems, including insufficient funding, weak control, corruption and the consequences of military aggression, which significantly reduce the effectiveness of environmental protection. Thus, the concept of environmental security is now a key element of international and national law, but its practical implementation depends on political will, institutional capacity, and effective international cooperation.

Legal gaps in the green transition. As the world confronts the escalating environmental crisis, the integration of environmental considerations into national and international legal systems has become imperative. However, the application of environmental regulations often intersects with social issues, including the affordability of goods and services, job loss due to factory closures, and the broader implications of eco-friendly transformation for vulnerable social groups. In this context, this section will analyse two aspects of this intersection: the increase in product, medication, and service prices due to environmental standards and the closure or downsizing of production facilities that fail to meet environmental regulations, leading to job losses and increased unemployment. Additionally, it will examine the shortcomings in existing social and environmental legislation, including the lack of an integrated approach and insufficient legal mechanisms for compensating those affected by environmental restrictions.

One of the most direct social consequences of stricter environmental standards is the rise in the prices of essential goods, services, and medicines. Environmental regulations often impose additional costs on producers, which are passed on to consumers. For example, requirements for cleaner production processes, waste management, and resource efficiency may lead to higher production costs, thereby increasing the prices of goods such as food and medicine. This is particularly burdensome for lower-income groups, who spend a higher proportion of their income on basic necessities. In many countries, including those within the European Union, governments are seeking to balance environmental sustainability with social protection through various measures. However, a significant gap remains in adequately addressing the social burden that environmental policies impose on vulnerable populations. According to the Regulation of the European Parliament and of the Council No. 2021/1056 (2021), the goal is to mitigate the social and economic impacts of environmental transformation, especially on communities and workers in carbon-dependent industries. Despite these efforts, the transition often leads to price hikes in sectors such as energy, housing, and transportation.

In the case of Ukraine, although the government has adopted various policies aimed at environmental protection, including the Green Deal Ukraïna (2023), these measures often lack the necessary social compensation mechanisms. The Law of Ukraine No. 1264-XII (1991) does not provide adequate provisions for compensating citizens who face the economic consequences of higher prices. Similarly, while the Decree of the President of Ukraine No. 20/91 (1992) offers some coverage for workers facing job loss, it does not sufficiently address the disproportionate effects of environmental policies on vulnerable groups, such as low-income citizens or those living in areas disproportionately affected by pollution and industrial transformation. A significant aspect of the ecological transformation involves the closure or downsizing of factories and industries that fail to comply with updated environmental standards. These closures often lead to mass layoffs, resulting in increased unemployment rates, particularly in regions where industries are concentrated. For example, heavy industries such as coal mining, steel production, and chemical manufacturing are often unable to meet the stringent environmental standards set by international or national regulations, leading to plant shutdowns and subsequent job losses.

In Ukraine, which is undergoing a gradual shift towards greener production technologies as part of its alignment with the EU *acquis communautaire*, several industries are already facing the challenge of adapting to stricter environmental regulations. The transition from coal-based to renewable energy production, for example, has led to significant job losses in the coal mining sector. The State Employment Service of Ukraine (2023) reports a steady increase in unemployment rates in industrial regions such as Donetsk and Luhansk, where the impact of environmental restrictions has been particularly severe. Act Law of Ukraine No. 1533-III "On Compulsory State Social Insurance in Case of Unemployment" (2000) provides some level of compensation and unemployment benefits, but the scope is limited, and many workers who lose their jobs due to the implementation of environmental standards do not receive adequate support for retraining or finding new employment opportunities. The Labour Code of Ukraine (1996) requires companies to take measures to minimise job loss due to technological change, but it does not impose sufficient obligations on employers to provide comprehensive retraining programs or to ensure long-term job security for workers displaced by ecological reforms. Furthermore, there is no clear legal obligation to support the just transition for workers affected by the closure of high-pollution industries, leaving many vulnerable workers without social protection or opportunities for reemployment. The lack of a comprehensive just transition framework in Ukrainian law highlights a significant gap. While the Regulation of the European Parliament and of the Council No. 2021/1056 (2021) provides detailed measures for social compensation and job creation for workers displaced by environmental changes, Ukrainian legislation has yet to adopt an equivalent legal obligation for companies to ensure social protection during the transition process. This legislative gap is exacerbated by the absence of specific policies that integrate social protection and environmental law

to address the dual challenges of employment loss and ecological transformation. As it stands, Ukrainian law primarily addresses environmental protection without sufficient regard for the social consequences of that protection.

An essential challenge in addressing the intersection between social and environmental law is the lack of an integrated approach to policy-making and legal regulation. Environmental laws often operate independently from social laws, and vice versa, leading to inconsistent and fragmented legal frameworks that fail to account for the broader impacts of ecological transformation on social well-being. Environmental Law in Ukraine, particularly through the Law of Ukraine No. 1264-XII (1991), emphasises safeguarding natural resources and managing pollution but lacks a cohesive strategy for integrating social equity into environmental governance. For example, while the Law of Ukraine No. 2059-VIII (2017) requires assessments of environmental risks, it does not mandate the evaluation of social risks or the impact on marginalised communities. There is also no legal requirement to assess the social implications of green technologies in terms of job creation or job loss, and the legal provisions for social compensation are largely absent. Social legislation in Ukraine, while providing some protection for workers through the Labour Code of Ukraine (1996) and the the Decree of the President of Ukraine No. 20/91 (1992), does not address the interdisciplinary nature of environmental policies and their impact on workers and vulnerable populations. This disjointed approach leads to a situation where environmental and social laws exist in parallel but fail to cooperate effectively to mitigate the negative social consequences of environmental protection measures. In many cases, the absence of effective legal mechanisms for compensating those impacted by environmental restrictions leaves vulnerable populations exposed. While the Decree of the President of Ukraine No. 20/91 (1992) offers some protection for individuals who lose their livelihoods due to economic changes, it does not consider environmental factors as significant causes of unemployment or poverty. Similarly, although there is increasing international support for the just transition, such as the European Union's funding for green job creation, Ukraine's domestic law does not provide robust procedures for compensating workers affected by environmental policy changes.

The lack of transparent decision-making criteria is another issue. This lack of transparency and inadequate regulation further exacerbates social tension and distrust in government policy. The challenges of balancing environmental protection with social needs underscore the importance of developing a more integrated legal approach that incorporates both social and environmental goals. Ukraine, as it aligns itself with EU environmental norms, must not only adopt robust environmental policies but also ensure the legal and social protections that vulnerable groups require during the ecological transition.

For this to be achieved, the adoption of a Just Transition Law, similar to the EU's framework, would be an essential step. Additionally, integrating social impact assessments into environmental law, improving compensation mechanisms, and ensuring that legislative frameworks explicitly account for the social impacts of environmental policies would create a more cohesive and just system. Until these issues are addressed through comprehensive legislative reforms, Ukraine risks perpetuating social inequalities and environmental degradation, ultimately hindering sustainable development.

Institutional barriers and legal strategies for advancing environmental security in Ukraine. The results of the study confirmed that international environmental law is evolving towards the recognition of environmental security as an integral part of global security. The analysis of international documents has shown a gradual expansion of the understanding of environmental security from a narrow focus on environmental protection to a broader context that includes social, economic and political aspects. The integration of environmental security into the international legal framework reflects the growing awareness that environmental challenges, such as climate change, biodiversity loss and land degradation, can have far-reaching consequences for international peace and security, triggering conflicts, migration and social instability. National legislation in different countries demonstrates different approaches to implementing the concept of environmental security, due to differences in legal systems, economic development and environmental priorities. The EU and the US have more developed legislation in the field of environmental safety, which reflects their political will and economic capacity to implement environmental protection measures. Ukraine, despite the priority of environmental safety in its legislation, faces implementation problems related to financial constraints and institutional weakness.

The developed practical recommendations, focused on the short and medium term, are based on a comprehensive analysis of international experience, legislative frameworks and challenges facing Ukraine in the field of environmental safety. The implementation of these recommendations is aimed at creating an effective system of state environmental management capable of responding effectively to current and future environmental threats. In the short term, the key priority is to improve the effectiveness of environmental law enforcement and control. This includes strengthening state environmental supervision (control) over the activities of polluting enterprises, in particular through the introduction of modern monitoring and inspection methods, such as remote sensing and unmanned aerial vehicles to detect unauthorised emissions and discharges of pollutants. It is also necessary to improve the system of administrative and criminal liability for environmental offences, ensuring that it complies with the principle of inevitability of punishment and the economic feasibility of preventing offences. In particular, it is advisable to review the amount of fines for environmental crimes and offences to bring them in line with the level of economic damage caused to the environment and ensure their proper collection. Optimisation of the state environmental monitoring system involves expanding the network of automated stations for monitoring the quality of atmospheric air and surface water, introducing modern information and analytical systems for processing and analysing monitoring data, and ensuring open and public access to environmental information for the public. Raising the environmental awareness of the population requires the development and implementation of comprehensive information and awareness campaigns aimed at shaping environmental culture, raising public awareness of environmental problems and ways to solve them, and encouraging their active participation in environmental activities. This may include holding thematic seminars, trainings, public lectures, disseminating information materials through the media and social networks, and supporting public environmental initiatives. Ensuring transparency and openness of public authorities in

the field of environmental safety is an important factor in increasing public trust in the actions of the authorities and ensuring effective public control over environmental activities.

An analysis of the practical aspects of the implementation of international environmental law in Ukraine, in particular in the context of harmonisation of national legislation with EU norms as part of the European integration process, reveals a significant gap between the formal legal consolidation of standards and their actual implementation. Despite the recognition of environmental safety as a national policy priority and progress in legislative approximation to the EU *acquis communautaire*, the effectiveness of practical application of these norms remains limited. The main obstacles are a complex of interrelated factors: insufficient funding for environmental protection measures, ineffective mechanisms of state environmental control and law enforcement, institutional weakness of the responsible authorities, significant levels of corruption in the environmental sector, and unprecedented environmental damage caused by the ongoing armed aggression. Systematic harmonisation of legislation with EU norms, especially in areas such as waste management, air protection, water management and environmental impact assessment, requires not only formal transposition of the provisions of European directives, but also ensuring their full and effective implementation in practice. Thus, overcoming these practical challenges by strengthening institutional capacity, ensuring adequate funding, and improving the state's control and supervisory functions is a critical prerequisite for achieving real environmental improvement and successful progress of Ukraine on the path of European integration in the field of environmental policy.

To enhance the existing medium-term recommendations and address the legal tension between social and environmental legislation, it is necessary to include targeted law-making measures aimed at ensuring their systematic coordination and legal coherence. These measures should be integrated into the broader strategy of harmonising Ukrainian environmental legislation with the EU acquis and strengthening the national legal system's capacity for conflict resolution in overlapping domains. Firstly, Ukraine should initiate the development of a Framework Law on Sustainable Development, which would serve as a coordinating legal act for aligning environmental and social objectives in sectoral legislation. This law should establish guiding principles such as the principle of proportionality, intergenerational equity, and the indivisibility of rights, ensuring that social and environmental rights are not treated in isolation but as interdependent and mutually reinforcing. Secondly, it is advisable to introduce mandatory sustainability impact assessments (SIA) in parallel with existing environmental impact assessments (EIA), particularly for large infrastructure, industrial, or extractive projects. These assessments should include criteria for evaluating potential adverse effects on vulnerable social groups (e.g., health impacts from pollution, loss of livelihoods due to land degradation), thereby institutionalising the reconciliation of environmental and social interests at the project planning stage. Thirdly, legislative amendments should be made to existing laws to introduce cross-references between environmental and social standards. For example, amendments to the Law of Ukraine No. 1264-XII "On Environmental Protection" (1991)" could incorporate provisions referencing labour rights, public health, and housing standards in environmental decision-making. Conversely, the Labour Code of Ukraine (1996) and the Law of Ukraine No. 2694-XII "On Labor Protection" (1992)" should include explicit references to environmental risk factors (e.g., air quality, chemical exposure) as part of worker protection. As a concrete example, the implementation of the EU Directive of the European Parliament and of the Council No. 2010/75/EU "On Industrial Emissions (Integrated Pollution Prevention and Control) (Recast)" (2010) on industrial emissions could be accompanied by a national regulation requiring that licensing procedures for industrial enterprises also consider potential social impacts on neighbouring communities (e.g., access to clean air and water, public health indicators). Similarly, regulations aligned with the EU Biodiversity Strategy for 2030 (2020) could mandate that land use planning processes account for both ecosystem services and local community needs. Finally, the establishment of a specialised interagency legal coordination body or parliamentary committee on sustainable development could facilitate the review of draft legislation to ensure coherence between environmental and social norms before adoption. This body would function as a preventive mechanism, reducing legal conflicts ex ante and promoting integrated legal solutions. Incorporating these law-making measures will help ensure that Ukraine's legal system evolves not only in formal alignment with EU norms, but also in a substantively balanced and socially just manner, ultimately supporting the long-term goals of environmental security and sustainable development.

Discussion

The results obtained in the course of the study demonstrate a high degree of consistency with a wide range of relevant scientific studies that focus on the growing role of environmental security in the international political arena and legal system. D. Bodansky *et al.* (2021) argue that international environmental law is constantly evolving towards the integration of security issues, considering environmental challenges as potential sources of international conflict and destabilisation. For example, the United Nations Framework Convention on Climate Change (1992) and the Paris Agreement (2015), although aimed at combating climate change, have a significant environmental security dimension, as climate change is recognised as a factor that can exacerbate existing security threats and create new ones, in particular through resource scarcity, population migration and social unrest. The study by K. Kaczmarek (2024) highlighted that climate change is a threat multiplier that can exacerbate existing social, economic and political tensions, creating new challenges for international security. Likewise, the Convention on Biological Diversity (1992) and other international agreements aimed at protecting biodiversity and ecosystems are also important for environmental security, as biodiversity loss can undermine environmental sustainability and create new environmental risks, including the spread of infectious diseases and degradation of ecosystem services.

The integration of environmental security into both national and international legal systems, while increasingly recognised in normative frameworks, often faces practical challenges related to normative conflict and institutional coherence (Kullolli, 2024). As M. Petersmann (2019b) notes, the collision between environmental protection objectives and other legal domains, particularly human rights or economic interests, necessitates a reconceptualisation of legal hierarchies and conflict resolution mechanisms. This is

particularly relevant in Ukraine's context, where environmental degradation exacerbated by armed aggression intersects with the constitutional guarantee of the right to a safe environment. The Ukrainian legal system thus requires not only harmonisation with EU environmental standards but also mechanisms to reconcile conflicting rights and priorities under conditions of legal pluralism and crisis governance. Simultaneously, the example of A. Schilling-Vacaflor (2021) illustrates how integrated legal approaches, particularly those linking environmental and human rights concerns in transnational regulatory frameworks such as supply chain legislation, can inform Ukraine's own regulatory evolution. The expansion of environmental accountability through legally binding responsibilities for corporate actors may serve as a model for Ukraine's efforts to strengthen enforcement mechanisms and prevent environmental harm. Adapting such integrated approaches would contribute to a more robust environmental governance framework that aligns not only with EU acquis communautaire but also with the broader objectives of sustainability and social justice.

P.C. Williams *et al.* (2021) highlighted the link between biodiversity loss and increased pandemic risk, emphasising the importance of biodiversity conservation for global environmental security and human health. C.K. Johnson *et al.* (2020) also highlighted that the degradation of ecosystem services, such as clean water, climate regulation and pollination, can have serious consequences for social and economic stability, creating new challenges for environmental security. A comparative analysis of national legislation in different countries has revealed a significant diversity in approaches to the practical implementation of the concept of environmental security. Developed countries, in particular the EU member states and the United States, demonstrate a more extensive and comprehensive system of legislative regulation of environmental safety (Caglar *et al.*, 2025). This is a reflection of their significant economic capacities, a clearly expressed political will to address environmental issues, and a developed civil society capable of effectively monitoring the actions of the authorities in the environmental sphere. The results are consistent with the findings of scientific studies that show that the level of economic development of a state, the degree of political stability and the level of development of democratic institutions are the determining factors that influence the formation of effective environmental legislation and the effectiveness of its practical implementation.

In contrast to developed countries, Ukraine faces numerous difficulties in ensuring an adequate level of environmental safety, despite the existence of a formally adopted legislative framework (Uliutina & Starokin, 2024). These difficulties are caused by a combination of factors, including economic constraints, insufficient institutional capacity, widespread corruption, insufficient environmental awareness among the population, and existing restrictions on the activities of civil society institutions. These findings are in line with research indicating that transition and developing countries often have insufficient institutional capacity and limited financial resources to effectively implement even progressive environmental legislation (Yang, 2021; Fornes & Altamira, 2023). O. Shashkina (2020) emphasises that for countries with economies in transition, including Ukraine, the priority is to overcome institutional barriers to effective environmental governance and to consistently strengthen the capacity of public authorities in this area.

W. Li and J.A. Puppim de Oliveira (2021) also emphasise that for Central Asian countries, where civil society institutions remain weak, the key task is to actively promote the development of environmental awareness among the general population and create conditions for real public involvement in the decision-making process in the field of environmental protection and environmental safety. The issue of the effectiveness of legislative mechanisms aimed at counteracting environmental threats is one of the central ones in the context of ensuring environmental safety (Buribayev *et al.*, 2020). The results of this study confirm that the mere existence of legislation, even the most progressive, is a necessary but clearly insufficient condition for achieving an adequate level of environmental safety. The effectiveness of legislative mechanisms is determined by a whole range of interrelated factors, including the quality of the legislation itself, the existence of effective mechanisms for its implementation and strict enforcement, sufficient institutional capacity of the relevant state authorities, low levels of corruption, political will to actually address environmental problems, and active public participation in control and monitoring processes (Ketners *et al.*, 2025). These conclusions are fully consistent with the results of scientific research, which emphasise that effective environmental governance requires a comprehensive approach that combines various public policy instruments, including legislative, economic, informational and voluntary measures, as well as active participation of civil society and effective international cooperation. C. Challoumis (2024) in his work emphasised the importance of implementing the principles of adaptive management of environmental resources, which involves flexibility of management approaches, continuous learning based on experience and involvement of a wide range of stakeholders in the process of making environmentally significant decisions. To sum up, the study confirmed the important role of environmental security in the formation of international environmental law and adaptation of national legislation.

Conclusions

This study explored the regulatory challenges arising from the dual imperative of fulfilling both social and environmental obligations in the modern state. Based on a comprehensive analysis of international legal instruments, national legislation in selected countries, and the situation in Ukraine, several general conclusions have been formulated. The concept of environmental security has gradually expanded from a narrowly defined ecological concern to a multidimensional construct encompassing social, economic and political dimensions. Its integration into international environmental law, as illustrated by documents such as the Rio Declaration on Environment and Development, the Johannesburg Plan of Implementation and the Paris Agreement, reflects a growing understanding that environmental threats are inherently linked to global peace, migration dynamics, and socioeconomic stability. These developments have influenced the formation of national legal systems, encouraging them to incorporate environmental considerations into broader regulatory frameworks.

National approaches to environmental security vary significantly. The European Union and the United States have demonstrated the political will and economic capacity to adopt comprehensive legal frameworks that integrate

environmental and social concerns. Ukraine, while formally recognising environmental safety as a priority in its legal system, faces serious obstacles to effective implementation. These include institutional weakness, underfunding, limited enforcement, and systemic corruption, all of which are exacerbated by the ongoing full-scale war. At the same time, the study has shown that environmental regulation generates specific social consequences. The introduction of stricter environmental standards often leads to higher prices for basic goods, services and energy, disproportionately affecting vulnerable groups. The closure or downsizing of non-compliant industrial facilities results in job losses and rising unemployment in regions with industrial specialisation. These social effects are insufficiently reflected in Ukrainian law, where environmental and social norms are formulated in isolation from each other and lack mechanisms for cross-sectoral coordination. Environmental legislation does not include effective provisions for social compensation or safeguards for affected communities, while labour and social security legislation does not adequately take into account the consequences of ecological transformation.

The lack of an integrated regulatory approach undermines the state's capacity to ensure a balanced transition toward environmental sustainability without compromising social justice. The Ukrainian legal system does not yet provide legally enforceable guarantees of a just transition, as formulated in the European Union's legal framework, including the Regulation establishing the Just Transition Fund. Existing legislation lacks binding obligations related to retraining, employment support, or systematic social impact assessment within environmental decision-making processes.

The findings of the study confirmed that the modern state faces regulatory fragmentation when seeking to reconcile ecological imperatives with the protection of socioeconomic rights. Without harmonised legislation and institutional coordination, environmental reforms risk deepening social inequality and generating resistance to policy implementation, particularly in fragile or transitional governance contexts. This research has laid the groundwork for further examination of how to build institutional and legal models that support both environmental transformation and social cohesion. Future research may focus on the operationalisation of just transition mechanisms, international experience in integrating social and environmental impact assessment procedures, and the design of coherent legal instruments that ensure legal certainty and distributive fairness in environmental governance.

Acknowledgements

None.

Funding

The study was not funded.

Conflict of interest

None.

References

[1] Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal. (1989, March). Retrieved from https://www.basel.int/theconvention/overview/tabid/1271/default.aspx.

[2] Biodiversity Strategy for 2030. (2020). Retrieved from https://environment.ec.europa.eu/strategy/biodiversity-strategy-2030_en.

[3] Bodansky, D., & Van Asselt, H. (2024). *The art and craft of international environmental law*. Oxford: Oxford University Press. doi: 10.1093/oso/9780197672365.001.0001.

[4] Bodansky, D., Brunnée, J., Doelle, M., & Rajamani, L. (2021). *International climate change law*. Oxford: Oxford University Press. doi: 10.1093/law/9780199664290.001.0001.

[5] Buribayev, Y.A., Khamzina, Z.A., Suteeva, C., Apakhayev, N.Z., Kussainov, S.Z., & Baitekova, K.Z. (2020). Legislative regulation of criminal liability for environmental crimes. *Journal of Environmental Accounting and Management*, 8(4), 323-334. doi: 10.5890/jeam.2020.12.002.

[6] Caglar, A.E., Demirdag, I., Destek, M.A., & Daştan, M. (2025). Achieving ecological sustainability in European countries: Does low carbon energy lead to a carbon neutrality pathway? *Science of the Total Environment*, 958, article number 177915. doi: 10.1016/j.scitotenv.2024.177915.

[7] Challoumis, C. (2024). Understanding the money cycle-how regulation policies shape financial flow. *SSRN*. doi: 10.2139/ssrn.4962809.

[8] Clean Air Act of US. (1963, December). https://www.epa.gov/laws-regulations/summary-clean-air-act.

[9] Clean Water Act of US. (1972, October). Retrieved from https://www.boem.gov/sites/default/files/documents/The%20Clean%20Water%20Act%20of%201972.pdf.

[10] Comprehensive Environmental Response, Compensation, and Liability Act of US. (1980, December). Retrieved from https://www.law.cornell.edu/wex/comprehensive_environmental_response_compensation_and_liability_act_(cercla).

[11] Constitution of Ukraine. (1996, August). Retrieved from https://wipolex-res.wipo.int/edocs/lexdocs/laws/uk/ua/ua013uk.pdf.

[12] Convention on Biological Diversity. (1992, June). Retrieved from https://www.cbd.int/convention.

[13] Convention on Environmental Impact Assessment in a Transboundary Context. (1991, February). Retrieved from https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-4&chapter=27&clang=_en.

[14] Convention on International Trade in Endangered Species of Wild Fauna and Flora. (1973, March). Retrieved from https://www.fisheries.noaa.gov/national/international-affairs/convention-international-trade-endangered-species-wild-fauna-and.

[15] Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques. (1976, December). Retrieved from https://treaties.un.org/Pages/ViewDetails.aspx?chapter=26&clang=_en&mtdsg_no=XXVI-1&src=TREATY.

[16] Convention on the Protection and Use of Transboundary Watercourses and International Lakes. (1992, March). Retrieved from https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=xxvii-5&chapter=27&clang=_en.

[17] Decree of the President of Ukraine No. 20/91 "On Social Protection of the Population in Conditions of Price Liberalisation". (1992, February). Retrieved from https://zakon.rada.gov.ua/laws/show/en/20/91?lang=uk#Text.
[18] Demydenko, A., & Krakovska, S. (2023). *Environmental security: From dichotomy to risk management*. Retrieved from https://voxukraine.org/en/environmental-security-from-dichotomy-to-risk-management.
[19] Directive of the European Parliament and of the Council No. 2001/42/EC "On the Assessment of the Effects of Certain Plans and Programmes on the Environment". (2001, June). Retrieved from https://eur-lex.europa.eu/eli/dir/2001/42/oj/eng.
[20] Directive of the European Parliament and of the Council No. 2004/35/CE "On Environmental Liability with Regard to the Prevention and Remedying of Environmental Damage". (2004, April). Retrieved from https://eur-lex.europa.eu/eli/dir/2004/35/oj/eng.
[21] Directive of the European Parliament and of the Council No. 2008/98/EC "On Waste and Repealing Certain Directives". (2008, November). Retrieved from https://eur-lex.europa.eu/eli/dir/2008/98/oj/eng.
[22] Directive of the European Parliament and of the Council No. 2009/147/EC "On the Conservation of Wild Birds (Codified Version)". (2009, November). Retrieved from https://eur-lex.europa.eu/eli/dir/2009/147/oj/eng.
[23] Directive of the European Parliament and of the Council No. 2010/75/EU "On Industrial Emissions (Integrated Pollution Prevention and Control) (Recast)". (2010, November). Retrieved from https://eur-lex.europa.eu/eli/dir/2010/75/oj/eng.
[24] Directive of the European Parliament and of the Council No. 2011/92/EU "On the Assessment of the Effects of Certain Public and Private Projects on the Environment (Codification)". (2011, December). Retrieved from https://eur-lex.europa.eu/eli/dir/2011/92/oj/eng.
[25] Emergency Planning and Community Right-to-Know Act. (1986, October). Retrieved from https://www.epa.gov/epcra.
[26] Erdoğan, S., Çakar, N.D., Ulucak, R., Danish, & Kassouri, Y. (2021). The role of natural resources abundance and dependence in achieving environmental sustainability: Evidence from resource-based economies. *Sustainable Development*, 29(1), 143-154. doi: 10.1002/sd.2137.
[27] Forest Code of Ukraine. (1994, January). Retrieved from https://zakon.rada.gov.ua/laws/show/3852-12#Text.
[28] Fornes, G., & Altamira, M. (2023). *Digitalization, technology and global business: How technology is shaping value creation across borders*. Cham: Palgrave Pivot. doi: 10.1007/978-3-031-33111-4.
[29] Green Deal Ukraïna. (2023). Retrieved from https://greendealukraina.org/.
[30] Işık, C., Ongan, S., & Islam, H. (2025). Global environmental sustainability: The role of economic, social, governance (ECON-SG) factors, climate policy uncertainty (EPU) and carbon emissions. *Air Quality Atmosphere and Health*, 18(3), 851-866. doi: 10.1007/s11869-024-01675-3.
[31] Johannesburg Plan of Implementation. (2002). Retrieved from https://surl.li/mzxrgu.
[32] Johnson, C.K., Hitchens, P.L., Pandit, P.S., Rushmore, J., Evans, T.S., Young, C.C., & Doyle, M.M. (2020). Global shifts in mammalian population trends reveal key predictors of virus spillover risk. *Proceedings. Biological Sciences*, 287(1924), article number 20192736. doi: 10.1098/rspb.2019.2736.
[33] Kaczmarek, K. (2024). The impact of climate change on security. *Journal of Modern Science*, 58(4), 410-430. doi: 10.13166/jms/192195.
[34] Ketners, K., Jargalsaikhan, Z., Miller, A., Miliienko, O., & Malkhasyan, L. (2025). Evaluation of effective anti-corruption strategies in state institutions. *Ceridap*, 2025(1), 93-118. doi: 10.13130/2723-9195/2025-1-48.
[35] Klymenko, V. (2024). Public administration of environmental safety in Ukraine and EU countries. *Law. Human. Environment*, 15(4), 9-30. doi: 10.31548/law/4.2024.09.
[36] Krasivskyy, O. (2024). Development and evolution of European Union policy. *Democratic Governance*, 17(2), 46-57. doi: 10.56318/dg/2.2024.46.
[37] Kullolli, B. (2024). Legal regulation of the use of forest resources. *Ukrainian Journal of Forest and Wood Science*, 15(2), 97-117. doi: 10.31548/forest/2.2024.97.
[38] Labour Code of Ukraine. (1996, July). Retrieved from https://zakon.rada.gov.ua/laws/show/322-08#Text.
[39] Land Code of Ukraine. (2001, October). Retrieved from https://zakon.rada.gov.ua/laws/show/2768-14#Text.
[40] Law of Ukraine No. 1264-XII "On Environmental Protection". (1991, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1264-12#Text.
[41] Law of Ukraine No. 1533-III "On Compulsory State Social Insurance in Case of Unemployment". (2000, March). Retrieved from https://natlex.ilo.org/dyn/natlex2/r/natlex/fe/details?p3_isn=56471&utm.
[42] Law of Ukraine No. 2059-VIII "On Environmental Impact Assessment". (2017, May). Retrieved from https://zakon.rada.gov.ua/laws/show/2059-19#Text.
[43] Law of Ukraine No. 2320-IX "On Waste Management". (2022, June). Retrieved from https://zakon.rada.gov.ua/laws/show/2320-20#Text.
[44] Law of Ukraine No. 2694-XII "On Labor Protection". (1992, December). Retrieved from https://zakon.rada.gov.ua/laws/show/2694-12#Text.
[45] Law of Ukraine No. 2707-XII "On Protection of Atmospheric Air". (1992, October). Retrieved from https://zakon.rada.gov.ua/laws/show/2707-12#Text.
[46] Law of Ukraine No. 4004-XII "On Ensuring Sanitary and Epidemic Welfare of the Population". (1994, February). Retrieved from https://zakon.rada.gov.ua/laws/show/4004-12#Text.
[47] Law of Ukraine No. 45/95-VR "On Environmental Expertise". (1995, February). Retrieved from https://zakon.rada.gov.ua/laws/show/45/95-вр#Text.
[48] Li, W., & Puppim de Oliveira, J.A. (2021). Environmental governance for sustainable development in Asia. *Journal of Environmental Management*, 290, article number 112622. doi: 10.1016/j.jenvman.2021.112622.

[49] Ministry of Environmental Protection and Natural Resources of Ukraine. (2023). *Priorities of the Ministry of Environmental Protection and Natural Resources of Ukraine*. Retrieved from https://mepr.gov.ua/pro-nas/priorytet/.
[50] Ministry of Environmental Protection and Natural Resources of Ukraine. (2021). *National report on the state of the environment in Ukraine*. Retrieved from https://mepr.gov.ua/wp-content/uploads/2023/01/Natsdopovid-2021-n.pdf.
[51] National Environmental Policy Act of US. (1969, December). Retrieved from https://www.govinfo.gov/content/pkg/COMPS-10352/pdf/COMPS-10352.pdf.
[52] NATO climate change and security impact assessment. (2024). Retrieved from https://www.nato.int/nato_static_fl2014/assets/pdf/2024/7/pdf/240709-Climate-Security-Impact.pdf.
[53] Nevitt, M. (2020). *Climate change: A threat to international peace & security?* Retrieved from http://opiniojuris.org/2020/08/29/climate-change-a-threat-to-international-peace-security/.
[54] Paris Agreement. (2015, December). Retrieved from https://unfccc.int/sites/default/files/english_paris_agreement.pdf.
[55] Petersmann, M. (2019a). Chapter VII.21: Conflicts between environmental protection and human rights. In *Elgar encyclopedia of environmental law* (pp. 288-299). Cheltenham: Edward Elgar Publishing.
[56] Petersmann, M. (2019b). *When environmental protection and human rights collide: studies in legal conflict and its management*. Florence: European University Institute.
[57] Regulation of the European Parliament and of the Council No. 1907/2006 "On the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), Establishing a European Chemicals Agency". (2006, December). Retrieved from https://www.fao.org/faolex/results/details/en/c/LEX-FAOC068317/.
[58] Regulation of the European Parliament and of the Council No. 2021/1056 "Just Transition Fund". (2021, June). Retrieved from https://www.eumonitor.eu/9353000/1/j4nvk6yhcbpeywk_j9vvik7m1c3gyxp/vllqc884x2zh?utm.
[59] Resource Conservation and Recovery Act of US. (1976, October). Retrieved from https://www.epa.gov/rcra.
[60] Rio Declaration on Environment and Development. (1992, August). Retrieved from https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf.
[61] Schilling-Vacaflor, A. (2021). Integrating human rights and the environment in supply chain regulations. *Sustainability*, 13(17), article number 9666. doi: 10.3390/su13179666.
[62] Shashkina, O. (2020). *Environmental governance in armed conflicts: A case study in eastern Ukraine*. Lund: Lund University.
[63] Stockholm Declaration of the United Nations Conference on the Human Environment. (1972, June). Retrieved from https://www.un.org/en/conferences/environment/stockholm1972.
[64] Teixeira, R.G. (2021). The role of international organizations in the development of international environmental law: Adjusting the lenses of analysis. *Case Western Reserve Journal of International Law*, 53, 237-268.
[65] The State Employment Service of Ukraine. (2023). *Labour market of Ukraine 2022-2023: State, trends, and prospects*. Retrieved from https://fscluster.org/sites/default/files/labour_market_of_ukraine_2023_en42.pdf?utm.
[66] Uliutina, O., & Starokin, A. (2024). Legal support for environmental protection in Ukraine and EU countries. *Law. Human. Environment*, 15(4), 124-143. doi: 10.31548/law/4.2024.124.
[67] UNCED. (1992). *Agenda 21*. Retrieved from https://sustainabledevelopment.un.org/outcomedocuments/agenda21.
[68] United Nations Framework Convention on Climate Change. (1992, May). Retrieved from https://unfccc.int/resource/docs/convkp/conveng.pdf.
[69] Williams, P.C., Bartlett, A.W., Howard-Jones, A., McMullan, B., Khatami, A., Britton, P.N., & Marais, B.J. (2021). Impact of climate change and biodiversity collapse on the global emergence and spread of infectious diseases. *Journal of Paediatrics and Child Health*, 57(11), 1811-1818. doi: 10.1111/jpc.15681.
[70] World Bank. (2021). *World development report 2021: Data for better lives*. Retrieved from https://www.worldbank.org/en/publication/wdr2021.
[71] World Wildlife Fund. (2024). *Living Planet report*. Retrieved from https://www.worldwildlife.org/publications/2024-living-planet-report.
[72] Yang, J. (2021). How does state policy shape East Asia's steel industry? A selective review. In J. Ma & M. Yamamoto (Eds.), *Growth mechanisms and sustainability: Economic analysis of the steel industry in East Asia* (pp. 11-42). Singapore: Palgrave Macmillan. doi: 10.1007/978-981-16-2486-5_2.
[73] Zhu, Y. (2024). A quasi-normative conflict: Resolving the tension between investment treaties and climate action. *Review of European, Comparative & International Environmental Law*, 33(2), 183-193. doi: 10.1111/reel.12565.

Поєднання соціального та екологічного права в умовах сталого розвитку: проблеми правового балансу

Людмила Міхневич
Доктор юридичних наук, професор
Національний університет біоресурсів і природокористування України
03041, вул. Героїв Оборони, 15, м. Київ, Україна
https://orcid.org/0000-0002-4774-079X

Наталья Борсук
Доктор юридичних наук, професор
Київський національний економічний університет імені Вадима Гетьмана
03057, просп. Берестейський, 54/1, м. Київ, Україна
https://orcid.org/0000-0003-3476-3084

Юлія Удовенко
Кандидат юридичних наук, доцент
Державний торговельно-економічний університет
02156, вул. Кіото, 19, м. Київ, Україна
https://orcid.org/0000-0001-7280-2633

Олексій Альонкін
Кандидат юридичних наук, доцент
Державний торговельно-економічний університет
02156, вул. Кіото, 19, м. Київ, Україна
https://orcid.org/0000-0002-7867-350X

Еліна Кулага
Кандидат юридичних наук, доцент
Київський національний економічний університет імені Вадима Гетьмана
03057, просп. Берестейський, 54/1, м. Київ, Україна
https://orcid.org/0000-0002-6405-3510

Анотація. Мета дослідження полягала у вивченні регуляторних проблем, що породжуються соціальними та еконологічними зобов'язаннями сучасної держави. У роботі застосовано комплекс методів дослідження, включаючи аналіз міжнародних правових актів, порівняльно-правовий аналіз законодавства країн ЄС, США та України, а також якісні методи обробки інформації. Результати дослідження підтвердили, що концепція екологічної безпеки поступово інтегрується у міжнародно-правові рамки, відображаючи зростаюче усвідомлення глобальної спільнотою взаємозв'язку між станом довкілля та міжнародним миром і безпекою. Аналіз національного законодавства виявив різноманітність підходів до реалізації екологічної безпеки, причому розвинені країни демонструють більш комплексні законодавчі бази. У випадку України, незважаючи на формальне визначення пріоритету екологічної безпеки в національному законодавстві, залишаються значні проблеми у фактичному впровадженні екологічного законодавства. Ці проблеми включають слабкі механізми правозастосування, інституційну фрагментацію та недостатню інтеграцію екологічних пріоритетів у ширші регуляторні та управлінські структури. На основі отриманих результатів було розроблено низку практичних рекомендацій для підвищення ефективності політики екологічної безпеки України у короткостроковій та середньостроковій перспективі. До них належать покращення правоохоронної діяльності, моніторингу навколишнього середовища, підвищення обізнаності громадськості та гармонізація національного законодавства зі стандартами ЄС. Крім того, дослідження виявило регуляторну суперечність між екологічними та соціальними зобов'язаннями, особливо в контексті зеленого переходу України. Закриття промислових об'єктів, які не відповідають екологічним стандартам, та пов'язане з цим зростання безробіття, а також зростання вартості товарів та послуг через дотримання екологічних норм, непропорційно впливають на вразливі групи. Українському законодавству бракує інтегрованих правових механізмів для пом'якшення таких наслідків. Існує потреба розробити міжгалузеві правові інструменти, включаючи оцінки соціального впливу, механізми компенсації та гарантії справедливого переходу, щоб забезпечити, щоб екологічні реформи не підривали соціальну згуртованість та не поглиблювали соціально-економічну нерівність. Практична значущість дослідження полягає у наданні науково обґрунтованих рекомендацій для формування ефективної державної політики екологічної безпеки України

Ключові слова: державна політика; глобальна спільнота; сталий розвиток; глобальне потепління; зміна клімату; екологічне право

UDC 341.9:342.72 (4)
DOI: 10.32518/sals2.2025.309

Соціально-правові студії. 2025. Т. 8, № 2
Social & Legal Studios. 2025. Vol. 8, No. 2

The impact of freedom of movement in the European Union on the spread of human trafficking: Legal challenges and opportunities for improving countermeasures

Begimai Kamilova*
PhD Student
Kyrgyz Republic Ministry of Foreign Affairs Diplomatic Academy named after Kazy Dikambaev
720040, 36 Erkindik Blvd., Bishkek, Kyrgyz Republic
https://orcid.org/0009-0003-6421-4155

Abstract. This study aimed to investigate the impact of the European Union's freedom of movement on the prevalence of human trafficking and to identify the associated legal problems. The research technique integrated comparative legal analysis, content analysis of European Union legislation and case law, and the evaluation of statistical data and case studies related to the operation of the freedom of movement. The research examined the legal frameworks in France, the United Kingdom, Italy, and the Baltic States, facilitating the identification of both commonalities and divergences in national methodologies for adapting European rules. The study's primary findings indicated inadequate interstate coordination, deficiencies in regulating individual travel, and the reliance of anti-trafficking efficacy on the institutional ability of each state. It was noted that criminal organisations often utilise freedom of movement to lawfully transport victims inside the European Union, particularly via labour migration pathways or by misusing residency privileges. National responses differ: France advocates for an interagency model; the United Kingdom employs a criminal law-based approach incorporating non-state players; Italy prioritises humanitarian assistance for victims; and the Baltic States implement a constrained, minimalist model dependent on external resources. The research's practical value is evident in its recommendations for enhancing European Union legislation and state frameworks, particularly through the harmonisation of legal methods, the establishment of a unified database, and the fortification of legal protections for victims

Keywords: labour exploitation; protection of victims' rights; cross-border crime; law enforcement cooperation; harmonisation of legislation; combating modern slavery

Introduction

The importance of this study arises from the need to reassess the balance between freedom of movement – one of the fundamental tenets of the European Union (EU) – and the imperative to effectively combat transnational crime, such as human trafficking. The current open borders policy creates new opportunities for EU residents, while also introducing security challenges that require enhancements to legislative and institutional structures. The primary study issue pertains to the intrinsic conflict between the enforcement of freedom of movement within the EU and the duty to provide sufficient safeguards against criminal exploitation. Notwithstanding the presence of supranational rules, Member States persistently encounter substantial challenges in the identification, prosecution, and prevention of human trafficking. These issues arise from legislative deficiencies, inadequate coordination, and the intricate practical implementation of legal principles inside the EU's Area of Freedom, Security, and Justice. Although a regulatory framework exists at the EU level to combat human trafficking, the ongoing challenges encountered by Member States indicate that these procedures are not consistently effective in practice.

Criminal organisations frequently utilise lawful avenues for mobility, residency regulations, and procedural deficiencies in victim recognition. In many instances, individuals are trafficked and exploited in other Member States, where their access to legal protection is obstructed by language, legal, or social hurdles (Urpí, 2023). This scenario exemplifies the paradox between the actualisation of freedom of movement as a protector of human rights and the necessity to ensure security and protection against criminal activities. The need for a thorough review stems from both legal inadequacies and the challenges of applying current policies in practice among open internal borders. Consequently, the matter necessitates a comprehensive examination, especially regarding

Suggested Citation

Article's History: Received: 11.03.2025 Revised: 22.05.2025 Accepted: 25.06.2025

Kamilova, B. (2025). The impact of freedom of movement in the European Union on the spread of human trafficking: Legal challenges and opportunities for improving countermeasures. *Social & Legal Studios*, 8(2), 309-323. doi: 10.32518/sals2.2025.309.

*Corresponding author

Copyright © The Author(s). This is an open access Article distributed under the terms of the Creative Commons Attribution License 4.0 (https://creativecommons.org/licenses/by/4.0/)

legal protection mechanisms, accountability structures, and international collaboration. It is crucial to examine both the regulatory and practical aspects of this issue to develop balanced, effective solutions that uphold the fundamental principles of the Union while improving the safeguarding of vulnerable individuals against trafficking and exploitation.

An examination of contemporary academic methodologies regarding the study of freedom of movement inside the EU indicates that the topic is meticulously analysed in connection with social rights, migration policy, and security issues, including human trafficking. N. Tietze (2025) examined the relationship between social rights and labor mobility within the EU citizenship regime, focusing on how the concept of social citizenship evolved during the 2000s and 2010s. By analysing three European Court of Justice (ECJ) judgments, the author explored the determination of worker status, the non-discrimination principle, and social entitlements granted or denied to plaintiffs. Researcher concluded that while the ECJ initially supported a social citizenship approach to labor mobility, it later dismantled it, reflecting a flexible, fragmented view of intra-European migrant workers' social citizenship aligned with changing labor market policies and economic goals. J. Ramji-Nogales and I.G. Lang (2020) examined the nexus between freedom of movement, migration, and state borders. They argued that, despite the formal openness of borders within the EU, significant asymmetries in access to rights and protections persist, increasing the risk of exploitation – especially for persons in precarious or border situations and for vulnerable groups. Similarly, A. Voivozeanu and J.-M. Lafleur (2023) introduced the concept of "welfare brokers" – actors who mediate between migrants and the social protection systems of EU Member States. These intermediaries may facilitate legal access to services, but can also create informal and potentially exploitative arrangements that may be used to control or abuse individuals.

Although D. Howarth and J. Schild (2021) focused on the creation of a fiscal union within the EU, their macroeconomic analysis highlights broader structural constraints and political-legal barriers to integration. They argued that limited fiscal solidarity and the lack of a harmonised approach to the redistribution of resources within the Union hinder effective policy coordination in areas such as the fight against cross-border crimes, including human trafficking. These insights can be extrapolated to the issue of fragmented protections for vulnerable individuals who move freely within the EU, underscoring the need for deeper institutional cooperation among Member States. D.E. Efthymiou (2022) challenged the justification for restrictions on EU immigrants' access to welfare rights, which are often based on the principle of reciprocity among member states. The author used a veil of ignorance device to argue that the current approach to reciprocity is flawed, suggesting that EU member states should adopt welfare policies that do not assume prior contributions, but instead consider what would be fair under conditions of uncertainty about migrants' contributions. The Article concluded that a fairer approach to reciprocity in welfare rights would require EU member states to adopt policies that account for the uncertainty of migrants' contributions and prevent member states from exploiting loopholes in the welfare system.

J. Rahnasto (2023) contended in a legal examination of genetic data that not all such data should be inherently classified as personal, given the varying degrees of identifiability and sensitivity. These findings are particularly pertinent to the legal management of data concerning vulnerable populations, such as trafficking victims, where the equilibrium between protection, identification, and data sensitivity is crucial within the framework of EU freedom of movement. F. Tammone (2024) examined the viability of Article 4 of the European Convention on Human Rights (1950) as a legal instrument to contest external migration policies that could enable trafficking. The author suggested innovative judicial methods for safeguarding victims using international legal frameworks. I. Rossoni and R. De Massol De Rebetz (2025) examined the influence of political and media discourse in shaping the archetypes of the "convenient criminal" and the "typical victim." These preconceptions, they contend, foster the rise of "anti-politics" that prioritises control above protection, ultimately marginalising genuine victims of human trafficking. Collectively, these studies underscored the imperative for a sophisticated legal and policy response to the unforeseen ramifications of freedom of movement inside the EU.

This study aimed to investigate the legislative deficiencies that enable the exploitation of freedom of movement inside the EU for human trafficking purposes. The objectives of the study were: to examine the impact of the principle of freedom of movement within the EU on the extent and dynamics of human trafficking, addressing both its beneficial and detrimental effects; to analyse the current EU legal framework for combating human trafficking, pinpointing significant gaps and deficiencies in enforcement and efficacy; and to suggest enhancements to legal mechanisms and international collaboration, striving to balance the safeguarding of fundamental rights – particularly freedom of movement – with the necessity for sufficient security and effective measures against transnational crime.

Materials and methods

The study utilised a multidisciplinary methodology, integrating a comparative legal approach with the examination of official statistical data. A comparative legal analysis was conducted to evaluate the legislative and law enforcement frameworks addressing human trafficking in France, the United Kingdom (UK), Italy, and the Baltic States. Special emphasis was placed on the parallels and differences in national strategies for the adoption and implementation of EU regulations. The primary legal sources analysed included: Charter of Fundamental Rights of the European Union (CFREU) (2000), Treaty establishing the European Community (2002), directives and regulations of the European Parliament and of the Council No. 2004/38/EC (2004), No. 2011/93/EU (2005), No. 2011/36/EU (2011), No. 2012/29/EU (2012), No. 2016/399 (2016), case law of the Court of Justice of the European Union (CJEU), including judgements in the cases No. C-2/74 (1974), No. C-415/93 (1995), No. C-384/93 (1995), No. C-145/09 (2010), No. C-34/09 (2011), No. C-333/13 (2014). Empirical data were drawn from the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) and related reports (Council of Europe, 2024). The case study method was used to provide an in-depth examination of landmark judgments of the European Court of Human Rights, including cases Case of Rantsev v. Cyprus and Russia (2010) and Commissioner General for Refugees and Stateless Persons v. Mostafa Lounani (2017), which illustrate

the application of international standards in protecting the rights of trafficking victims.

Special attention was paid to the legal developments following Brexit, particularly concerning the regulation of freedom of movement and anti-trafficking efforts. This analysis was conducted with reference to the Trade and Cooperation Agreement between the EU and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the Other Part (2021) and the Immigration and Social Security Co-ordination (EU Withdrawal) Act (2020). Specific issues examined included new restrictions on the mobility of EU citizens, changes to victim identification procedures, and emerging challenges in interstate information exchange and law enforcement cooperation.

Results

The freedom of movement inside the EU is firmly established in both core EU legislation and the case law of the CJEU. It includes the unrestricted movement of individuals, labourers, service providers, and entrepreneurs, constituting a fundamental element of the EU internal market. The principal legal foundation supporting this right is the Treaty on the Functioning of the European Union (TFEU) (2017). Article 21 Treaty confers upon every Union citizen the fundamental freedom to move and reside freely within the territories of the Member States. This provision underpins the formulation of secondary legislation and the interpretative jurisprudence of the CJEU, encompassing the conditions under which this right may be legally constrained. Significant emphasis is placed on the unrestricted mobility of workers, as stipulated in Article 45 Treaty. This Article forbids discrimination based on nationality for employment, compensation, and other working circumstances. The CJEU has generally construed this Article broadly. In the ruling of Judgment of the European Court of Justice in Case No. C-415/93 (1995), the Court determined that transfer regulations in professional football infringed upon the freedom of movement of workers by imposing unwarranted constraints on mobility between Member States.

Articles 49 and 56 TFEU enshrine the freedom of establishment and the right to supply services, respectively. These laws ensure that individuals and businesses possess the freedom to participate in economic activities in other Member States without unwarranted obstacles. According to the ECJ Decision No. Judgment of the European Court of Justice in Case No. C-2/74 (1974), Article 49 possesses immediate effect and can be asserted by people in national courts. The Judgment of the European Court of Justice in Case No. C-384/93 (1995) affirmed that Dutch regulations prohibiting brokers from cold calling perspective clients in other Member States violated the freedom to provide services, despite the invocation of national consumer protection objectives. The CFREU (2000), which acquired binding primary law status after the Treaty of Lisbon, supplements these treaty articles. Article 45 of the Charter asserts the entitlement of Union citizens to travel and reside freely inside the EU. It underscores the essential nature of freedom of movement and its inherent link to EU citizenship as a distinct legal category.

The case law of the CJEU has been significant in defining the extent and boundaries of this freedom. In the ruling of Judgment of the European Court of Justice in Case No. C-413/99 (2002), the Court determined that an EU citizen maintains the right of residence even without economic activity, as long as they have adequate finances and health insurance. This verdict affirmed the interpretation of EU citizenship as a source of rights independent of economic position. In the Judgment of the European Court of Justice in Case No. C-34/09 (2011), the Court elaborated on this principle, determining that a Member State could not undertake actions, such as expelling third-country national parents of minor EU citizens, that would inhibit the citizen's genuine enjoyment of their rights under EU law. These verdicts collectively demonstrate the progressive and broad interpretation of freedom of movement in EU law, confirming it as a fundamental value of Union membership and a guiding precept in the evolution of the EU's legal framework.

The legal foundation for freedom of movement inside the EU is multifaceted, comprising treaty provisions, fundamental rights, and complex judicial interpretations. This freedom is regarded not just as an economic entitlement but also as a personal right, reinforcing European integration and legal consistency among Member States. The implementation of freedom of movement within the EU is closely connected to the functioning of the Schengen Area, the core principles of the internal market, and the governance of labour mobility and migration trends. Despite variations in breadth and legal character, these features establish a cohesive framework enabling EU nationals to travel, work, and dwell freely within Member States devoid of internal borders.

The Schengen Area exemplifies a significant accomplishment of EU integration by eliminating internal border controls among member states. This advancement has markedly enhanced citizen mobility and fostered increased contact in tourism, commerce, and social domains. The elimination of internal border inspections has thus presented new security issues, especially with terrorism, transnational crime, and mass migration. In response, Member States have intermittently reintroduced temporary border controls, as authorised by Articles 25-30 of the Schengen Borders Code (Regulation of the European Parliament and the Council No. 2016/399, 2016). During the 2015 refugee crisis, nations including Germany, Austria, and Sweden reinstated internal controls, citing concerns regarding public order and internal security.

The exercise of freedom of movement is inherently connected to the four fundamental freedoms of the EU internal market, especially the free movement of individuals. This independence includes the abolition of physical boundaries as well as the eradication of administrative and legal obstacles (Tovias, 2024). Essential elements encompass the reciprocal acknowledgement of professional credentials, equitable access to the employment market, and streamlined residency registration processes. A notable example illustrating the judicial defence of these principles is the case Commission v. Luxembourg (2004), where the CJEU held that Luxembourg had infringed the freedom to provide services. The state had imposed disproportionately burdensome conditions for the recognition of foreign engineering qualifications, thereby obstructing the ability of professionals from other EU Member States to exercise their rights within its territory. These developments underscore that while freedom of movement remains a cornerstone of EU integration, its practical application continues to be shaped by evolving legal standards, national interests, and security considerations.

A further tangible expression of freedom of movement within the EU is the mobility of labour. The capacity to

pursue and get employment in any Member State fosters economic growth and improves employment prospects throughout the Union. For governments facing population decline or employment shortages, this mobility provides a means to occupy vacancies with individuals from other EU nations. However, such patterns of intra-EU migration can also produce conflicts in host nation labour markets. Before Brexit, the UK consistently expressed apprehensions regarding the effects of workforce migration from Central and Eastern Europe. These concerns influenced public sentiment and political backing for the UK's exit from the EU. The Judgment of the European Court of Justice in Case No. C-333/13 (2014), affirmed the authority of Member States to limit access to social assistance for economically inactive EU residents who do not meet the requirements for legitimate residence.

The ruling emphasised that the principle of freedom of movement does not absolutely encompass the entitlement to social assistance. Migration movements inside the EU are also heavily driven by economic differences between Member States. A significant problem is the "brain drain", in which experienced individuals from less economically developed nations, such as Bulgaria or Romania, migrate to more affluent Member States, notably Germany and the Netherlands. This mobility enhances integration and the efficient distribution of human capital, while it also intensifies regional disparities and imposes more strain on the labour markets and public services of both origin and destination nations. In reaction to these issues, the EU has implemented measures to improve coordination in employment and social protection. The establishment of the European Labour Authority is a step designed to enhance transparency, ensure adherence to EU labour legislation, and promote equity within the internal labour market (Cremers, 2020).

The execution of freedom of movement within the EU constitutes a complex procedure with legal, economic, and security dimensions. It advances the momentum of European integration while requiring a careful balance between individual rights and the legitimate regulatory interests of Member States. The freedom of movement inside the EU, while a fundamental principle of European integration, is not absolute. The TFEU (2017) and related secondary legislation impose substantial restrictions on this right, especially regarding national security, public order, or the protection of public health (Bruzelius, 2018). These exceptions are narrowly construed and may only be applied based on valid, justified, and proportionate assessments, which are subject to judicial review at both national and European levels. The legal basis for these restrictions is delineated in Article 45(3) TFEU concerning the freedom of movement of workers, and specifically in Article 27 of Directive of the European Parliament and of the Council No. 2004/38/EC (2004), which regulates the rights of Union citizens and their family members to move and reside freely within Member States. Member States may restrict entry or residency rights alone if the individual poses a genuine, imminent, and sufficiently substantial harm to one of society's core interests. Such a threat must be authentic and current, not hypothetical or just based on past actions.

The CJEU has frequently underlined the necessity for a stringent and restrictive interpretation of the principles of "public order" and "national security". In case Yvonne van Duyn v Home Office" (1974), the Court affirmed a limitation predicated on ideological association, specifically the applicant's passive membership in the Church of Scientology, acknowledging that a Member State may intervene if it can substantiate that the organisation's activities contravene public order. Subsequently, the Court clarified its stance in further case law. In case Regina v. Bouchereau (1977), it was determined that prior criminal convictions alone do not warrant expulsion unless there is demonstrable proof of a present and substantial threat to public order. These cases demonstrate that although Member States possess a degree of latitude in protecting public interests, the application of this discretion is limited by the fundamental principles of EU law, including proportionality, individual assessment, and judicial scrutiny.

Public health measures are a significant category of possible limitations on freedom of movement inside the EU. Such measures may encompass quarantine mandates, obligatory medical assessments, or even provisional entrance prohibitions, but solely in instances of significant hazards – especially during epidemics of infectious diseases (Hu *et al.,* 2021). Throughout the COVID-19 pandemic, some EU Member States enacted limitations on migration and border crossings, inciting legal discourse concerning the proportionality and constitutionality of these actions. Although these activities were executed in accordance with Article 29 of Directive of the European Parliament and of the Council No. 2004/38/EC (2004), they were nonetheless mandated to adhere to the criteria of necessity, minimal interference, and non-discrimination.

In its ruling in Judgment of the European Court of Justice in Case No. C-808/18 (2020), the CJEU reiterated that measures purportedly justified by public security or health cannot serve as a pretext for systematic or disproportionate infringement of the rights of Union citizens. This judgement affirmed the Court's resolute position that any deviation from core EU freedoms must be rare, substantiated by evidence, and reasonable. Legal instruments for enforcing limits encompass expulsion orders and re-entry prohibitions. Nonetheless, these measures must adhere to the procedural safeguards delineated in Directive No. 2004/38/EC of the EPC (2004). These protections encompass the right to appeal, written notification, and a tailored evaluation of the individual's circumstances, including duration of residence, degree of integration, and familial connections. In Judgment of the European Court of Justice in Case No. C-145/09 (2010), the Court determined that restrictions on the right to free movement are permissible, even in instances of significant criminal conduct such as drug trafficking, only if the individual presents an immediate and tangible threat to public order. Furthermore, any decision must be evaluated in accordance with the idea of proportionality, especially with its effects on an individual's private and family life.

Consequently, limitations on freedom of movement under EU law are uncommon and may only be employed as a final recourse. They must be based on explicitly stated legal principles, undergo stringent judicial examination, and consistently adhere to fundamental rights, especially the respect for human dignity, private life, and family life, as articulated in the CFREU (2000). The UK's exit from the EU (Brexit) has significantly affected the right to freedom of movement, which was formerly assured to both UK citizens living in the EU and EU people living in the UK. Brexit has profoundly impacted the legal status of individuals, border control procedures, and migration dynamics, with extensive consequences for the combat against human trafficking (Sredanovic, 2020).

The legal right to free movement between the UK and the EU officially ended at the conclusion of the transition period on 31 December 2020. A points-based immigration system was established, uniformly applicable to all foreign nationals, regardless of nationality. As a result, EU nationals no longer have an automatic right to enter, reside, or work in the UK. The only exception applies to individuals who successfully applied under the EU Settlement Scheme, as outlined in the Withdrawal Agreement – specifically Articles 15 to 18 – which ensures the retention of certain rights for EU nationals who were lawfully residing in the UK before the end of the transition period (Portes & Springford, 2023).

The alteration of the freedom of movement framework has resulted in stricter border controls. The UK has exited the Schengen Information System (SIS) and ceased participation in the Common European Entry/Exit System. As a result, UK border authorities now possess complete discretion in regulating entry into the Kingdom, including the authority to deny access to EU residents who fail to meet the new immigration criteria (Fürst, 2023). The Immigration and Social Security Co-ordination (EU Withdrawal) Act (2020) establishes the legal basis for the new border control system, consolidating the UK's immigration strategy following Brexit. Furthermore, the government has instituted more stringent entrance regulations, which opponents argue have created further obstacles for visitors, students, and seasonal workers from the EU. These developments indicate a substantial shift from prior EU-UK mobility agreements and have repercussions for the identification, prevention, and prosecution of human trafficking, especially due to the relaxation of information-sharing frameworks and cross-border cooperation mechanisms that were previously established.

The ramifications of Brexit in the realm of migration have been complex. The imposition of mobility restrictions has resulted in a significant decrease in the influx of EU citizens seeking employment in the UK. This reduction has notably impacted sectors traditionally dependent on migrant workers, including agriculture, healthcare, and services. The UK Office for National Statistics (ONS) reported a notable decline in worker migration from Eastern Europe from 2021 to 2023, leading to severe manpower shortages in various critical sectors (Portes, 2025). The enhancement of border restrictions and the cessation of access to European migrant protection systems post-Brexit have markedly heightened the susceptibility of some demographics, particularly migrant workers pursuing employment in the UK. The revised immigration regulations have rendered it more challenging for EU residents, especially those from Eastern Europe, to lawfully enter and work in the UK, resulting in an increase in unreported employment, labour exploitation, and restricted access to social safeguards. The lack of organised collaboration with EU entities has diminished the ability to address labour rights infringements and has established obstacles to lodging complaints or obtaining legal support, thereby heightening the danger of discrimination and exploitation.

Concerning the battle against human trafficking, Brexit has posed supplementary hazards. The dissolution of the joint EU legal framework has obstructed cross-border collaboration in this domain. The UK has forfeited direct access to essential tools like Europol and the Rapid Alert System, which formerly facilitated the swift discovery and prosecution of transnational trafficking networks (Landman *et al.,* 2024). The UK maintains involvement in certain security cooperation frameworks established by the Trade and Cooperation Agreement between the EU, the European Atomic Energy Community, and the UK (2021); however, their efficacy is constrained relative to the advantages provided by complete EU membership. The introduction of new entry and residency laws has heightened the vulnerability of specific groups, including EU nationals who were unable to apply for status regularisation or had adequate evidence of legitimate presence. This has increased the likelihood of irregular migration and exploitation, both of which are significant contributors to human trafficking. In this context, international organisations, such as GRETA (Council of Europe, 2024), have urged UK authorities to enhance the safeguarding of victims' rights and to refine procedures for identification, support, and legal recourse.

Brexit has profoundly transformed the UK's stance on freedom of movement, transitioning from a participant in an integrated European legal framework to an independent state with complete control over its immigration policy. The ramifications of this transition are unclear: although the UK has attained enhanced authority over its borders and migration policies, it has concurrently become more vulnerable to challenges, including heightened risks of human rights infringements and increased difficulties in combating transnational crime, such as human trafficking.

The combat against human trafficking continues to be a fundamental objective within the EU's legal and regulatory framework. This dedication is shown through a thorough array of regulatory measures designed to establish a cohesive legal framework for the prevention of trafficking, the prosecution of perpetrators, and the safeguarding of victims' rights. The core of this framework is Directive of the European Parliament and of the Council No. 2011/36/EU (2011), which superseded the previous Framework Decision and established a rights-based methodology for addressing human trafficking. Directive of the European Parliament and of the Council No. 2011/36/EU (2011) offers a standardised definition of trafficking, which includes sexual and labour exploitation, forced begging, organ removal, and coerced employment. The Directive emphasises the protection of vulnerable populations, particularly children, and requires Member States to ensure: efficient criminal prosecution (Articles 2-5), the establishment of national coordination mechanisms (Article 19), the availability of specialised support services (Article 11), and the development of reintegration programs for victims. Article 8 is significant since it allows for the non-prosecution of victims for offences they were compelled to commit as a result of their exploitation. This principle aligns with the reasoning of the landmark Judgment of the European Court of Humar Rights in Case No. 25965/04 (2010) rendered by the European Court of Human Rights. Although not a ruling from the CJEU, Rantsev established that States had a positive obligation to proactively identify, protect, and help victims of trafficking.

The Directive's implementation is bolstered by strategic initiatives, particularly the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions (2021), released by the European Commission. This strategy prioritises four key objectives: reducing demand for exploitative services, destroying criminal networks, protecting and empowering victims, and strengthening international cooperation. The policy underscores the

imperative for digital interventions to combat rising forms of exploitation, including online trafficking and the grooming of minors via social media platforms. The policy is implemented through the European Platform for the Coordination of Interstate Cooperation, alongside the increased involvement of Europol in international investigations.

The Joint Action Day operation sought to discover workforce exploitation within the construction and agriculture sectors. In addition to the major legislative frameworks, various other important EU legal instruments contribute to the fight against human trafficking. Directive No. 2004/81/EC (2004) mandates the issuance of temporary residence permits to third-country nationals who are victims of trafficking and cooperate with law enforcement authorities. This Directive guarantees access to medical care, psychological support, and legal assistance within a Member State, and it includes a period for recuperation and contemplation during which the victim may opt to cooperate with the authorities. The justification for this victim-centered approach was affirmed in the CJEU's judgment in case Commissioner General for Refugees and Stateless Persons v. Mostafa Lounani (2017), in which the Court emphasised the importance of an individualised assessment of each victim in determining their right to residence. This ruling emphasises the imperative of treating trafficking victims with dignity and in alignment with their specific situations.

Directive No. 2011/93/EU (2011) is significantly pertinent to child protection. The primary aim is to protect minors from sexual offences, while also addressing child trafficking laws, with a focus on protection, investigation, and prosecution. Directive No. 2012/29/EU (2012) provides enhanced protection by setting minimum standards for the rights, assistance, and protecting of crime victims. This Directive ensures that victims of trafficking are informed of their rights and legal processes, provided with assistance and secure accommodation, and protected from re-traumatisation during criminal investigations. The EU's legal framework for addressing human trafficking is based on a comprehensive approach that integrates criminal prosecution, victim protection, prevention, and international collaboration. These instruments are perpetually advancing to tackle developing difficulties, such as the digital transformation of crime, heightened migratory patterns, and the escalating necessity for cross-border coordination. The institutional framework underpinning the EU's anti-trafficking initiatives comprises multiple essential entities collaborating closely.

Europol, the body tasked with assisting Member States' law enforcement in the fight against severe and organised crime, plays a crucial role. Europol enables information interchange, assists in collaborative operations, and offers strategic and operational analysis. During Joint Action Days, Europol orchestrates focused efforts to identify trafficking victims around the EU (Maftei, 2023). In conjunction with Europol, Eurojust is crucial in coordinating the investigation and prosecution of trafficking offences on a transnational scale. Eurojust facilitates the formation of Joint Investigation Teams (JITs), uniting prosecutors and law enforcement personnel from several Member States. The CIA has orchestrated multiple extensive operations to eliminate trafficking networks engaged in sexual exploitation and forced labour. The European Border and Coast Guard Agency (Frontex) is another crucial agency. Frontex aids anti-trafficking initiatives by bolstering external border management, aiding in the identification of trafficking victims, and enabling evidence collection. Moreover, Frontex provides training programs for border guards, emphasising the identification of trafficking signs and the safeguarding of victims throughout border processes.

The EU Anti-Trafficking Coordinator oversees the strategic coordination of anti-trafficking efforts inside the EU. The primary duty of this role is to facilitate collaboration among EU institutions, Member States, and international partners. The coordinator is responsible for developing strategic policy documents, specifically the European Union Strategies on Combatting Trafficking in Human Beings, managing their implementation, and promoting the sharing of best practices across the Union (Nordquist, 2024). The Council of Europe Convention on Action against Trafficking in Human Beings (2005) is an essential legislative tool for international collaboration. This Convention has laid the foundation for the development of European standards on victim protection, the criminalisation of all forms of human trafficking, and the effective prosecution of offenders. Unlike many other international treaties, the Convention adopts a victim-centered approach and establishes a distinct monitoring structure. GRETA, the Group of Experts on Action against Trafficking in Human Beings, oversees compliance with the Convention. GRETA conducts systematic evaluations of State Parties' compliance with their obligations and offers recommendations to improve national legislation and policies. Recent studies indicate that GRETA has emphasised the necessity of improving access to compensation procedures for trafficking victims in several European nations (Novika *et al.,* 2020).

The EU actively collaborates with foreign organisations, including the United Nations Office on Drugs and Crime (UNODC) and the foreign Organisation for Migration (IOM). Collaborative efforts encompass the formulation of methodological standards, training programs for law enforcement personnel and judiciary members, and the creation of victim identification protocols, especially for refugees and migrants. The EU collaborates with Office to support worldwide initiatives aimed at improving legislative frameworks and bolstering transnational cooperation in combating human trafficking.

Cooperation with third countries represents another essential dimension of the EU's external anti-trafficking strategy. Through joint technical assistance programmes, such as the EU Action against Trafficking in Human Beings in South and Southeast Asia, the Union supports the capacity-building of local law enforcement and judicial institutions (McGregor *et al.,* 2025). These efforts are often complemented by bilateral agreements and regional dialogues on trafficking prevention, information exchange, and the repatriation of victims, conducted with full respect for victims' rights and dignity. In sum, the EU's institutional architecture for combatting trafficking in human beings is multi-level and comprehensive, encompassing both internal coordination among EU agencies and extensive international engagement. This structure enables the Union to adopt a holistic, cross-sectoral approach to tackling trafficking, addressing not only prosecution but also prevention, protection, and international collaboration.

The strategies delineated in the EU's external action plan to combat human trafficking, especially its collaboration with third countries, seem to be efficacious in tackling the intricate issues associated with human trafficking. The EU is enhancing the capabilities of local law enforcement and

judicial authorities through collaborative technical assistance initiatives, such as the EU Action to Combat Trafficking in Human Beings in South and Southeast Asia, thereby increasing these nations' efficacy in addressing human trafficking. These initiatives, backed by bilateral agreements and regional discussions on preventing human trafficking, contribute to improving information sharing and victim repatriation procedures. In addition, the EU's multi-level institutional structure, which combines internal coordination between EU institutions with broad international participation, facilitates the implementation of a comprehensive cross-sectoral strategy. This strategy focuses not only on prosecution but also on prevention, protection, and international cooperation, thereby addressing the problem of human trafficking from all angles. Taking into account the rights and dignity of victims in these approaches enhances their effectiveness, ensuring comprehensive measures to address a multifaceted global problem.

In France, the combat against human trafficking is anchored on a comprehensive legislative framework, particularly the Penal Code of France (2025) and the Code of Entry and Residence of Foreigners and the Right to Asylum (2025). Articles 225-4-1 et seq. of the Penal Code explicitly criminalise diverse forms of human trafficking, encompassing exploitation, forced work, and sexual exploitation, and stipulate stringent punishments upon conviction. The Code on Entry and Stay delineates particular safeguards for international trafficking victims, including the potential to acquire a residence permit dependent on their collaboration with investigative and prosecuting entities. France has established a comprehensive system for identifying and assisting victims, comprising cooperation between official entities and non-governmental organisations (NGOs). Non-governmental organisations frequently serve as initial responders in suspected trafficking incidents and play a crucial role in offering interim housing, psychological support, legal assistance, and safeguarding against forced repatriation, which may subject victims to re-exploitation. Special emphasis is placed on high-risk populations, particularly migrants, unaccompanied adolescents, and women vulnerable to sexual or labour exploitation (Sabaj-Sidur, 2019). France's geographical location, providing direct access to the Atlantic Ocean and the English Channel, renders it both a transit and destination nation for trafficking victims. Although numerous persons want to utilise French territory as a launchpad for access to the UK or other European nations, a considerable proportion are subjected to exploitation within France itself.

In the wake of the United Kingdom's exit from the EU (Brexit), its national migration policy has experienced significant alterations, which have indirectly impacted its anti-trafficking frameworks. The withdrawal from EU-level information exchange platforms and the facilitation of free movement has led to increased border controls and the implementation of a new points-based immigration system aimed at prioritising the UK's economic interests. This approach has restricted legal avenues for admission, especially for low-skilled migrants, hence unintentionally heightening the susceptibility of specific groups to recruitment by criminal organisations (Landman *et al.,* 2024). The National Referral Mechanism (NRM) serves as the primary institutional framework for the identification and safeguarding of trafficking victims in the UK. The evaluation process consists of two stages: the initial phase ascertains whether there are "reasonable grounds" to suspect that an individual is a trafficking victim, followed by a definitive determination confirming the victim's status. The NRM provides access to several protection measures, including medical assistance, legal support, and the opportunity to acquire a resident permit. Nonetheless, the NRM has encountered criticism due to its protracted procedures, insufficient knowledge among possible victims, and discrepancies in execution, which have diminished its efficacy in victim identification and assistance. Post-Brexit border reforms have produced a dual effect: enhanced border security has complicated human smuggling, yet it has concurrently exacerbated the marginalisation of vulnerable populations, who may now turn to irregular and perilous migration routes, thereby elevating the risk of exploitation and trafficking.

Italy, owing to its strategic geographical position in the Mediterranean, continues to serve as a principal entrance point for irregular migrants into Europe. The connection between irregular migration and human trafficking in Italy is clear, since a substantial number of individuals coming by sea are at increased risk of being exploited by criminal organisations for forced labour or sexual exploitation (Punzo & Scaglione, 2024). One of Italy's most urgent challenges in this area is the prompt identification of trafficking victims among asylum seekers. A multitude of victims refrain from revealing their exploitation experiences owing to apprehension of retaliation, scepticism towards authorities, or ongoing coercion by traffickers. The overcrowding of reception centres and the scarcity of trained workers exacerbate these challenges, so restricting the ability for efficient screening and victim support. Notwithstanding these challenges, Italy has established an extensive protection and reintegration framework for trafficking victims. Initiatives encompass access to temporary housing in specialist shelters, medical and psychological care, vocational training, and employment aid programs. Victims who collaborate with law enforcement may receive a residence permit, facilitating social integration or, when applicable, safe voluntary repatriation.

The Baltic nations, namely Lithuania, Latvia, and Estonia, predominantly serve as countries of origin for victims of human trafficking. Citizens of these countries – especially women and children – are frequently subjected to forced labour, sexual exploitation, and trafficking for the purpose of begging, predominantly within Western European states. In recent years (2021-2025), the role of the Baltic States within the broader EU trafficking landscape has evolved. While they continue to function mainly as countries of origin, there is increasing evidence of their involvement as transit and even destination countries, signalling a shift in their position within intra-European trafficking dynamics. Latvia has actively developed its legislation regarding the fight against human trafficking, particularly through the adoption of new legal frameworks and alignment with European standards. The Penal Code of Latvia (2004) includes provisions for human trafficking (Articles 154-1 and 154-2), with a maximum prison sentence of up to 15 years. However, these provisions are sometimes accompanied by suspended sentences, raising concerns about the effectiveness of punishment. In 2016, there were 11 criminal cases initiated under Article 154-1, four of which resulted in suspended sentences without real imprisonment. This highlights the need for improvements in judicial practices and stronger accountability for such crimes. In 2022, the Latvian government initiated the development of a new action plan to enhance the fight against human

trafficking (Group of Experts on Action against Trafficking in Human Beings, 2022). This plan includes expanding training for front-line workers, developing new tools for identifying victims, and strengthening inter-agency cooperation. It also includes the implementation of a European directive that criminalises knowingly using services provided by victims of human trafficking, with stricter penalties, including up to ten years of imprisonment in severe cases. These measures aim to increase the effectiveness of the fight against human trafficking and provide better protection for victims.

Estonia defines human trafficking as a serious crime, with penalties ranging from one to seven years in prison. However, unlike Latvia, Estonia does not have a dedicated law specifically addressing human trafficking. This absence of specialised legislation may complicate effective action against the issue, as a lack of clear legal definitions and procedures can hinder investigations and judicial proceedings. In 2021, the Estonian government adopted the Agreement on Violence Prevention for the Period Until 2025 (2021) which includes a section dedicated to human trafficking. This agreement provides a comprehensive approach to combating human trafficking, covering prevention, victim identification, assistance, and prosecution of perpetrators. However, the absence of a dedicated law may limit the full implementation of these measures, reducing their effectiveness.

Lithuania possesses a robust legislative framework for addressing human trafficking. The Penal Code of Lithuania (2000) stipulates penalties for human trafficking, with a maximum incarceration period of 12 years. The Law on Assistance to Victims of Crime (2021) established a support system for victims of crime, including trafficking victims. This legislation guarantees that victims receive psychiatric, medical, legal, and other essential support services. Lithuania incorporates a "reflection period" provision for foreign nationals who have fallen victim to human trafficking. This duration permits victims to remain in the nation for 30 days to determine whether to collaborate with law enforcement. This method facilitates improved identification and safeguarding of victims while augmenting the efficacy of investigations. Consequently, the Baltic nations exhibit varying strategies in addressing human trafficking. Latvia and Lithuania have established legislative frameworks and specialised methods to tackle this issue, whereas Estonia, despite its active involvement, lacks a specific law addressing human trafficking.

A comparative analysis of the anti-trafficking frameworks in France, the UK, and Italy reveals both commonalities and distinctive features, predominantly shaped by each country's legislative framework, migration policy, and institutional arrangements. All three nations uniformly classify human trafficking as a criminal offence within their legal frameworks. Each nation has enacted specific laws that criminalise certain types of trafficking and specify corresponding penalties. A common feature is the victim-centered approach adopted in legal systems and practices: in France, the UK, and Italy, victims who cooperate with law enforcement are granted protection, which includes medical assistance, legal support, and the possibility of obtaining residence permits. However, considerable inconsistencies remain in the implementation of these procedures. France emphasises the cooperation between governmental and non-governmental organisations, particularly in the identification and protection of at-risk groups, including adolescents and migrants.

The National Referral Mechanism (NRM) in the UK functions as the principal framework for the formal acknowledgement of trafficking victims. Although it offers access to several support services, it has faced criticism for its protracted procedures and bureaucratic delays, which may diminish its efficacy. Italy, in contrast, has its most pressing difficulty in the prompt identification of victims, particularly among migrants coming by sea; yet, it has established one of the EU's most extensive reintegration programs, providing long-term support to acknowledged victims. France exhibits a significant degree of conformity with European standards, particularly with EU and Council of Europe instruments, including the Council of Europe Convention on Action against Trafficking in Human Beings (2005) and Directive No. 2011/36/EU (2011). Italy has incorporated the fundamental elements of EU law into its national laws; nonetheless, the effective implementation is sometimes obstructed by the excessive demands on migration services and limited resources.

The UK, post-Brexit, is no longer formally required to enact EU directives. Nonetheless, it upholds stringent anti-trafficking standards via its domestic laws and international obligations, persistently engaging in global cooperative frameworks like as those orchestrated by GRETA and the United Nations. The comparison research reveals multiple systemic difficulties common to all three jurisdictions. This encompasses: challenges in the prompt identification of victims, especially among migrants and asylum seekers; inadequate awareness among victims about their rights and available assistance; insufficient collaboration among law enforcement, social services, and non-governmental organisations; and protracted administrative processes concerning protection and status determination, which frequently intensify victims' vulnerability. In conclusion, whereas France, the UK, and Italy have established unique national frameworks for addressing human trafficking, they encounter same structural constraints. Resolving these difficulties necessitates refined identification systems, expedited administrative procedures, and strengthened inter-agency collaboration at both national and international levels.

A comparative analysis of the strategies employed by France, the UK, Italy, and the Baltic States in addressing human trafficking uncovers varied models of adaptation to European standards, influenced by each nation's legal tradition, political context, and administrative framework. In France, a nation rooted in the continental legal tradition, the stipulations of Directive No. 2011/36/EU (2011) were integrated via amendments to the Penal Code of France (2025) and the creation of an inter-agency coordination body, the Interministerial Mission for the Protection of Women against Violence and the Fight against Trafficking in Human Beings (MIPROF). France's model prioritises inter-agency collaboration, victim safeguarding, and public awareness initiatives, demonstrating a preventive and protective approach. In contrast, the UK formulated an own anti-trafficking plan before its exit from the EU. The enactment of the Modern Slavery Act (2015) constituted a pivotal legislative achievement and is acknowledged as one of the most extensive regulatory frameworks in this domain.

The UK's strategy emphasises the prosecution of traffickers, the implementation of a formalised National Referral Mechanism (NRM) for victim identification, and substantial partnership with non-governmental organisations (NGOs).

Despite the UK's retention of certain European norms following Brexit, its enhanced authority over migration policy has led to stricter border restrictions, which, according to expert evaluations, may restrict access to protective measures for prospective trafficking victims. Italy, located on significant Mediterranean migration pathways, implements a humanitarian strategy based on the Victims' Rights Directive (Directive of the European Parliament and of the Council No. 2012/29/EU, 2012). Italian laws provide an extensive array of support measures, including temporary residence permits, social protection programs, and reintegration services, available even in the absence of victims' cooperation with law enforcement agencies. Notwithstanding this rights-based framework, Italy's anti-trafficking system has faced criticism for bureaucratic inefficiency and restricted accessibility of victim support programs, especially in overwhelmed migration hotspots.

In the Baltic States anti-trafficking initiatives have predominantly emphasised prevention over post-exploitation rehabilitation, indicative of their historical role as nations of origin. A significant portion of the operational tasks involved in identifying and assisting victims is conducted by international organisations and NGOs, as governmental systems often experience constraints in funding and institutional capacity. Prevention measures are generally focused on public information campaigns and anti-recruitment initiatives. Nevertheless, as migratory flows escalate, the Baltic nations are gradually evolving into transit and even destination countries, requiring a realignment of national policy and the enhancement of internal protection infrastructure. Despite all analysed countries legally adhering to European norms, the processes of implementation vary considerably. France exemplifies a centralised, inter-agency coordination model; the UK adopts a criminal-legal strategy marked by significant NGO involvement; Italy adheres to a humanitarian model with a strong social assistance component; the Baltic States embody a minimalist, externally supported model, dependent on international partnerships and targeted prevention efforts. These disparities highlight the necessity of accounting for national contexts when developing a unified and coordinated EU policy to combat human trafficking. An effective Union-wide strategy must possess adequate flexibility to integrate various administrative systems while guaranteeing uniform minimum standards of protection, prosecution, and prevention among all Member States.

Criminal networks exploit the spheres of freedom, security, and justice to legitimise the global trafficking of victims (Khamzin *et al.*, 2022). They often employ lawful mobility options, such as temporary residence or work permits, and frequently rely on fraudulent documentation or identity theft to enable movement with diminished chance of detection. Upon arrival, they faced labour or sexual exploitation. For instance, when a victim travels from Lithuania through Poland to a destination in Western Europe, law enforcement agencies in each jurisdiction may lack timely intelligence or legal authority to intervene effectively, especially in the absence of clear legal infractions during the transit. The Baltic States have always been regarded as source countries for trafficking victims. Recent trends indicate that they are progressively transforming into transit and, in certain cases, destination countries, thereby complicating their national anti-trafficking strategies. While freedom of movement is not a direct catalyst for trafficking, it fosters an environment that allows trafficking networks to modify their strategies within a borderless Europe. This requires augmented surveillance systems, strengthened cross-border collaboration, and more efficient early detection measures for possible victims.

To comprehend the influence of freedom of movement on trafficking dynamics, it is beneficial to compare the national strategies of specific EU Member States. Table 1 presents a comparative analysis of the legislative frameworks, victim identification and protection methods, and the special issues faced in France, the UK, and Italy. This comparative analysis elucidates the various ways in which freedom of movement, among other legal and policy considerations, has impacted the efficacy of national anti-trafficking measures.

Table 1. Comparison of approaches of France, Great Britain and Italy to combating Human Trafficking

Country	Legislative regulation	Victim identification	Access to protection	Impact of freedom of movement	Specific problems
France	High compliance with EU standards	Well developed through partnership with Non-Governmental Organisation (NGO)	Guaranteed	Increased migration through open borders has made it more difficult to identify victims	Shelter overcrowding
Great Britain	Separate national law after Brexit	Complex two-step procedure (NRM)	Guaranteed, but the procedure was long	Increased controls after Brexit have reduced migrant mobility	Delays in recognising victim status
Italy	Implementation of European standards	Complicated among migrants and asylum seekers	Guaranteed	Freedom of movement facilitated the transit of victims through the country	Lack of resources for reintegration

Source: compiled by the author

The comparative analysis indicates that France, the UK, and Italy exhibit a collective dedication to upholding elevated standards of victim protection regarding human trafficking; yet, each nation encounters unique practical obstacles in execution. In France, the victim identification system is comparatively advanced and bolstered by inter-agency collaboration procedures. The rising influx of migrants has significantly strained social services, impacting the speed and quality of care provided to victims. The UK, subsequent to its exit from the EU, has enhanced border control protocols. Nonetheless, it has ongoing difficulties due to procedural delays and backlogs within the National Referral Mechanism (NRM).

The complications arise chiefly from the intricate nature of the evaluation and identification procedure, which frequently delays victims' access to protection. Italy, as both a transit and destination nation for migrants, continues to

encounter a significant deficiency in resources for the reintegration of victims. Successful reintegration necessitates significant investment in housing, healthcare, legal assistance, vocational training, and employment support. The restricted financial and institutional capabilities of both governmental entities and non-governmental organisations (NGOs) significantly impede the execution of these vital programs. This, consequently, impedes initiatives to assist in the rehabilitation and sustained recovery of trafficking victims. These country disparities highlight the necessity for further harmonisation of victim protection systems throughout Europe and more vigorous interstate collaboration in tackling the intricate, transnational aspects of human trafficking.

To better understand the systemic challenges confronting individual Member States, it is useful to identify the recurring barriers in victim protection. In France, the early identification of victims of violence and abuse remains a major challenge, with studies indicating that only 20-25% of victims are identified at the initial point of contact with medical, social, or law enforcement services (INSEE, 2024). Protection procedures, including emergency protection orders and long-term support mechanisms, often face delays, with an average processing time of 4 to 8 weeks depending on the jurisdiction. Resource limitations significantly affect victim assistance: according to the report by the French National Consultative Commission on Human Rights (2022), nearly 40% of victim support organisations report insufficient funding and staff shortages. Furthermore, coordination between judicial, medical, and social services remains fragmented, leading to repeated interviews and case mismanagement. As a result, secondary victimisation affects a significant proportion of individuals – over 30% of victims report feeling re-traumatised by the justice system itself (French National Consultative Commission on Human Rights, 2022).

In the UK, identifying victims early remains a significant challenge – research has found that police data systems often lack basic victim details, hindering timely detection and referral. Once cases are flagged, protection procedures can be slow: for example, average times to charge or summons in sexual offences reached 423 days for rape and 277 days for broader sexual crimes in the year ending March 2024 (Crime outcomes…, 2025). Resources for victim support are stretched – 43% of domestic abuse survivors in England and Wales reported not reporting incidents due to lack of trust or confidence in authorities, citing overstretched services and insufficient legal aid. Coordination between agencies is also weak: major inquiries such as in Rotherham, Telford, and Rochdale have repeatedly exposed fragmented inter-agency communication, cultural barriers, and data gaps. As a direct consequence, secondary victimisation is widespread – Victim Support and academic studies highlight that insensitive interactions with police, courts, and other agencies often exacerbate trauma, with victims citing repeated interviews, disbelief, and poor risk assessments.

In Italy, the early identification of victims – especially trafficking, domestic violence, and child abuse – remains a significant challenge due to strict trafficker control, victims' fear or lack of awareness, and fragmented referral systems. Protection procedures, including restraining orders and pre-trial hearings, can take weeks or months before implementation, with specialised "special evidence pre-trial hearings" rarely invoked without NGO intervention. Resources are insufficient: although around 486 shelters operate nationwide (with ~1,045 beds), anti-violence centres and support networks are unevenly distributed and lack comprehensive services – often missing legal, psychological, and economic aid (VICToRIIA, 2021). Coordination between authorities (judiciary, social, health, law enforcement) is weak and inconsistent across regions, lacking a unified national protocol and systematic victim referrals. Consequently, secondary victimisation remains widespread: victims report repeated interviews, re-traumatising cross-examinations, and disrespectful court treatment – often blamed for their situation or inadequately protected under procedural safeguards.

Thus, France, the UK, and Italy have systemic deficiencies in victim protection, characterised by persistent issues in early identification, procedural delays, inadequate resources, and disjointed inter-agency collaboration. These institutional deficiencies hinder access to prompt and effective protection and also lead to elevated rates of secondary victimisation, wherein victims are re-traumatised by the systems designed to assist them. Notwithstanding national disparities, a consistent pattern emerges: in the absence of comprehensive protocols, continuous funding, and trauma-informed practices, victim protection remains insufficient across these Member States.

Discussion

The examination of the effects of freedom of movement inside the EU on the proliferation of human trafficking has uncovered significant patterns, national vulnerabilities, and systemic legal and practical obstacles. The freedom to free movement offers considerable advantages for EU residents; nonetheless, the findings indicate that it concurrently generates structural vulnerabilities that are increasingly exploited by organised trafficking networks. Open borders facilitate the unimpeded transnational movement of victims, complicating the identification of at-risk individuals, inter-state coordination, and the provision of prompt protection and support (Ismayilov *et al.*, 2024).

The comparative analysis of France, the UK, and Italy illustrates that these countries encounter the same core challenges, albeit with varying intensity: difficulties in early victim identification, prolonged protection procedures, inadequate resources, limited inter-agency coordination, and risks of secondary victimisation. Among the three, Italy – a principal transit country for migratory flows – exhibits the highest levels of concern regarding resource shortages (notably uneven service distribution and inadequate shelter capacity) and victim identification difficulties due to trafficker control and fragmented referral systems. These findings align with the research of S.R. Bell and R.W. Frank (2022), who argue that geographic proximity to migration routes and Schengen liberalisation increase exposure to trafficking risks, particularly in the southern regions of Europe. The case of the UK, which introduced stricter border controls post-Brexit, presents a contrasting yet instructive example.

Despite a reduction in cross-border migration volumes, the complexity and length of protection procedures under the National Referral Mechanism (NRM) remain a substantial issue, with average times to charge reaching 423 days for rape cases. This outcome supports the claims of D. Hernandez and A. Rudolph (2015), who contend that restrictive migration policies alone do not reduce trafficking in human beings unless supported by robust identification and support frameworks. A particularly sensitive issue in this context is

the balance between the right to freedom of movement and the need for restriction in the interest of victim protection. S.V. Prodyvus (2023) notes that international human rights standards permit the legitimate restriction of freedom of movement when such limitations are necessary to safeguard individuals at risk, especially victims of trafficking. Although the EU remains reluctant to impose such restrictions for political reasons, the study suggests that targeted measures, such as enhanced monitoring of migration flows, may be both justified and consistent with the European Convention on Human Rights (1950). Relevant in this discussion are the insights of S. Nordquist (2023), who demonstrated that state welfare policies directly influence the level of vulnerability to trafficking. Countries with more comprehensive victim support systems tend to report lower rates of secondary victimisation. This is reflected in the current study: in France, where NGOs play an integral role in victim assistance, the rate of secondary victimisation is approximately 30%, compared to over 30% in the UK and significantly higher in Italy, where institutional support remains fragmented and under-resourced. Some of the findings, however, challenge prevailing scholarly claims.

For instance, A. Sojka *et al.* (2023) argue that EU citizens are often unwilling to extend the right to freedom of movement to third-country nationals, potentially deepening structural inequalities. The present research suggests that the greater obstacle lies not in public sentiment, but rather in the institutional inability of states to promptly identify and protect vulnerable migrant groups, regardless of their citizenship status. Further insight is offered by F. Tammone (2024), who explores the application of Article 4 of the ECHR (1950) as a legal avenue to protect victims of trafficking. He argues for the strengthened judicial enforcement of victims' rights through international legal mechanisms, a direction this study affirms as essential to enhancing European anti-trafficking systems. Likewise, V. Turanjanin and J. Stanisavljević (2024), in their in-depth analysis of forced prostitution under Article 4, advocate for an evolution in legal interpretation that reflects contemporary forms of exploitation. The present findings reinforce their position: legal obligations must be translated into operational mechanisms at the national level – ranging from early identification and protection to long-term rehabilitation. In sum, the study underscores the complex interplay between freedom of movement, migration policy, legal frameworks, and victim protection systems. Addressing the root causes and systemic enablers of trafficking will require not only stronger legal instruments but also their effective implementation, coupled with a commitment to cross-border coordination, resource allocation, and judicial accountability. Strengthening national and European mechanisms to protect victims must remain a core priority in the ongoing evolution of EU policy in this area (Zhukorska, 2024).

M. Stobb and C. McDonald (2019) focus on the conditions influencing the implementation of legislative initiatives aimed at protecting victims of trafficking in EU Member States. Their study reveals that EU membership status exerts a significant "conditional effect" on the fulfilment of obligations to protect victims. The authors argue that Member States are generally more effective in implementing European obligations, as they are embedded within a common legal framework. However, the study also highlights serious challenges in ensuring effective anti-trafficking responses, primarily due to the lack of uniform standards in the application of legal norms across different national jurisdictions. This disparity is, in part, a consequence of the EU's open-border policy, which allows criminal groups to legitimately transfer victims between states, exploiting gaps in legal protection systems (Shcherbatiuk *et al.*, 2024). In a complementary analysis, M. Počuča and J. Matijašević (2021) examine the impact of migration processes on EU security, with particular emphasis on the rise in human trafficking cases. While acknowledging that freedom of movement contributes to economic integration, the authors note that it also creates significant security vulnerabilities, including the facilitation of trafficking networks.

Migration flows, they argue, increase individual vulnerability, particularly among persons with limited access to legal assistance or protection, often due to language barriers, cultural differences, or uncertainty regarding their legal status. Furthermore, open internal borders have contributed to the expansion of trafficking transit routes, which complicates victim identification and the implementation of protective measures (Dzhuzha *et al.*, 2025). The study concludes that addressing these risks requires a holistic strategy, combining national protection frameworks with enhanced cross-border cooperation to effectively dismantle trafficking networks that exploit mobility rights within the EU. Both studies underscore the necessity of developing common standards and mechanisms for combating trafficking in human beings across the EU. While freedom of movement is a cornerstone of European integration and a tool for promoting human rights, it can also be exploited as a vector for organised crime (Oldak, 2023). Thus, it is not only the legal provisions that must be improved, but also the practices and procedures associated with their enforcement. This includes reinforcing victim identification systems, enhancing cross-border collaboration, and introducing more effective mechanisms for monitoring movement within and across Member States.

The present analysis confirmed that freedom of movement has a tangible impact on the spread of human trafficking in the EU. However, the effectiveness of national responses varies considerably. In France, social support systems are under strain due to high migrant inflows, which limits the state's capacity to provide adequate assistance. The UK, following the introduction of tighter border controls, is challenged by protracted victim recognition procedures under the National Referral Mechanism. Italy, as a critical transit country, suffers from an acute shortage of resources to support the reintegration of victims, particularly in the face of sustained migratory pressure. The findings suggest that freedom of movement without adequate control mechanisms creates enabling conditions for trafficking. However, the restriction of movement alone is not a sufficient or effective countermeasure. Instead, a comprehensive and rights-based approach is essential. This should encompass: preventive measures targeting recruitment and exploitation; streamlined identification procedures; expedited recognition of victim status; increased funding for support and reintegration programmes; and strong interagency coordination at both the national and EU levels. Moreover, the development of judicial and human rights mechanisms must align with international legal standards, ensuring that victims receive not only protection but also access to remedies, restitution, and long-term rehabilitation. These integrated efforts will enhance the resilience of Member States against trafficking

networks and uphold the foundational human rights values upon which the EU is built.

Conclusions

This research on the influence of freedom of movement inside the EU on the proliferation of human trafficking has highlighted numerous critical aspects contributing to the issue, as well as the primary problems encountered by various EU Member States in their anti-trafficking initiatives. The analysis affirms that, although freedom of movement is a fundamental principle of the EU, it simultaneously heightens the susceptibility of migrants to exploitation. The lack of internal border controls enables the transnational mobility of victims, so complicating their identification, monitoring, and protection. The findings indicate that unregulated and uncoordinated freedom of movement can lead to unforeseen adverse effects. Effective counteraction necessitates supplementary measures in the domains of regulation, intergovernmental collaboration, and prompt intervention.

The quantitative data gathered in the study revealed notable issues specific to each country: In Italy, the primary challenges pertain to resource deficiencies and victim identification, mostly attributable to the nation's status as a significant migratory transit hub and the disparate allocation of support resources. In the UK, notwithstanding enhanced border controls following Brexit, the principal challenges persist in the protracted duration of victim recognition processes – averaging 423 days to charge in rape cases – and inadequate inter-agency coordination, as evidenced by numerous prominent inquiry outcomes. France, leveraging robust collaboration with NGOs, demonstrates comparatively more effective protection procedures. Nonetheless, systemic overburden remains a considerable obstacle to prompt help and case processing, with about 20-25% of victims recognised at the initial point of contact. The results confirm that the principle of freedom of movement inside the EU necessitates strong safeguards, including measures for: swift victim identification; immediate response and aid; and improved inter-agency collaboration across national systems.

The study also examined the Baltic States which face distinct challenges in addressing human trafficking within the framework of EU mobility. Limited financial and human resources, combined with high levels of transit migration and unclear legal status of many individuals, hinder the identification and protection of victims. In Latvia and Lithuania, weak coordination between law enforcement and social services exacerbates this problem, while the geopolitical location of these countries – bordering Russia and Belarus – further increases their importance as transit corridors for trafficking operations. Compared to larger EU Member States, the Baltic countries also face limited funding and technological capacity, particularly in the development of digital monitoring systems to track migration flows. Consequently, improving the response in these countries requires: strengthening the legal framework; enhancing interdepartmental collaboration; and allocating additional resources to support victim identification and rehabilitation programmes.

One limitation of the present study lies in the restricted geographical coverage, which does not allow for comprehensive generalisations across the entire EU. To achieve a more accurate and representative assessment, future research should seek to include a broader range of Member States and regional contexts. Additional inquiry is necessary regarding the function of digital technology in addressing human trafficking. In particular, research should focus on how data-driven tools, AI-supported monitoring, and cross-border information exchange can strengthen cooperation among technical, human rights, and law enforcement agencies.

Acknowledgements

None.

Funding

The study was not funded.

Conflict of interest

None.

References

[1] Agreement on Violence Prevention for the Period Until 2025. (2021). Retrieved from https://surl.li/hzyjpd.

[2] Bell, S.R., & Frank, R.W. (2022). The spatial dynamics of freedom of foreign movement and human trafficking. *Journal of Human Rights*, 21(4), 365-382. doi: 10.1080/14754835.2021.2007364.

[3] Bruzelius, C. (2018). Freedom of movement, social rights, and residence-based conditionality in the European Union. *Journal of European Social Policy*, 29(1), 70-83. doi: 10.1177/0958928718756262.

[4] Charter of Fundamental Rights of the European Union. (2000, December). Retrieved from https://www.europarl.europa.eu/charter/pdf/text_en.pdf.

[5] Code of Entry and Residence of Foreigners and the Right to Asylum. (2025, March). Retrieved from https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070158/.

[6] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "On the EU Strategy on Combatting Trafficking in Human Beings 2021-2025". (2021, April). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52021DC0171.

[7] Council of Europe Convention on Action against Trafficking in Human Beings. (2005, May). Retrieved from https://rm.coe.int/168008371d.

[8] Council of Europe. (2024). *14th general report*. Retrieved from https://surl.lu/znzidf.

[9] Cremers, J. (2020). The European labour authority and rights-based labour mobility. *ERA Forum*, 21, 21-34. doi: 10.1007/s12027-020-00601-1.

[10] Crime outcomes in England and Wales 2023 to 2024. (2025). Retrieved from https://www.gov.uk/government/statistics/crime-outcomes-in-england-and-wales-2023-to-2024/crime-outcomes-in-england-and-wales-2023-to-2024.

[11] Directive of the European Council No. 2004/81/EC "On the Residence Permit Issued to Third-Country Nationals Who are Victims of Trafficking in Human Beings or Who Have Been the Subject of an Action to Facilitate Illegal Immigration, Who Cooperate with the Competent Authorities". (2004, April). Retrieved from https://eur-lex.europa.eu/eli/dir/2004/81/oj/eng.

[12] Directive of the European Parliament and of the Council No. 2004/38/EC "On the Right of Citizens of the Union and their Family Members to Move and Reside Freely Within the Territory of the Member States Amending Regulation (EEC) No. 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA Relevance)". (2004, April). Retrieved from https://eur-lex.europa.eu/eli/dir/2004/38/oj/eng.

[13] Directive of the European Parliament and of the Council No. 2011/36/EU "On Preventing and Combating Trafficking in Human Beings and Protecting its Victims, and Replacing Council Framework Decision 2002/629/JHA". (2011, April). Retrieved from https://eur-lex.europa.eu/eli/dir/2011/36/oj/eng.

[14] Directive of the European Parliament and of the Council No. 2011/93/EU "On Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography, and Replacing Council Framework Decision 2004/68/JHA". (2011, December). Retrieved from https://eur-lex.europa.eu/eli/dir/2011/93/oj/eng.

[15] Directive of the European Parliament and of the Council No. 2012/29/EU "Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, and Replacing Council Framework Decision 2001/220/JHA". (2012, October). Retrieved from https://eur-lex.europa.eu/eli/dir/2012/29/oj/eng.

[16] Dzhuzha, O., Vasylevych, V., & Siuravchyk, V. (2025). Problematic aspects of studying the impact of criminal activity among illegal migrants on organised crime. *Law Journal of the National Academy of Internal Affairs*, 15(1), 9-17. doi: 10.63341/naiachasopis/1.2025.09.

[17] Efthymiou, D.E. (2022). EU citizens' access to welfare rights: How (not) to think about unreasonable burdens? *Res Publica*, 28(4), 613-633. doi: 10.1007/s11158-021-09536-x

[18] European Convention on Human Rights. (1950, November). Retrieved from https://www.echr.coe.int/european-convention-on-human-rights.

[19] French National Consultative Commission on Human Rights. (2022). Retrieved from https://www.cncdh.fr/sites/default/files/2023-07/The%20Essentials%20Report%20Racism%202022.pdf.

[20] Fürst, J. (2023). Defensive integration through cooperative re-bordering? How member states use internal border controls in Schengen. *Journal of European Public Policy*, 31(2), 478-500. doi: 10.1080/13501763.2022.2162104.

[21] Group of Experts on Action against Trafficking in Human Beings. (2022). *Human trafficking: Latvia urged to better protect and compensate victims, convict traffickers*. Retrieved from https://www.coe.int/es/web/presidency/hungarian-presidency-news/-/asset_publisher/Xo3G1vGjd4E2/content/human-trafficking-latvia-urged-to-better-protect-and-compensate-victims-convict-traffickers/16695.

[22] Hernandez, D., & Rudolph, A. (2015). Modern day slavery: What drives human trafficking in Europe? *European Journal of Political Economy*, 38, 118-139. doi: 10.1016/J.EJPOLECO.2015.02.002.

[23] Howarth, D., & Schild, J. (2021). Nein to "Transfer Union": The German brake on the construction of a European Union fiscal capacity. *Journal of European Integration*, 43(2), 209-226. doi: 10.1080/07036337.2021.1877690.

[24] Hu, C., Tang, Y., Su, Q., Lei, Y., Cui, W., Zhang, Y., Zhou, Y., Li, X., Wang, Z., & Zhao, Z. (2021). Public health measures during the Covid-19 pandemic reduce the spread of other respiratory infectious diseases. *Frontiers in Public Health*, 9, article number 771638. doi: 10.3389/fpubh.2021.771638.

[25] Immigration and Social Security Co-ordination (EU Withdrawal) Act. (2020, November). Retrieved from https://www.legislation.gov.uk/ukpga/2020/20.

[26] Ismayilov, V., Aslanzade, I., Guliyev, R., Ismayilov, I., & Lala, J. (2024). Labour migration and development in Azerbaijan, 1998-2022. *Applied Econometrics and International Development*, 24(2), 85-102.

[27] Judgment of the Court of Justice (Grand Chamber) No. C573/14 "Commissioner General for Refugees and Stateless Persons v. Mostafa Lounani". (2017, January). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62014CJ0573.

[28] Judgment of the Court of Justice in Case No. C-413/99 "Baumbast and R v Secretary of State for the Home Department". (2002, September). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61999CJ0413.

[29] Judgment of the Court of Justice in Case No. C-41-74 "Yvonne van Duyn v. Home Office". (1974, December). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61974CJ0041.

[30] Judgment of the European Court of Humar Rights in Case No. 25965/04 "Rantsev v. Cyprus and Russia". (2010, January). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-96549%22]}.

[31] Judgment of the European Court of Justice in Case No. C-2/74 "Reyners v. Belgian State". (1974, June). Retrieved from https://curia.europa.eu/juris/liste.jsf?num=C-2/74.

[32] Judgment of the European Court of Justice in Case No. C-30/77 "Regina v. Bouchereau". (1977, October). Retrieved from https://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=30/77&td=ALL.

[33] Judgment of the European Court of Justice in Case No. C-333/13 "Elisabeta Dano and Florin Dano v. Jobcenter Leipzig". (2014, November). Retrieved from https://curia.europa.eu/juris/liste.jsf?num=C-333/13.

[34] Judgment of the European Court of Justice in Case No. C-34/09 "Gerardo Ruiz Zambrano v. Office national de l'emploi (ONEm)". (2011, March). Retrieved from https://curia.europa.eu/juris/liste.jsf?num=C-34/09

[35] Judgment of the European Court of Justice in Case No. C-384/93 "Alpine Investments v. Minister of Finance". (1995, May). Retrieved from https://curia.europa.eu/juris/liste.jsf?num=C-384/93.

[36] Judgment of the European Court of Justice in Case No. C-415/93 "Union royale belge des sociétés de football association and others v. Bosman and Others". (1995, December). Retrieved from https://curia.europa.eu/juris/liste.jsf?num=C-415/93.

[37] Judgment of the European Court of Justice in Case No. C-445/03 "Commission v. Luxembourg". (2004, October). Retrieved from https://curia.europa.eu/juris/liste.jsf?language=en&num=C-445/03.

[38] Judgment of the European Court of Justice in Case No. C-808/18 "Commission v. Hungary". (2020, December). Retrieved from https://curia.europa.eu/juris/liste.jsf?num=C-808/18.
[39] Judgment of the European Court of Justice in Case No. Case C-145/09 "Land Baden-Württemberg v. Panagiotis Tsakouridis". (2010, November). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62009CA0145.
[40] Khamzin, A., Buribayev, Y., & Sartayeva, K. (2022). Prevention of Human Trafficking Crime: A View from Kazakhstan and Central Asian Countries. *International Journal of Criminal Justice Sciences*, 17(1), 34-53. doi: 10.5281/zenodo.4756088.
[41] Landman, T., Brewster, B., & Thornton, S. (2024). Taking back control: Human Rights and Human Trafficking in the United Kingdom. *Societies*, 14(4), article number 47. doi: 10.3390/soc14040047.
[42] Law of Lithuania No. XIV-169 "On Assistance for Victims of Criminal Offences of the Republic". (2021, January). Retrieved from https://vaikoteises.lrv.lt/en/protection-of-children/ensuring-the-childs-rights/assistance/assistance-for-victims-of-criminal-offences/.
[43] Maftei, C.-V. (2023). INTERPOL'S contribution and prospective roles in tackling migrant smuggling concerning Europe and Wider Area. *Internal Affairs Review,* 71(3), 129-139. doi: 10.38146/bsz.spec.2023.3.12.
[44] McGregor, E., Godin, M., Jumbert, M.G., & Ike, N. (2025). Conditionality, compensation, or both? Comparative experiences of third-country cooperation on migration with the EU. *Journal of Immigrant & Refugee Studies*, 23(1), 47-61. doi: 10.1080/15562948.2024.2431067
[45] Modern Slavery Act 2015. (2015, March). Retrieved from https://www.legislation.gov.uk/ukpga/2015/30/contents.
[46] Nordquist, S. (2023). How does public policy impact trafficking victimisation?: An exact matching study in the EU. *European Journal of Law and Economics*, 56, 23-68. doi: 10.1007/s10657-023-09768-7.
[47] Nordquist, S. (2024). EU policymaking and anti-human trafficking efforts: Inferred policy preferences from a new survey. *Journal of Human Trafficking*, 10(1), 69-86. doi: 10.1080/23322705.2022.2041339.
[48] Novika, G.D., Disemadi, H.S., & Rochaeti, N. (2020). Legal protection in restitution to the victims of human trafficking. *Legality: Scientific Journal of Law*, 28(1), 36-46. doi: 10.22219/ljih.v28i1.10374.
[49] Oldak, L. (2023). State regulation of transborder cooperation at the regional leve. *Democratic Governance*, 16(1), 212-219. doi: 10.23939/dg2023.01.212.
[50] Penal Code Lithuania. (2000, September). Retrieved from https://policehumanrightsresources.org/content/uploads/2016/08/Criminal-Code-Lithuania-2000.pdf?x80005.
[51] Penal Code of France. (2025, March). Retrieved from https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070719/.
[52] Penal Code of Latvia. (2004, January). Retrieved from https://www.warnathgroup.com/wp-content/uploads/2015/03/Latvia-Criminal-Code.pdf.
[53] Počuča, M., & Matijašević, J. (2021). Migrations and their effect on human trafficking – security challenges for the European Union. *Studies in European Affairs*, 3, 27-38. doi: 10.33067/se.3.2021.2.
[54] Portes, J. (2025). Unintended consequences? The changing composition of immigration to the United Kingdom after Brexit. *National Institute Economic Review*, 268, 63-78. doi: 10.1017/nie.2024.16.
[55] Portes, J., & Springford, J. (2023). The impact of the post-Brexit migration system on the UK labour market. *Contemporary Social Science*, 18(2), 132-149. doi: 10.1080/21582041.2023.2192516.
[56] Prodyvus, S.V. (2023). Lawful restriction of the right to freedom of movement: International legal standards and practice of the European Court of Human Rights. *Uzhhorod National University Herald. Series: Law*, 2(78), 365-371. doi: 10.24144/2307-3322.2023.78.2.59.
[57] Punzo, V., & Scaglione, A. (2024). Beyond borders: Exploring the impact of Italian migration control policies on mediterranean smuggling dynamics and migrant journeys. *Trends in Organised Crime*. doi: 10.1007/s12117-024-09533-5.
[58] Rahnasto, J. (2023). Genetic data are not always personal – disaggregating the identifiability and sensitivity of genetic data. *Journal of Law and the Biosciences*, 10(2), article number lsad029. doi: 10.1093/jlb/lsad029.
[59] Ramji-Nogales, J., & Lang, I.G. (2020). Freedom of movement, migration, and borders. *Journal of Human Rights*, 19(5), 593-602. doi: 10.1080/14754835.2020.1830045.
[60] Regulation of the European Parliament and of the Council No. 2016/399 "On a Union Code on the Rules Governing the Movement of Persons Across Borders (Schengen Borders Code) (Codification)". (2016, April). Retrieved from https://eur-lex.europa.eu/eli/reg/2016/399/oj/eng.
[61] Rossoni, I., & De Massol De Rebetz, R. (2025). The convenient villain and the stereotypical victim: How demand and vulnerability help construct anti-policies in trafficking and smuggling. *Journal on Migration and Human Security*. doi: 10.1177/23315024251316543.
[62] Sabaj-Sidur, M. (2019). The French system of psychological and legal assistance for victims. *Fides Et Ratio Scientific Quarterly*, 38(2), 403-412. doi: 10.34766/FETR.V2I38.88.
[63] Shcherbatiuk, V., Kuras, D., & Sokur, Yu. (2024). The problem of slavery and human trafficking: International law and scientific discourse. *Scientific Journal of the National Academy of Internal Affairs*, 29(1), 43-54. doi: 10.56215/naia-herald/1.2024.43.
[64] Sojka, A., Talving, L., & Vasilopoulou, S. (2023). Free to move, reluctant to share: Unequal opposition to transnational rights under the EU's free movement principle. *European Union Politics*, 25(2), 269-290. doi: 10.1177/14651165231215440.
[65] Sredanovic, D. (2020). Brexit as a trigger and an obstacle to onwards and return migration. *International Migration*, 59(6), 93-108. doi: 10.1111/imig.12712.
[66] Stobb, M., & McDonald, C. (2019). The conditioning effect of EU membership status: Understanding compliance with legislative initiatives to protect trafficking victims. *Comparative European Politics*, 17, 813-831. doi: 10.1057/S41295-018-0127-0.
[67] Tammone, F. (2024). Challenging externalisation by means of Article 4 ECHR: Towards new avenues of litigation for victims of human trafficking? *Netherlands International Law Review*, 71, 89-117. doi: 10.1007/s40802-024-00254-8.

[68] Tietze, N. (2025). When european citizens become a “Burden” … negotiations on social rights at the Court of Justice of the European Union (1998-2015). *Historical Social Research*, 50(1), 162-192. doi: 10.12759/hsr.50.2025.08.
[69] Tovias, A. (2024). Will the EU’s fourth freedom be further challenged by present members of the single market?. *Central European Economic Journal*, 11(58), 42-53. doi: 10.2478/ceej-2024-0005.
[70] Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the Other Part. (2021, April). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L .2021.149.01.0010.01.ENG&toc=OJ%3AL%3A2021%3A149%3ATOC.
[71] Treaty establishing the European Community. (2002, December). Retrieved from https://eur-lex.europa.eu/eli/treaty/tec 2002/oj/eng.
[72] Treaty on the Functioning of the European Union. (2017, December). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legissum:4301854.
[73] Turanjanin, V., & Stanisavljević, J. (2024). Human trafficking and forced prostitution under Article 4 of the European Convention on Human Rights. *German Law Journal*, 25(2), 262-288. doi: 10.1017/glj.2023.98.
[74] United Nations. (2024). *Report of the Secretary-General on the Work of the Organisation (A/79/1, seventy-ninth session)*. Retrieved from https://www.un.org/sites/un2.un.org/files/sg annual report 2024 en.pdf.
[75] Urpí, A.M. (2023). Can victims of trafficking have access to international protection? Analysis of the possibilities of refuge or subsidiary protection in the European Union. *Journal of European Community Law,* 74, 191-226. doi: 10.18042/cepc/rdce.74.06.
[76] VICToRIIA. (2021). *Referral, assessment and information provision to victims of crimes*. Retrieved from https://victim-support.eu/wp-content/uploads/2021/02/National-Report-Italy.pdf.
[77] Voivozeanu, A., & Lafleur, J.-M. (2023). Welfare brokers and European Union migrants’ access to social protection. *British Journal of Sociology*, 74(4), 717-732. doi: 10.1111/1468-4446.13021.
[78] Zhukorska, Y. (2024). Attribution of conduct to an International Organisation: Theory and practice. *Law, Policy and Security*, 2(1), 21-32. doi: 10.62566/lps/1.2024.21.

Вплив свободи пересування в Європейському Союзі на поширення торгівлі людьми: правові виклики та можливості для вдосконалення контрзаходів

Бегімай Камілова
Аспірант
Дипломатична академія Міністерства закордонних справ Киргизької Республіки імені Казі Дікамбаєва
720040, просп. Еркіндіка, 36, м. Бішкек, Киргизька Республіка
https://orcid.org/0009-0003-6421-4155

Анотація. Метою цього дослідження було вивчення того, як реалізація свободи пересування в межах Європейського Союзу впливає на масштаби торгівлі людьми, а також визначення правових проблем, що виникають у зв’язку з цим явищем. Методологія дослідження поєднала порівняльно-правовий аналіз, контент-аналіз нормативних актів Європейського Союзу та судової практики, а також вивчення статистичних даних та тематичних досліджень щодо функціонування свободи пересування. Досліджувалися нормативні база Франції, Сполученого Королівства, Італії та країн Балтії, що дозволило виявити як спільні риси, так і відмінності в національних підходах до адаптації європейських норм. Основні результати дослідження виявили недостатню міждержавну координацію, прогалини в контролі за пересуванням осіб та залежність ефективності боротьби з торгівлею людьми від інституційного потенціалу кожної держави. Було зазначено, що свобода пересування часто використовується злочинними групами для легального переміщення жертв у межах Європейського Союзу, зокрема через канали трудової міграції або шляхом зловживання правом на проживання. Національні відповіді різняться: Франція надає перевагу міжвідомчій моделі; Сполучене Королівство застосовує підхід, заснований на кримінальному праві, що включає недержавні суб’єкти; Італія наголошує на гуманітарній підтримці жертв; а країни Балтії застосовують обмежену, мінімалістичну модель, що залежить від зовнішніх ресурсів. Практичне значення дослідження полягає в його пропозиціях щодо вдосконалення законодавства Європейського Союзу та національних рамок, зокрема, шляхом гармонізації правових підходів, створення єдиної бази даних та посилення правових гарантій для жертв

Ключові слова: трудова експлуатація; захист прав жертв; транскордонна злочинність; співпраця правоохоронних органів; гармонізація законодавства; боротьба із сучасним рабством

UDC 341.6:341.231
DOI: 10.32518/sals2.2025.324

Соціально-правові студії. 2025. Т. 8, № 2
Social & Legal Studios. 2025. Vol. 8, No. 2

Ensuring human rights in Ukraine based on the case law of the European Court of Human Rights

Andrii Kuchuk*
Doctor of Law, Professor
Sumy State Pedagogical University named after A.S. Makarenko
40002, 87 Romenska Str., Sumy, Ukraine
https://orcid.org/0000-0002-5918-2035

Yevhen Kobko
PhD in Law, Associate Professor
National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine
https://orcid.org/0000-0002-3121–0823

Anatolii Radchuk
PhD n Law, Chief Justice of the Odesa Circuit Administrative Court
Odesa Circuit Administrative Court
65062, 14 Fontanska Str., Odesa, Ukraine
https://orcid.org/0009-0004-0786-815X

Vadym Knyshov
Director of the Odesa Center of Primary Professional Training "Police Academy"
Odesa State University of Internal Affairs
65014, 1 Uspenska Str., Odesa, Ukraine
https://orcid.org/0009-0006-8189-5505

Tetiana Voloshanivska
PhD in Law, Associate Professor
Odesa State University of Internal Affairs
65014, 1 Uspenska Str., Odesa, Ukraine
https://orcid.org/0000-0002-1060-5412

Abstract. The study aimed to analyse how the Ukrainian legal system implements the decisions of the European Court of Human Rights, as well as to identify problems and prospects for improving this process. The article used methods of legal analysis of the decisions of the European Court of Human Rights, comparison of national legislation with the European Convention on Human Rights, analysis of the statistics of the European Court of Human Rights, research on the implementation of European Court of Human Rights decisions at the national level, hermeneutics to identify terminological gaps, analysis of the implementation of European standards in the national legal system, and deduction to identify key issues in cases against Ukraine. An analysis of the decisions of the European Court of Human Rights revealed numerous systemic human rights violations in Ukraine, particularly in the areas of conditions of detention, unlawful arrests and lengthy court proceedings. Problems with non-enforcement of court decisions and violations of the rights to liberty and dignity have been confirmed by numerous cases, such as Gongadze v. Ukraine and Kharchenko v. Ukraine. Amendments to the Criminal Code of Ukraine following the decisions of the European Court of Human Rights, in particular the limitation of the term of pre-trial detention, have reduced the number of cases of prolonged detention

Suggested Citation

Article's History: Received: 26.02.2025 Revised: 03.06.2025 Accepted: 25.06.2025

Kuchuk, A., Kobko, Ye., Radchuk, A., Knyshov, V., & Voloshanivska, T. (2025). Ensuring human rights in Ukraine based on the case law of the European Court of Human Rights. *Social & Legal Studios*, 8(2), 324-338. doi: 10.32518/sals2.2025.324.

*Corresponding author

Copyright © The Author(s). This is an open access Article distributed under the terms of the Creative Commons Attribution License 4.0 (https://creativecommons.org/licenses/by/4.0/)

without sufficient grounds. However, the article also pointed to difficulties in the enforcement of European Court of Human Rights decisions, such as lack of resources, political will and insufficient reforms in the judicial sphere. The role of international cooperation and civil society in the process of implementing the decisions of the European Court of Human Rights in Ukraine is critical for the further development of the human rights situation in the country. The practical significance of the article lies in the fact that it provides valuable recommendations for improving human rights practices in Ukraine, in particular in the area of implementing the decisions of the European Court of Human Rights

Keywords: justice; implementation; legislation; freedom of speech; war; international standards

Introduction

The relevance of study is determined by the complex and multifaceted nature of the human rights situation in Ukraine, which continues to deteriorate under the impact of the Russian Federation's full-scale military aggression. Systemic problems such as limited access to justice, prolonged non-enforcement of court decisions, inadequate conditions of detention, and repeated violations of freedom of expression highlight the structural fragility of the Ukrainian legal system. These challenges are further exacerbated by the consequences of hybrid warfare, the annexation of Crimea, and the ongoing armed conflict, all of which significantly disrupt the legal and institutional frameworks responsible for safeguarding fundamental rights.

According to the Council of Europe & Committee of Ministers (2024), Ukraine remains among the member states with the highest number of judgments of the European Court of Human Rights (ECtHR) pending execution. Particularly problematic are judgments concerning torture and ill-treatment, ineffective investigations, poor detention conditions, and delays in enforcing national judicial decisions. The Report on the Human Rights Situation in Ukraine (2024) documents widespread violations of international humanitarian and human rights law between 1 February and 30 June 2024. These include arbitrary detentions, ill-treatment of civilians, restrictions on freedom of movement, and insufficient progress in investigating wartime human rights abuses. Against this background, recourse to the case law of the ECtHR emerges not only as a critical analytical tool but also as a practical guide for reforming Ukraine's national human rights protection system. The standards developed by the Court provide concrete benchmarks for legal adaptation and institutional transformation both during the war and in the context of post-war recovery.

Problems with access to justice, delays in the enforcement of court decisions, inadequate conditions of detention, and numerous cases of violations of freedom of speech are part of a broader systemic problem highlighted by human rights organisations (Sopelnyk, 2025). According to the OHCHR (2024), human rights violations remain a serious problem in Ukraine, particularly with regard to ensuring adequate conditions of detention for prisoners and protecting the rights of persons in state institutions. This particularly concerns inadequate conditions in detention facilities, human rights violations during court proceedings, and restrictions on freedom of expression, which is one of the fundamental tools of a democratic society.

According to a Human Rights Watch (2023) cases of unlawful detention and poor conditions of detention in places of deprivation of liberty continue to be recorded in Ukraine, which are serious violations under international law. In addition, the war has given rise to new challenges for human rights, in particular through the intensification of repressive practices, restrictions on media freedom, and internet censorship. Restrictions on freedom of speech became even more evident after the introduction of emergency measures during the conflict, when new rules were introduced for the media, giving the state significant powers to regulate the information space, which could lead to abuse (Taran & Hryha, 2024). This highlights the need to improve legislation to ensure a balance between security and citizens' rights.

The topic of human rights protection in Ukraine through the prism of European Court of Human Rights (ECtHR) practice is substantially researched. One of the key areas is the implementation of ECtHR judgments into Ukrainian legislation. The role of the judiciary in ensuring compliance with international human rights norms is an important point of analysis, as noted by N.V. Mishyna (2023), who explored the practical aspects of applying ECtHR judgments in Ukrainian courts. These works stress the importance of harmonising national judicial procedures with the European Convention on Human Rights (1950) (Convention), particularly regarding judicial independence, procedural fairness, and the enforceability of court rulings. The military context makes it difficult to respect human rights in Ukraine, but research highlights how Ukraine is overcoming this challenge by adapting its legal system to international human rights obligations. V. Barvinenko *et al.* (2023) explored the intersection of human rights protection and decentralisation in the context of Ukraine's militarisation, examining how local authorities and institutions balance national security and human rights in wartime. Their findings underscore that while emergency measures are sometimes necessary, there remains a normative and institutional commitment to European legal standards. This commitment is reflected in the continued participation of Ukraine in the Council of Europe's monitoring bodies and the gradual adaptation of administrative and criminal procedures to reflect proportionality, necessity, and non-discrimination.

R.I. Blahuta *et al.* (2024) analysed how national law enforcement practices comply with European Union (EU) human rights standards, focusing in particular on police conduct, the right to privacy, and protection from torture and inhuman treatment. Their study highlighted systemic issues in the functioning of Ukrainian law enforcement agencies and identified institutional shortcomings in internal oversight and accountability mechanisms. A central conclusion of the study was that Ukraine's path toward full integration with EU human rights standards requires not only formal legislative alignment but also deep structural reform of the police and security services. V. Cherneha *et al.* (2024) examined the implementation of the right to respect for private life under Article 8 of the European Convention on Human Rights (1950) by comparing Ukrainian legislation with the standards established in ECtHR case law. The study underscored that although Ukraine has adopted key legal frameworks concerning personal data protection and state

surveillance, gaps remain in their application and enforcement. Particularly problematic are the legal mechanisms governing access to and control over personal data by state security bodies. The authors noted insufficient judicial oversight in surveillance cases and the need to improve legal remedies for violations of privacy rights.

N. Malhotra (2023) examines the role of microfinance as a tool for ensuring social justice and realising human rights in developing countries, particularly in Bangladesh, India, and Kenya. The author analyses how alternative financial models integrated with human rights approaches contribute to strengthening the economic autonomy of vulnerable groups and create institutional conditions for expanding access to basic rights such as education, employment, and protection from discrimination. M. Buijsen (2023) offers a comparative analysis of the Dobbs v. Jackson Women's Health Organization (2022) from the perspective of the European approach to human rights, focusing on reproductive rights and the right to privacy. The author demonstrates how the jurisdictions of countries such as France, the Netherlands, and Germany ensure compliance with the standards of the European Convention on Human Rights (1950) through legislative and judicial mechanisms that may be useful for Central and Eastern European countries, including Ukraine, in the process of harmonising their legal systems with European norms.

Lastly, the ECtHR jurisprudence on specific rights, such as the right to a fair trial and procedural fairness, is an important topic for Ukraine's human rights obligations (Semeniuk & Horbach-Kudria, 2024). V. Hvozdiuk and N. Morhun (2024) examine the application of ECtHR jurisprudence by Ukrainian investigators, in particular concerning searches and seizures. The study demonstrated how the court's decisions on procedural rights have influenced the Ukrainian law enforcement system, although problems remain with the consistent application of these standards. The study concludes that despite progress in aligning investigative practices with ECtHR standards particularly regarding legal grounds and judicial oversight of searches systemic problems remain. Inconsistent application of procedural safeguards continues to hinder effective rights protection. The authors stress the need for not only further legislative harmonisation but also institutional reforms, including training for legal professionals and stricter judicial control over investigative actions, to ensure full compliance with ECtHR jurisprudence. S.M. Smokov *et al.* (2022) examined the rule of law in criminal proceedings, focusing on the ECtHR. The analysis provided valuable information on how the Court's judgments affect the development of national criminal justice systems following international human rights standards. These studies confirm that Court jurisprudence serves as a powerful driver for the transformation of Ukrainian legal practices, particularly in criminal and administrative justice. The findings highlight that while significant advances have been made in aligning procedural norms with European standards especially in the areas of search and seizure, fair trial guarantees, and legal protection for vulnerable populations practical implementation remains uneven. The literature suggests that sustained legal harmonisation and institutional commitment are needed to ensure that ECtHR principles are applied uniformly across all levels of the Ukrainian legal system.

A study by U.A. Kos (2023) analyses the mechanisms used by the European Union (EU) to influence member states that deviate from the rule of law, using Hungary and Poland as examples. The main focus is on so-called "signaling" – that is, political and legal messages that the EU conveys to these countries through legal mechanisms, in particular Suspension clause (Article 7 of the Treaty on European Union (2016)), decisions of the EU Court, and through funding instruments. The author argues that, although EU legal norms and decisions remain important, without support from domestic actors (courts, civil society, opposition) and consistent political will on the part of the EU, legal signals are often ignored or circumvented by national governments. This study aimed to analyse the ECtHR's practice on human rights protection in Ukraine, with an emphasis on how the Court's judgments affect the development of national laws, court practice and mechanisms for protecting citizens' rights. The objectives of the study were:

1. to analyse key ECtHR judgments that have had an impact on the development of the Ukrainian legal system;

2. to study the process of adapting national legislation to ECtHR standards;

3. to identify factors that facilitate or hinder the effective implementation of ECtHR judgments at the national level.

Materials and methods

In the study of human rights in Ukraine based on the ECtHR case law, the analysis of the main legislative acts of Ukraine and their compliance with international human rights standards was central. In particular, the Code of Administrative Judicial Procedure of Ukraine (2005) and the Criminal Code of the Republic of Ukraine (2001), which are key regulatory acts in the context of ensuring the legal protection of citizens, were considered. In methodological terms, the study examined not only the case law of the ECtHR concerning Ukraine but also legislative amendments adopted in response to key judgments. Notable changes to the Criminal Code of Ukraine (2001) and the Code of Administrative Judicial Procedure (2005) followed rulings such as Kharchenko v. Ukraine (2011), Ivanov v. Ukraine (2006), and Oleksandr Volkov v. Ukraine (2013), addressing issues of pre-trial detention, judicial independence, and enforcement of court decisions. The methodology also included a comparative analysis with neighbouring countries. In Poland and Romania, ECtHR judgments have led to substantial reforms in access to justice and the prevention of ill-treatment. In contrast, Hungary has shown resistance to implementing Court rulings, as seen in the limited follow-up to Baka v. Hungary (2016), despite formal legal adjustments. This comparative dimension enabled an assessment of both the normative alignment of Ukraine's legal framework with ECtHR standards and the practical effectiveness of their implementation.

The analysis was based on the EtCHR judgments concerning human rights violations in Ukraine, in particular: Kharchenko v. Ukraine (2011) – issues of unlawful detention; Afanasiev v. Ukraine (2005) – the effectiveness of the investigation of ill-treatment; Gongadze v. Ukraine (2005) – violation of the right to life and ineffective investigation; Oleksandr Volkov v. Ukraine (2013) – unlawful dismissal of a judge; Kaverzin v. Ukraine (2012) – torture while in custody; Ivanov v. Ukraine (2006) – violation of the right to enforce a court decision; Karabet and Others v. Ukraine (2013) – ill-treatment of prisoners; Nevmerzhitsky v. Ukraine (2005) – violations of prison conditions.

In addition to the analysis of landmark ECtHR judgments concerning Ukraine, the methodology also included a focused examination of five recent cases from 2020 to 2025: Spivak v. Ukraine (2025), Malyeyev v. Ukraine (2025), Derdin v. Ukraine (2025), Ryaska v. Ukraine (2024), and Medvid v. Ukraine (2025). These cases were selected due to their relevance to systemic issues such as arbitrary detention, lack of judicial oversight in psychiatric confinement, and procedural violations during criminal proceedings. The analysis involved a detailed review of the facts, legal reasoning, and the Court's assessment of Ukraine's compliance with Articles 5, 6, and 8 of the European Convention on Human Rights (1950). By incorporating these recent judgments, the study ensured an up-to-date understanding of the evolving human rights landscape in Ukraine and provided a basis for evaluating the effectiveness of legal reforms undertaken in response to the ECtHR's findings.

The research methods included a legal analysis of ECtHR judgments and, a comparison of national legislation with the provisions of the European Convention on Human Rights (1950). The interpretation of the Convention by the ECttHR and its application to specific situations in Ukraine was highlighted. The statistics of the European Court of Human Rights (2024) for 2023 were used to analyse the dynamics of cases filed against Ukraine, which identified key problematic issues in the field of human rights protection. The study also included an analysis of the implementation of ECtHR judgments at the national level and their impact on changes in legislation and court practice in Ukraine. This assessed how effectively the national courts implement the provisions of the ECtHR and what measures are needed to further improve the human rights protection system in Ukraine. The study also analysed the impact of ECtHR judgments on the development of judicial practice in Ukraine, as well as how effectively national courts implement these judgments. The study employed hermeneutical methods to identify terminological gaps and generalise the legal framework, analysing the implementation of European standards in the national legal system. Particular attention was paid to the role of the ECtHR in interpreting international law applicable in Ukraine and assessing the measures needed to improve the legal protection system. Deduction identified the main problems that systematically arise in cases considered by the ECtHR against Ukraine.

Results

The core principles of the European Convention on Human Rights (1950) establish the rights and freedoms safeguarded by the ECtHR. The Guide on Article 2 of the European Convention on Human Rights (2025), the prohibition of torture and inhuman or degrading treatment (Article 3), and the ban on slavery and forced labor (Article 4). It also guarantees significant rights, including the right to a fair trial (Article 6), freedom of thought, conscience, and religion (Article 9), freedom of expression (Article 10), and the right to peaceful assembly and association (Article 11). Additionally, the Convention protects the right to private and family life (Article 8) and ensures effective legal remedies (Article 13). The ECtHR emphasises the prohibition of discrimination (Article 14) in the exercise of these rights. The Protocols to the Convention further expand these rights to encompass protection of property, education, and free elections. In its rulings, the ECtHR is guided by principles of universality, equality, and non-discrimination, guaranteeing protection for all individuals, irrespective of nationality or social status. The Court consistently takes into account the proportionality of state interference with human rights, aiming to strike a balance between societal interests and individual rights.

One of the most important functions of the ECtHR is to develop case law that creates common European human rights standards. Through its judgments, the Court interprets the provisions of the European Convention on Human Rights (1950), considering contemporary social, political and technological challenges. For instance, its interpretation of the right to freedom of expression, privacy or fair trial is adapted to the modern context, including the digital age. The Court also contributes to strengthening the independence of the judiciary and the rule of law in member states. The Court's judgments often aim to eliminate corruption, political pressure on judges and other problems that undermine confidence in the judiciary. The ECtHR thus ensures that the principles enshrined in the European Convention on Human Rights (1950) are effectively applied. It stipulates human rights institutions at the national level, promotes reforms and ensures justice even where national mechanisms fail.

Following the landmark pilot judgment in Rutkowski and Others v. Poland (2015), the Court identified systemic delays in Polish judicial processes and inadequate domestic remedies under Article 6 § 1 and Article 13. In response, Poland introduced legislative reforms in 2016 obliging courts to expedite proceedings, enhancing judicial case management, and significantly improving compensation mechanisms for excessive delays (Ploszka, 2022). This legal overhaul not only led to the processing of over 600 backlog cases but also strengthened public confidence in the institutional ability to deliver justice within a reasonable timeframe.

The principles established in Barbu Anghelescu v. Romania (2004), particularly the state's positive obligation under Article 3 of the European Convention on Human Rights (1950) to conduct effective investigations into ill-treatment, were subsequently incorporated into Romanian law through legislative and procedural reforms. These legal developments were documented by the European Committee for the Prevention of Torture (CPT) following its 2006 visit to Romania, which noted improvements in the treatment of persons in custody and the regulatory framework governing police conduct (Council of Europe anti-torture..., 2024a). The Committee of Ministers of the Council of Europe, in its supervision of the implementation of the Barbu Anghelescu judgment, also recognized that Romania had taken meaningful steps to address the systemic shortcomings identified by the European Court, culminating in its adoption of resolution confirming substantial compliance with Article 3 standards (Directive of European Comission No. 2011/69/EU, 2011).

Hungary presents a contrasting third example: despite the ECtHR's condemnation of judicial interference in Baka v. Hungary (2016), domestic implementation has been inconsistent. While Hungary made formal amendments accommodating Strasbourg doctrine, political resistance and institutional inertia have hampered meaningful enforcement. This case underscores the importance of complementing legal alignment with robust judicial independence and civic engagement lessons directly applicable to Ukraine as it seeks to consolidate its own reforms under ECtHR influence.

According to the official annual report of the European Court of Human Rights, as of December 31, 2024, the total number of cases examined without preliminary distribution and in priority was approximately 60,350, while at the end of 2023 there were 68,450, indicating a decrease of 8,100 (-12%). Ukraine is among the top five countries with the highest number of open cases, ranking third after Turkey and Russia, with approximately 7,700 applicants as of the end of 2024 (European Court of Human Rights, 2025). Regarding cases related to the armed conflict, the ECtHR reports that as of February 2025, there were 9,264 individual applications filed in connection with the conflict in Ukraine. In addition, three inter-state cases, including the important case of Ukraine and the Netherlands v. Russia (2022), have been referred to the Grand Chamber, with a decision expected on July 9, 2025 (Applications concerning the conflicts…, 2025). Ukraine continues to be one of the main respondent countries in the ECtHR, with most cases concerning important issues: the right to liberty and security, the right to a fair trial, protection from torture, and violations of privacy. Despite a slight decrease in the overall caseload, the lack of a significant reduction in the number of complaints indicates existing systemic problems with justice and human rights compliance.

Many cases against Ukraine before the Guide on Article 3 of the European Convention on Human Rights (2025), which prohibits torture and inhuman or degrading treatment. These cases frequently concern systemic problems in the penitentiary system, including overcrowded detention facilities, lack of access to medical care, unsanitary conditions, and inadequate food provision. In addition, Ukraine has been repeatedly criticised for the excessive use of force by law enforcement officers, particularly during arrest and interrogation, as well as for the absence of effective, prompt, and independent investigations into allegations of ill-treatment. The failure to meet minimum standards of detention conditions has been established in numerous judgments, such as Karabet and Others v. Ukraine (2013) and Nevmerzhitsky v. Ukraine (2005), where the Court underlined the structural character of these violations.

The Court has also repeatedly found Ukraine in breach of European Convention on Human Rights – Article 5 due to unlawful or arbitrary deprivation of liberty. These violations typically concern cases of prolonged pre-trial detention without adequate judicial oversight or without sufficient justification as required by the European Convention on Human Rights (1950). In several judgments, including Kharchenko v. Ukraine (2011) and Derdin v. Ukraine (2025), the Court concluded that national authorities had failed to provide detailed reasoning for continued detention, and that detainees were often held for extended periods based on formulaic or outdated justifications. Procedural rights during detention were frequently violated, including the right to be promptly informed of the reasons for arrest, to challenge the lawfulness of detention before a court, and to have access to legal counsel (Mykhailovskyi, 2021). These findings point to persistent flaws in Ukraine's criminal justice procedures and underline the need for sustained reform of both legislative frameworks and investigative practices.

The most frequently reported violations currently concern Articles 3, 5, and 6 of the European Convention on Human Rights (1950). In particular, Ukraine continues to face widespread findings of inhuman or degrading treatment, especially in detention facilities, including issues such as overcrowding, lack of medical care, and failure to investigate allegations of ill-treatment. A recent example is the Case of Spivak v. Ukraine (2025), where the Court found violations of both Article 5 (liberty and security) and Article 3 due to unjustified psychiatric detention and insufficient procedural safeguards. In the Case of Malyeyev v. Ukraine (2025), the ECtHR concluded that the applicant had been subjected to arbitrary confinement in a psychiatric facility without adequate judicial review, violating his rights under Articles 3 and 5. The Court has also continued to identify structural problems related to lengthy judicial proceedings, the non-enforcement of domestic court decisions, and weak guarantees of judicial independence under Article 6. These issues are compounded by recurrent violations of freedom of expression and peaceful assembly, particularly in politically sensitive contexts. In this regard, while the Gongadze v. Ukraine (2005) case remains emblematic of violations of Article 10, more recent cases show that constraints on media and protest rights persist. For example, in Ryaska v. Ukraine (2024), the Court found that procedural guarantees during criminal proceedings were systematically violated, reflecting ongoing weaknesses in the administration of justice.

In the case of Kharchenko v. Ukraine (2011), the European Court held that pre-trial detention lasting over two years without detailed judicial justification violated the applicant's right to liberty and security. Importantly, it signaled systemic failings in Ukraine's legal framework. Ukrainian authorities introduced legislative amendments aimed at improving procedural safeguards. Changes to the Criminal Procedure Code of Ukraine (2012) limited prosecutors' authority to order or extend detention and mandated more rigorous judicial oversight. In December 2020, further amendments empowered detainees to appeal extensions directly to appellate courts, following a Constitutional Court ruling prompted by similar ECtHR criticism. Despite these formal reforms, implementation has been inconsistent. Monitoring reports highlight that courts still rely on template reasoning when approving detention, and pre-trial detention periods remain excessive in many cases. As noted by the Supreme Court in early 2025, Kharchenko continues to "serve as a benchmark" against which courts evaluate detention justifications, yet systemic practices have not fully aligned with Strasbourg standards. This suggests that legislative change must be accompanied by cultural and institutional reform targeted judicial training, standardised decision-making, and stronger enforcement mechanisms to ensure effective compliance with ECtHR jurisprudence (Litoshenko *et al.*, 2023).

The ECtHR considered the case of Afanasiev v. Ukraine (2005) in the context of ill-treatment by law enforcement officers. The applicant claimed that during detention, police officers had used physical violence to extract a confession. The Court found that the state had violated Article 3 of the Convention (1950), which prohibits torture and inhuman or degrading treatment. The ECtHR also highlighted the ineffectiveness of the investigation into these allegations of ill-treatment. legislative changes introduced between 2012 and 2014, particularly with the adoption of the new Criminal Procedure Code (2012), strengthened procedural safeguards for detainees: mandatory medical examinations after arrest, requirements for legal counsel, and limits on pre-trial detention without court oversight.

Despite these legal adjustments, the systemic shortcomings identified in Afanasiev v. Ukraine (2005) including the

ineffectiveness and lack of independence in investigations of police abuse persist. Monitoring by the European Committee for the Prevention of Torture (CPT) (Council of Europe anti-torture…, 2024b) and annual reports of the Kharkiv Human Rights Protection Group (2024) from 2020-2024 confirm ongoing impunity for law enforcement officers, delayed investigations, and insufficient prosecutorial response to credible allegations of torture. This indicates that while the decision served as a catalyst for legal reform, the implementation gap remains significant, and the investigative bodies responsible for responding to allegations of torture still often lack functional independence from the police. Thus, Afanasiev v. Ukraine (2005) continues to function as a key reference point in evaluating Ukraine's obligations under Article 3, and its legacy reveals the enduring challenge of transforming formal legal commitments into institutional accountability.

The case of Gongadze v. Ukraine (2005) is one of the most famous in the ECtHR case law concerning Ukraine. The case concerned the murder of journalist Georgiy Gongadze and the lack of an effective investigation into the crime. The Court found that Ukraine had violated Guide on Article 2 of the European Convention on Human Rights (2025) by failing to protect the applicant's life and Article 13 (right to an effective remedy) by failing to conduct an effective investigation. In the aftermath of the judgment, Ukraine undertook several legislative and institutional reforms. In 2006-2008, the authorities arrested and convicted three police officers directly involved in the murder, with former Interior Ministry General Pukach receiving a life sentence in 2013 (CPJ concerned by irregularities..., 2011). The Parliament reinforced investigative procedures for crimes against journalists through amendments to the Criminal Code and Criminal Procedure Code in 2007-2009, mandating stricter oversight and assigning responsibility to specialised units for such cases (Zamboni, 2011).

However, despite these formal changes, implementation remains uneven. The Committee to Protect Journalists and other monitoring bodies continue to report ongoing impunity and stalled progress in prosecuting the intellectual perpetrators of high-profile crimes against journalists. Investigative inefficiencies, political interference, and sluggish prosecutions suggest that while the Gongadze judgment generated significant legislative activity, the substantive culture of investigative accountability and respect for press freedom is still underdeveloped. Thus, Gongadze remains a critical legal and symbolic touchstone for evaluating Ukraine's commitment to protecting journalists and the broader rule of law.

In the case of Oleksandr Volkov v. Ukraine, No. 21722/11 (2013), the ECtHR examined the independence of the judiciary. The applicant, a former judge of the Supreme Court of Ukraine, claimed that dismissal from office violated the principle of judicial independence and under pressure from political interests. The Court found that Ukraine had violated A guide to the implementation of Article 6 of the European Convention on Human Rights (2006), as the procedures for dismissing the judge did not meet the requirements of fairness. The Oleksandr Volkov v. Ukraine judgment exposed systemic problems in the independence and impartiality of Ukraine's judiciary, finding violations of Article 6 due to the opaque and politically influenced dismissal of a Supreme Court judge. In response, Ukraine launched a comprehensive judicial reform in 2016: Law of Ukraine No. 1401VIII (2016), amended Articles 124-131 of the Constitution. These amendments restructured the judiciary by consolidating higher specialized courts into a strengthened Supreme Court, established the constitutional basis for the new three-tier court system, provided for competitive and transparent judicial selection and dismissal procedures, introduced the constitutional complaint, and enshrined the binding nature of court decisions with state oversight of their execution. Building on this foundation, the Law of Ukraine No. 31 (2016) implemented the new court structure, reorganized the High Council of Justice, and enhanced public and professional oversight through the High Qualification Commission and the Public Integrity Council. One immediate consequence was the reinstatement of Judge Volkov in February 2015, implementing the ECtHR's individual measure. These changes have not fully eradicated structural weaknesses. While the Volkov judgment served as a catalyst for legal reforms, the transformation of judicial culture requires deeper institutional independence enforced by transparent governance, rigorous training, and consistent enforcement of appointments and dismissals, in line with ECtHR standards.

Another key issue is the lengthy enforcement of domestic court decisions, which violates Article 6 of the Convention (1950) (right to a fair trial) and Article 13 (right to an effective remedy). This problem has been the subject of numerous cases against Ukraine, such as Ivanov v. Ukraine (2006), which demonstrate that citizens are forced to wait for years for the enforcement of court decisions already delivered, even if they relate to vital issues such as the payment of wages or social assistance. In its judgments, the Court emphasises that the state is responsible for ensuring the proper functioning of the enforcement system and must take measures to remedy this systemic violation. An equally substantial issue is the inadequate conditions of detention in places of detention, which violate Article 3 of the Convention, which prohibits torture and inhuman or degrading treatment. In Karabet and Others v. Ukraine (2005), the ECtHR found that detention conditions, such as overcrowding, lack of access to medical care and inadequate food, constituted a serious violation of international standards. Several cases were also documented cases of excessive use of force against prisoners and the lack of proper investigation of complaints about such treatment.

In response to these cases, Ukraine made certain amendments to the Criminal Code of Ukraine (2001) in 2014-2016, which formally strengthened control over conditions of detention and medical care. Monitoring commissions were established and regular visits by the national preventive mechanism were introduced. However, according to human rights defenders (2023-2025), the problem of overcrowding, lack of medicines, and improper treatment of prisoners remains systemic due to lack of funding, ineffective monitoring, and low standards of implementation. Thus, legislative changes have taken place, but their implementation remains fragmented and insufficiently effective. These recurring problems are interrelated and often reflect a systemic crisis in the functioning of state institutions. They require not only a targeted solution in each case but also a comprehensive approach, including reform of law enforcement, and judicial and penitentiary systems. The ECtHR judgments in these cases have become important benchmarks for Ukraine in implementing such reforms aimed at ensuring respect for human rights at all levels.

The implementation of ECtHR judgments in Ukraine is an important part of ensuring compliance with international human rights standards. According to Article 46 of the Convention (1950), ECtHR judgments are binding on the states in respect of which they are delivered. In Ukraine, several mechanisms were established for this purpose, including the Ministry of Justice and other national authorities responsible for implementing decisions. The Ministry of Justice of Ukraine is central in the implementation of ECtHR judgments. This body coordinates the interaction between the ECtHR, the Committee of Ministers of the Council of Europe, which monitors the implementation of judgments, and national authorities. The Ministry develops action plans or reports on measures to be taken by the state to implement a particular judgment. These plans include both individual and general measures. Individual measures are aimed at restoring the rights of a particular applicant, such as the payment of compensation, review of court decisions or re-investigation of cases. For instance, in cases of ill-treatment, the Ministry coordinates the prosecution of perpetrators or organises appropriate corrective measures. General measures include changes in legislation, and reform of administrative procedures or institutions to prevent repeat violations. For instance, the enforcement of decisions related to the longstanding non-enforcement of court rulings has led to the creation of a special fund to partially compensate applicants.

National authorities, such as courts, prosecutors, law enforcement agencies and the penitentiary system, are also involved in the enforcement process, depending on the nature of the case. The Supreme Court of Ukraine has recently taken notable steps to integrate ECtHR jurisprudence into its rulings, illustrating active judicial engagement in aligning domestic practice with international human rights standards. For instance, in the case of Ignatov v. Ukraine (2016) group of cases, the Supreme Court, together with the Council of Europe and OSCE, organised a roundtable to develop clear guidelines for implementing ECtHR-mandated safeguards related to the right to liberty and security. This initiative reflects a practical shift toward judicial collaboration and the creation of unified procedural standards across Ukrainian courts. In the recent Case of Ukrkava, Tov v. Ukraine (2025), the Supreme Court explicitly interpreted national legislation in light of domestic law's compatibility with ECtHR precedents, setting an important precedent for legal foreseeability and ECtHR adaptation. This decision highlights an evolving judicial methodology: Ukrainian law is not merely interpreted within national boundaries, but also in direct dialogue with Strasbourg case law.

The Supreme Court has published annual reviews summarising the impact of ECtHR decisions (2023 and 2024) on national jurisprudence. These reviews include targeted reflections, such as in cases concerning Figurka v. Ukraine (2023), where the Supreme Court examined procedural compliance and addressed gaps in Article 6 application. Such reviews provide a powerful instrument for judges at all levels, encouraging internalisation of ECtHR standards in future rulings. Permanent interagency working groups have been established to coordinate the work between the authorities, which work on the enforcement of judgments, increasing the efficiency of this process and the development of comprehensive approaches to address the causes of violations (Tymoshenko, 2022; Najafli *et al.*, 2024). However, the implementation of ECtHR judgments in Ukraine faces several challenges, including insufficient resources, coordination problems and systemic shortcomings in the functioning of state institutions. Nevertheless, the active involvement of the Ministry of Justice and other authorities is an important step towards improving Ukraine's compliance with international human rights standards. The process of implementing ECtHR judgments is an important indicator of a state's legal maturity and willingness to fulfil its international obligations. However, Ukraine faces certain systemic obstacles that affect not only the effectiveness of the enforcement of judgments but also the overall credibility of the legal system (Table 1).

Table 1. Obstacles and problems of implementation of ECtHR judgments in Ukraine

Obstacle	The essence of the problem	Consequences	Examples
Insufficient funding	Lack of resources for compensation, implementation of reforms or improvement of conditions in places of detention	Delays in the execution of judgements, including payments under the Court's decisions, and the inability to implement appropriate institutional changes	The inadequate funding of the penitentiary system leads to the persistence of inadequate conditions of detention, which the Court has recognised as a violation in several cases, e.g., Nevmerzhitsky v. Ukraine (2005) and Malyeyev v. Ukraine (2025).
Lack of political will	Politicians and officials are not always interested in quick implementation of decisions, especially if it affects their interests.	Slowing down reforms, avoiding addressing systemic human rights issues	In cases involving politically sensitive issues, e.g., the independence of the judiciary, as in Oleksandr Volkov v. Ukraine (2013), Ryaska v. Ukraine (2024), Derdin v. Ukraine (2025), the decisions are often not fully implemented.
Lack of systemic reforms	Many ECtHR judgments require changes at the level of legislation or administration that are not implemented.	Violations persist, and the number of complaints to the ECtHR on systemic problems increases.	Failure to comply with systemic decisions, such as Ivanov v. Ukraine (2006), Spivak v. Ukraine (2025), Afanasiev v. Ukraine (2005), Gongadze v. Ukraine (2005), where the ECtHR stated the need to reform the system of enforcement of national judgments.

Source: compiled by the authors

The introduction of amendments to the Criminal Code of the Republic of Ukraine (2001) and the Code of Administrative Judicial Procedure of Ukraine (2005) was a response to systemic violations identified in cases examined by the ECtHR. For example, following numerous judgments of the Court concerning unlawful detention, the Criminal Code of the Republic of Ukraine (2001) was amended to limit the duration of pre-trial detention and improve the procedures

for justifying such measures. This has reduced the number of cases of arbitrary detention, which was previously a common problem identified in cases such as Kharchenko v. Ukraine (2011).

Amendments to the Code of Administrative Judicial Procedure of Ukraine (2005) contributed to strengthening the guarantees of protection of citizens' rights in relations with state authorities. Such innovations as simplified access to court proceedings in administrative cases and the introduction of clearer rules on the liability of public authorities were steps towards improving the effectiveness of legal protection in the administrative sphere. Increased transparency in the Ukrainian judicial system has also been an important result of the impact of ECtHR case law. The Court's judgments concerning violations of the right to a fair trial (Article 6 of the Convention), such as Oleksandr Volkov v. Ukraine (2013), have contributed to reforms that have made court proceedings more open. One of the achievements was the introduction of electronic document management in courts, which enabled citizens to track the progress of their cases. In addition, transparency in the selection and appointment of judges has been enhanced, reducing the risk of political influence. This has become particularly important in the context of implementing ECtHR judgments that emphasise the need for judicial independence. Modern mechanisms for declaring judges' assets and monitoring their integrity have contributed to increased trust in the judiciary.

Despite legislative improvements following the ECtHR's judgments such as amendments to the Criminal Code (2001) and the Code of Administrative Judicial Procedure (2005) the overall decrease in applications to the European Court of Human Rights from Ukraine in the relevant categories remains modest. For instance, while some reduction has been observed in the number of admissible cases concerning prolonged pre-trial detention or lack of judicial justification, as in Kharchenko v. Ukraine (2011), these issues have not been fully resolved, and new complaints with similar procedural violations continue to appear. The introduction of stricter procedural safeguards and electronic court administration has improved access to justice and transparency, particularly in administrative proceedings and judicial oversight, yet the number of ECtHR cases related to Article 6 (right to a fair trial) and Article 13 (right to an effective remedy) remains high. Key findings of the 2023 Report on Ukraine (2023) still classify Ukraine among the leading countries by volume of pending applications, many of which pertain to systemic issues previously identified. This indicates that although individual reforms have positively influenced judicial practice and institutional culture, they have not yet resulted in a significant or sustained decline in complaints, particularly in categories involving judicial independence, enforcement of domestic judgments, and conditions of detention. Thus, while the reforms mark progress, their incomplete and inconsistent implementation continues to generate new litigation before the Strasbourg Court. These positive developments demonstrate that the implementation of ECtHR judgments is not only an obligation of Ukraine, but also an important step towards modernising the legal system, ensuring the rule of law and strengthening democratic institutions.

The improvement of human rights protection mechanisms in Ukraine depends significantly on the effective implementation of ECtHR recommendations addressing legislative, administrative, and educational shortcomings. Ensuring compliance of national legislation with the European Convention on Human Rights (1950) is a key priority, requiring regular revision of legal acts and alignment with ECtHR jurisprudence. Particular emphasis should be placed on reforming criminal and civil justice and enhancing access to justice. Equally important is the professional training of judges, prosecutors, and law enforcement officers in ECtHR standards, as insufficient expertise often leads to violations. Public legal education, especially among youth, is also vital, as many violations remain unaddressed due to low legal awareness (Bocheliuk *et al.*, 2020). Overall, harmonising legislation, enhancing institutional capacity, and fostering legal culture are essential for reducing ECtHR applications and strengthening Ukraine's position in the international human rights framework.

Ukraine's prospects for improving human rights protection hinge not only on domestic reforms but also on the capacity to institutionalize ECtHR-driven changes (Fedorchenko *et al.*, 2020). Neighbouring countries provide instructive case studies in this regard. In Poland, structural judicial reforms prompted by ECtHR and EU concerns over court independence were instituted in stages starting in 2017 with a major overhaul of the National Council of the Judiciary (NCJ), Supreme Court, and ordinary courts. Although the Venice Commission raised concerns about excessive parliamentary control, Poland's newly adopted 2024 "Rule of Law Action Plan" reaffirms the primacy of EU and Strasbourg standards and signals a renewed commitment to judicial autonomy (Urgent Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law of the Council of Europe No. 1181/2024, 2024).

Romania has also undertaken significant reforms following its experience with ECtHR cases, particularly regarding the enforcement of court decisions. Since the 2013 Code of Civil Procedure of Romania (2016) overhaul validated by the Court in case Ciocodeică v. Romania (2018) has streamlined enforcement mechanisms, cut unreasonable delays, and introduced stringent remedies for victims of protracted litigation. Moreover, in June 2024, co-operation between Romanian judges and EU/ECtHR bodies was reinforced through Council of Europe help training programs, aiming to deepen judicial familiarity with ECtHR case law (EU-ECHR Interplay…, 2024). By contrast, Hungary offers a cautionary tale: despite the Case of Baka V. Hungary (2016) ECtHR finding against politically driven judicial dismissals, domestic resistance has persisted, undermining efforts to safeguard judicial independence. The Hungarian experience underscores that formal legal changes must be accompanied by genuine political commitment and cultural shifts within judicial systems to avoid superficial compliance. These regional examples highlight that while legislative alignment with ECtHR standards is necessary, effective implementation ultimately depends on reinforcing institutional independence, ensuring consistent judicial training, and fostering a systemic shift toward accountability. Ukraine can draw on these lessons especially from Poland and Romania to design reforms that are not only legally compliant but resilient and sustainable in practice.

International cooperation is an important tool for improving Ukraine's legal system, especially in the area of human rights. Interaction with European institutions, and experts and the use of the experience of other countries helps to adapt national legislation to international standards,

improve human rights protection mechanisms and enhance the skills of specialists. Engaging European experts is one of the most effective ways to integrate best legal practices. Experts from the Council of Europe, the EU, and other international organisations have experience in different legal systems and can provide Ukraine with valuable advice. For example, their involvement in the development of legislative reforms ensures that new regulations comply with the European Convention on Human Rights (1950) and ECtHR case law. In addition, experts conduct trainings and seminars for judges, prosecutors, lawyers and other legal professionals, focusing on specific issues such as combating torture, effective investigation of violations or ensuring the right to a fair trial.

By leveraging the experience of other countries, Ukraine can incorporate best practices that have proven effective in similar social or legal contexts. Poland is one of the most successful countries in Central and Eastern Europe that conducted judicial reforms in preparation for EU accession. The creation of transparent mechanisms for selecting judges and the development of independent anti-corruption bodies, such as the Central Anti-Corruption Bureau of Poland, have been important aspects of Polish reforms. These practices have inspired the creation of similar structures in Ukraine (Kos, 2023; Balynska *et al.*, 2024). After joining the EU, the Czech Republic also underwent significant judicial reform. One of the main changes was the improvement of mechanisms for controlling the judicial system, which ensured greater transparency and independence of judges. The Czech Republic also introduced new procedures for selecting judges that consider European standards (McWhirter & Clark, 2023). In the case of Estonia, the country prioritised the development of e-justice and the digitisation of court proceedings, which has significantly improved the efficiency and transparency of the judicial system. Ukraine can draw on Estonia's experience to introduce innovations in the judicial process (Gosztonyi, 2019). Romania has also set an example for Ukraine by establishing specialised anti-corruption bodies, such as the National Anti-Corruption Directorate. Romania's experience in fighting corruption and strengthening the independence of the judiciary is important for Ukrainian reformers. Bulgaria has implemented several reforms in the judicial system, including changes to the selection procedure for judges and increasing their independence, as well as reforms to anti-corruption activities that could be useful for Ukraine (Stepanian, 2022).

Judicial reforms in Poland, the Czech Republic, Romania, and other neighbouring states have been closely tied to rulings of the European Court of Human Rights, serving both as catalysts for change and as indicators of persistent challenges. In Poland, decisions such as Case of Xero Flor w Polsce sp. z o.o. v. Poland (2021) highlighted systemic violations of judicial independence under Article 6 of the Convention. These judgments prompted legal and institutional reforms, including changes to judicial appointments and disciplinary mechanisms, though implementation remains partial and contested. In the Czech Republic, the 2023 judgment in case of Grosam v. The Czech Republic (2023) led to significant adjustments in the disciplinary oversight of judicial and quasi-judicial officials, reinforcing procedural guarantees and judicial review standards. Romania, although not recently subject to high-profile ECtHR cases, has taken consistent steps since the 2010s to align with Strasbourg jurisprudence, including reforms of civil and criminal procedure codes and the strengthening of anti-corruption structures, largely influenced by earlier ECtHR findings on ineffective investigations and delays in enforcement. In all these cases, the impact of Court judgments is evident not only in specific legislative changes but also in the evolution of legal culture, with a growing emphasis on fair trial guarantees, judicial transparency, and institutional accountability (Santosh *et al.*, 2023). Ukraine, facing similar challenges, can draw valuable lessons from these experiences, particularly in ensuring that legal harmonisation is accompanied by structural reforms and sustained political commitment to the rule of law.

Ukrainian legislation has been transformed under the influence of the decisions of the ECtHR, but despite a series of reforms, systemic problems in law enforcement remain (Yuzheka, 2023). Thus, following the decision in the case of Kharchenko v. Ukraine (2011), which found a violation of Article 5 of the Convention due to prolonged pre-trial detention without proper justification, amendments were made to the criminal procedure legislation Ukraine in 2012 and 2020. Law of Ukraine No. 113-IX (2019) amended the Criminal Procedure Code (2012) to replace the term "local prosecutor's office" with "district prosecutor's office", reflecting administrative restructuring, while also enhancing procedural guarantees related to the justification of arrests. In 2020, the Law of Ukraine No. 3509-IX (2023) further amended the Criminal Procedure Code (2012) to strengthen procedural protections and allow for appeals against the extension of pre-trial detention. These amendments impose stricter requirements for justifying arrests and allow for appeals against their extension. However, in practice, courts still often use template wording, and the problem of "automatic" detention remains widespread.

Following the Afanasiev v. Ukraine (2005) judgment, in which the Court found a violation of Article 3 concerning torture by the police and the ineffectiveness of the investigation, Article 127 was added to the Criminal Code of Ukraine (2001), which clearly prohibits torture. Procedures for independent medical examinations and mechanisms for recording bodily injuries were also introduced. However, even in 2025, human rights organisations continue to report impunity for police officers and a lack of prompt and impartial investigations, indicating a failure to implement the Court's decisions at the institutional level. The Gongadze v. Ukraine (2005) decision, which became symbolic in the protection of journalists, sparked discussions about reforming the prosecutor's office and strengthening guarantees for independent investigations of crimes against journalists. Despite formal changes, including the reform of the prosecution service, the effectiveness of investigations into attacks on journalists remains low, and the political will to ensure full accountability of high-ranking officials is limited. Ukraine needs further legislative changes by 2025. These include standardising the reasoning behind court decisions on arrest, strengthening the procedural independence of investigative bodies, reviewing the disciplinary responsibility of judges with guarantees of independence, and digitising the enforcement of court decisions with strict deadlines and mechanisms for accountability for violations. Only the real implementation of legal norms and bringing institutional practice into line with European standards will be able to ensure a reduction in the number of new cases against Ukraine in the ECtHR.

Discussion

Discussing ECtHR decisions in the context of Ukraine is extremely important for assessing the effectiveness of law enforcement practices and identifying key problems in the implementation of international standards. As Ukraine actively seeks to adapt its legislation to the requirements of the Court, studying existing research allows us to understand where the greatest difficulties arise – whether in the interpretation of decisions by courts or in coordination between authorities. This makes it possible to identify systemic problems that affect the implementation of ECtHR decisions and points to the need for comprehensive reforms that will ensure more effective implementation of international obligations and improve legal protection at the national level.

The study by V. Barvinenko *et al.* (2023) examines the impact of decentralisation on the implementation of ECtHR decisions at the local government level, noting that local authorities often lack the institutional capacity to implement them, especially under martial law. The current study also highlights problems with ECtHR implementation in Ukraine, particularly regarding pre-trial detention and inadequate conditions of detention. However, it broadens the focus to include nationwide coordination between the Ministry of Justice, courts, and penitentiary institutions, addressing systemic problems in public administration. While agreeing with Barvinenko *et al.* (2023) the current study argues that the problem lies not only in decentralisation but also in the lack of coordination at the central authority level.

The research by V. Cherneha *et al.* (2024) on the right to respect for private life and A.V. Denysova *et al.* (2022) on the right to a fair trial analyses specific ECtHR case, highlighting Ukraine's achievements and failures in implementing the Court's decisions. The authors point to difficulties in interpreting and implementing these decisions by the courts. The current study also notes challenges in implementing ECHR decisions, particularly regarding prolonged pre-trial detention and inadequate detention conditions. However, unlike Cherneha *et al.* (2024), the current study focuses not only on the level of courts but also on nationwide coordination between the Ministry of Justice, courts, and penitentiary institutions. The current study broadens the focus to systemic problems in public administration.

The study by U. Huliam (2022), V. Hvozdiuk and N. Morhun (2024) highlights the difficulties faced by Ukrainian authorities in translating ECtHR judgments into concrete actions, particularly due to the gap between legal theories and actual practices. This research correlates with the findings of the current study, which also identified difficulties in the implementation of human rights, especially in criminal cases, where Court principles are not always fully integrated into national practice. However, the current study focuses on specific ECtHR cases, such as problems with prolonged pre-trial detention and violations of rights in penitentiary institutions, while authprs focus on the general difficulties of integrating ECHR decisions into law enforcement and judicial practice. The conclusions of these authors regarding the gap between theory and practice in the application of ECtHR standards are supported, but the generalised approach, which reduces the problem to a mere inconsistency between legal theories and their application, is not supported.

The study by H. Keller and C. Heri (2022) focuses on the impact of ECtHR decisions in the context of climate litigation, while M. Cousins (2020) explores social security issues, highlighting the evolution of the application of ECtHR decisions in various legal areas. This research shows how the protection of human rights is increasingly intertwined with new global challenges such as climate change and digital technology. The current study also examines the implementation of ECtHR decisions, but focuses on more traditional areas such as pre-trial detention and conditions of detention in penitentiary institutions. The difference is study emphasises the interaction of human rights with contemporary global issues, while our study focuses on Ukraine's internal legal challenges, particularly judicial and law enforcement practices. A conclusion has been made regarding the importance of adapting legal standards to new realities, but the idea of extending this adaptation to so-called new global problems is not supported, since existing problems should be solved within the framework of traditional legal institutions.

M. Buijsen's (2023) study raises the issue of subjective interpretation of ECtHR decisions, especially in cases where different judicial opinions can lead to inconsistent application of decisions in member states. The current study also examines problems with the implementation of ECtHR decisions in Ukraine, but the main focus is on systemic legal and administrative shortcomings that cause difficulties in enforcing decisions. While Buijsen emphasises judicial subjectivity, the current study draws attention to the lack of proper coordination between state authorities, which complicates the implementation of ECtHR standards. The author's general conclusions regarding the difficulties associated with interpreting ECtHR decisions are supported, but the idea that judicial subjectivity is the main problem is not supported.

The study by N. Mazaraki and T. Tsuvina (2023) highlights the need to balance national sovereignty and international responsibility in addressing business-related human rights violations in Ukraine, particularly in the context of war. The current study also considers decentralisation, focusing on institutional challenges like insufficient vertical coordination between authorities. The key difference is that Mazaraki and Tsuvina address business and human rights in relation to national sovereignty, while the current study focuses on legal aspects and national mechanisms for implementing ECtHR decisions. While supporting the need for balancing sovereignty and responsibility, the current study does not focus on business issues, as they are not the main topic.

This section discusses various studies that examine the problems of implementing ECtHR decisions in Ukraine and the interaction of these decisions with national legal and administrative systems. All authors agree that Ukraine faces serious difficulties in implementing ECtHR judgments, in particular due to problems with coordination between authorities, subjective interpretation of judgments, and lack of adequate legal support. While some studies highlight specific aspects such as decentralisation, militarisation, or the interpretation of decisions by courts, the current study broadens the focus to systemic problems that span all levels of government and require comprehensive reforms. The different approaches in these studies highlight the need to consider both domestic and international factors for effective enforcement of ECtHR judgments and the adaptation of national legislation to international standards.

Conclusions

The research successfully addressed the key tasks outlined in the introduction, providing valuable insights into the

impact of ECtHR judgments on the Ukrainian legal system, the adaptation of national legislation to ECHR standards, and the factors influencing the effective implementation of Court decisions. The study thoroughly analysed key ECtHR judgments that have influenced the development of Ukrainian law, particularly in areas such as pre-trial detention, penitentiary conditions, and judicial independence. Specific cases like Karabet and Others v. Ukraine and Gongadze v. Ukraine were explored, highlighting both the progress made and the ongoing challenges in implementing ECtHR standards. These judgments have played a critical role in shaping Ukraine's legal framework, though systemic problems persist.

The study examined the process of adapting national legislation to ECHR standards. While significant legal reforms have been introduced in Ukraine such as amendments to the Criminal Procedure Code and the establishment of new mechanisms for judicial oversight there is still a gap between legislative changes and their practical enforcement. The analysis reveals that, despite reforms, issues like excessive pre-trial detention and inadequate conditions in detention facilities continue to be widespread. The implementation of ECHR judgments often faces obstacles due to insufficient coordination among national authorities, which undermines the effectiveness of these reforms.

The study identified factors that both facilitate and hinder the effective implementation of ECtHR judgments in Ukraine. The research highlights the importance of institutional coordination, particularly between the Ministry of Justice, courts, and penitentiary institutions. While some positive steps have been made in judicial and legislative reforms, systemic issues such as political interference, lack of resources, and inadequate enforcement mechanisms persist. The study concludes that further reforms are necessary to ensure the consistent and effective application of ECtHR standards in Ukraine, particularly in light of ongoing human rights challenges in areas like judicial independence and the protection of vulnerable groups. The research successfully fulfilled the outlined objectives by providing a comprehensive analysis of the challenges and progress in aligning Ukraine's legal system with ECtHR standards, while also offering a critical examination of the institutional and systemic barriers that hinder the full implementation of human rights protections.

The prospective significance of the Article lies in the fact that it provides valuable insights for the further development of the Ukrainian legal system through the integration of international standards, in particular the decisions of the ECtHR. The work contributes to a deeper understanding of the problems that hinder the effective implementation of these decisions, in particular due to imperfect coordination between state bodies and systemic shortcomings in law enforcement. This can serve as a basis for further research and practical recommendations on improving judicial reform, enhancing the effectiveness of legal protection, and ensuring respect for human rights in Ukraine.

Acknowledgements

None.

Funding

The study was not funded.

Conflict of interest

None.

References

[1] Applications concerning the conflicts and war in Ukraine. (2025). Retrieved from https://www.echr.coe.int/w/applications-concerning-the-conflicts-and-war-in-ukraine?utm.

[2] Balynska, O., Korniienko, M., Martseliak, O., Halunko, V., & Mahnovskyi, I. (2024). Constitutional, administrative and criminal law regulation of protecting rights of internally displaced persons: Foreign experience and directions for improvement. *Legal Treasures*, 6(1). doi: 10.15575/kh.v6i1.33775.

[3] Barvinenko, V., Mishyna, N., & Qaracayev, C. (2023). Ukrainian local government and council of Europe's standards: Human rights protection and decentralisation at the times of militarisation. *Baltic Journal of Economic Studies*, 9(4), 31-36. doi: 10.30525/2256-0742/2023-9-4-31-36.

[4] Blahuta, R.I., Barabash, O.O., Zakharov, V.P., Kovalska, M.Y., & Dobkina, K.R. (2024). Enhancing human rights protections in Ukrainian law enforcement: National compliance with EU standards. *Yuridika,* 39(1), 1-30. doi: 10.20473/ydk.v39i1.45461.

[5] Bocheliuk, V.Y., Denysov, S.F., Denysova, T.A., Palchenkova, V.M., & Panov, N.S. (2020). Psychological and legal problems for ensuring human rights. *Rivista di Studi sulla Sostenibilita*, 1, 235-245. doi: 10.3280/RISS2020-001014.

[6] Buijsen, M. (2023). On interpretation and appreciation. A European human rights perspective on *Dobbs*. *Cambridge Quarterly of Healthcare Ethics*, 32(3), 323-336. doi: 10.1017/s0963180122000913.

[7] Cherneha, V., Dobkina, K., Horban, Y., Hrytsyshyna, L., & Zalizko, O. (2024). The right to respect for private life: Ukrainian approach and European Court of Human Rights practice. *Dixi*, 26(2), 1-22. doi: 10.16925/2357-5891.2024.02.11.

[8] Code of Administrative Judicial Procedure of Ukraine. (2005, July). Retrieved from https://zakon.rada.gov.ua/laws/show/2747-15#Text.

[9] Code of Civil Procedure of Romania. (2016, March). Retrieved from https://legislatie.just.ro/public/detaliidocument/177197.

[10] Council of Europe & Committee of Ministers. (2024). *Annual report 2024*. Retrieved from https://www.coe.int/en/web/execution/annual-report-2024.

[11] Council of Europe anti-torture Committee (CPT) carries out a visit to Romania. (2024a). Retrieved from https://surl.li/ohnirx.

[12] Council of Europe anti-torture Committee (CPT) publishes the response of the Ukrainian authorities to the report on the 2023 visit. (2024b). Retrieved from https://surl.lt/qjdpiw.

[13] Cousins, M. (2020). Legitimate expectation and social security law under the European convention of human rights. *European Journal of Social Security,* 23(1), 24-43. doi: 10.1177/1388262720961792.

[14] CPJ concerned by irregularities in Ukraine's Gongadze case. (2011). Retrieved from https://cpj.org/2011/03/cpj-concerned-by-irregularities-in-ukraines-gongad/?utm.

[15] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/en/2341-14#Text.

[16] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://rm.coe.int/16802f6016.
[17] Denysova, A.V., Blaga, A.B., Makovii, V.P., & Kaliuzhna, Y.S. (2022). The right to a fair trial: The European Court of Human Rights case-law and its implementation in the Ukrainian judiciary. *Law and Social Bonds*, 2(40), 109-127. doi: 10.36128/priw.vi40.385.
[18] Directive of European Comission No. 2011/69/EU "On Amending Directive 98/8/EC of the European Parliament and of the Council to Include Imidacloprid as an Active Substance in Annex I thereto Text with EEA Relevance". (2011, July). Retrieved from https://eur-lex.europa.eu/eli/dir/2011/69/oj.
[19] EU-ECHR Interplay: Council of Europe HELP course launched for judges and prosecutors from Romania and Lithuania. (2024). Retrieved from https://surl.lu/ifqkjp.
[20] European Convention on Human Rights. (1950, November). Retrieved from https://www.echr.coe.int/documents/d/echr/convention_ENG.
[21] European Court of Human Rights. (2024). *Analisys of statistics 2023*. https://www.echr.coe.int/documents/d/echr/stats-analysis-2023-eng.
[22] European Court of Human Rights. (2025). *Analisys of statistics 2024*. https://www.echr.coe.int/documents/d/echr/stats-analysis-2024-eng.
[23] Fedorchenko, N.V., Shymon, S.I., Vyshnovetska, S.V., Mikhnevych, L.V., & Bazhenov, M.I. (2020). Community organisation as a subject of civil relations according to Law of Ukraine and CIS countries. *Memoria E Ricerca*, 1, 353-370. doi: 10.4478/98143.
[24] Gosztonyi, G. (2019). How the European Court of Human Rights contributed to understanding liability issues of internet service providers. *Annals of the Roland Eötvös University of Sciences, Budapest, Legal Section*, 58, 121-133. doi: 10.56749/annales.elteajk.2019.lviii.7.121.
[25] Guide on Article 2 of the European Convention on Human Rights. (2025). Retrieved from https://ks.echr.coe.int/documents/d/echr-ks/guide_art_2_eng.
[26] Guide on Article 3 of the European Convention on Human Rights. (2025). Retrieved from https://ks.echr.coe.int/documents/d/echr-ks/guide_art_3_eng.
[27] Huliam, U. (2022). The implementation of practice of the European Court of Human Rights by the Ukrainian judiciary. *International Humanitarian University Herald. Series Jurisprudence*, 57, 108-114. doi: 10.32841/2307-1745.2022.57.22.
[28] Human Rights Watch. (2023). *World report 2023*. Retrieved from https://www.hrw.org/world-report/2023.
[29] Hvozdiuk, V., & Morhun, N. (2024). Application of the European Court of Human Rights practices by the investigator during the search. *Scientific Bulletin of the National Academy of Internal Affairs*, 29(2), 57-66. doi: 10.56215/naia-herald/2.2024.57.
[30] Judgment of the European Court of Human Rights in Case No. 10233/20 "Ukrkava, Tov v. Ukraine". (2025, June). Retrieved from https://hudoc.echr.coe.int/eng#{«itemid»:[«001-24EU-ECHR Interplay1576»]}.
[31] Judgment of the European Court of Human Rights in Case No. 15007/02 "Ivanov v. Ukraine". (2006, December). Retrieved from https://zakon.rada.gov.ua/laws/show/974_136#Text.
[32] Judgment of the European Court of Human Rights in Case No. 19750/13 "Grosam v. The Czech Republic". (2023, June). Retrieved from https://hudoc.echr.coe.int/eng#{«itemid»:[«001-225231»]}.
[33] Judgment of the European Court of Human Rights in Case No. 20261/12 "Baka v. Hungary". (2016, November). Retrieved from https://hudoc.echr.coe.int/fre#{«itemid»:[«001-163113»]}.
[34] Judgment of the European Court of Human Rights in Case No. 21722/11 "Oleksandr Volkov v. Ukraine". (2013, January). Retrieved from https://zakon.rada.gov.ua/laws/show/974_947#Text.
[35] Judgment of the European Court of Human Rights in Case No. 23893/03 "Kaverzin v. Ukraine". (2012, May). Retrieved from https://zakon.rada.gov.ua/laws/show/974_851#Text.
[36] Judgment of the European Court of Human Rights in Case No. 27413/09 "Ciocodeică v. Romania". (2018, January). Retrieved from https://laweuro.com/?p=9482.
[37] Judgment of the European Court of Human Rights in Case No. 28232/22 "Figurka v. Ukraine". (2024, April). Retrieved from https://hudoc.echr.coe.int/app/conversion/docx/html/body?library=ECHR&id=001-228845.
[38] Judgment of the European Court of Human Rights in Case No. 34056/02 "Gongadze v. Ukraine". (2005, November). Retrieved from https://zakon.rada.gov.ua/laws/show/980_420#Text.
[39] Judgment of the European Court of Human Rights in Case No. 38722/02 "Afanasiev v. Ukraine". (2005, April). Retrieved from https://zakon.rada.gov.ua/laws/show/980_239#Text.
[40] Judgment of the European Court of Human Rights in Case No. 40107/02 "Kharchenko v. Ukraine". (2011, February). Retrieved from https://zakon.rada.gov.ua/laws/show/974_662#Text.
[41] Judgment of the European Court of Human Rights in Case No. 40583/15 "Ignatov v. Ukraine". (2016, December). Retrieved from https://hudoc.echr.coe.int/eng#{«itemid»:[«001-169524»]}.
[42] Judgment of the European Court of Human Rights in Case No. 43426/20 "Spivak v. Ukraine". (2025, January). Retrieved from https://hudoc.echr.coe.int/ukr#{«itemid»:[«001-243367»]}.
[43] Judgment of the European Court of Human Rights in Case No. 46430/99 "Barbu Anghelescu v. Romania". (2004, October). Retrieved from https://hudoc.echr.coe.int/#{«itemid»:[«001-122715»]}.
[44] Judgment of the European Court of Human Rights in Case No. 4907/18 "Xero Flor w Polsce sp. z o.o. v. Poland". (2021, August). Retrieved from https://hudoc.echr.coe.int/fre#{«itemid»:[«001-210065»]}.
[45] Judgment of the European Court of Human Rights in Case No. 50533/19 "Ryaska v. Ukraine". (2024, October). Retrieved from https://hudoc.echr.coe.int/rus#{«itemid»:[«001-236203»]}.
[46] Judgment of the European Court of Human Rights in Case No. 54825/00 "Nevmerzhitsky v. Ukraine". (2005, April). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-125783%22]}.

[47] Judgment of the European Court of Human Rights in Case No. 57424/18 "Medvid v. Ukraine". (2024, November). Retrieved from https://court.gov.ua/storage/portal/supreme/zakonodavstvo/Medvid_Ukraine.pdf.
[48] Judgment of the European Court of Human Rights in Case No. 59016/18 "Malyeyev v. Ukraine". (2025, January). Retrieved from https://hudoc.echr.coe.int/ukr#{«itemid»:[«001-243273»]}.
[49] Judgment of the European Court of Human Rights in Case No. 74820/10 "Derdin v. Ukraine". (2025, February). Retrieved from https://court.gov.ua/storage/portal/supreme/zakonodavstvo/Derdin_Ukraine.pdf.
[50] Judgment of the European Court of Human Rights in Case Nos. 38906/07 and 52025/07 "Karabet and Others v. Ukraine". (2013, January). Retrieved from https://zakon.rada.gov.ua/laws/show/974_c69#Text.
[51] Judgment of the European Court of Human Rights in Case Nos. 43800/14, 8019/16 and 28525/20 "Ukraine and the Netherlands v. Russia". (2022, January). Retrieved from https://hudoc.echr.coe.int/eng#{"itemid":["002-13989"]}.
[52] Judgment of the European Court of Human Rights in Case Nos. 72287/10, 13927/11 and 46187/11 "Rutkowski and Others v. Poland". (2015, July). Retrieved from https://hudoc.echr.coe.int/fre#{«itemid»:[«001-155815»]}.
[53] Keller, H., & Heri, C. (2022). The future is now: Climate cases before the ECTHR. *Nordic Journal of Human Rights*, 40(1), 153-174. doi: 10.1080/18918131.2022.2064074.
[54] Key findings of the 2023 Report on Ukraine. (2023). Retrieved from https://www.eeas.europa.eu/delegations/ukraine/key-findings-2023-report-ukraine_en.
[55] Kharkiv Human Rights Protection Group. (2024). *Annual reports*. Retrieved from https://khpg.org/en/1608811872.
[56] Kos, U.A. (2023). Signalling in European rule of law cases: Hungary and Poland as case studies. *Human Rights Law Review*, 23(4), article number ngad035. doi: 10.1093/hrlr/ngad035.
[57] Law of Ukraine No. 113-IX "On Amendments to Certain Legislative Acts of Ukraine Regarding Priority Measures for the Reform of the Prosecutor's Office". (2019, September). Retrieved from https://zakon.rada.gov.ua/laws/show/113-20#Text.
[58] Law of Ukraine No. 1401VIII "On Amendments to the Constitution of Ukraine (Regarding Justice)". (2016, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1401-VIII#Text.
[59] Law of Ukraine No. 31 "On the Judiciary and the Status of Judges". (2016, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1402-19#Text.
[60] Law of Ukraine No. 3509-IX "On Amendments to the Criminal Procedure Code of Ukraine and Other Legislative Acts of Ukraine to Strengthen the Independence of the Specialized Anti-Corruption Prosecutor's Office". (2023, December). Retrieved from https://zakon.rada.gov.ua/laws/show/3509-20#Text.
[61] Litoshenko, O., Bogdan, O., & Pugachov, M. (2023). Regulatory and legal basis of ensuring human rights in Ukraine. *International Scientific Journal "Internauka". Series: "Juridical Sciences"*, 9. doi: 10.25313/2520-2308-2023-9-9161.
[62] Malhotra, N. (2023). Ensuring justice and human rights. In N. Malhotra (Ed.), *Microfinance and Development in emerging economies: An alternative financial model for advancing the sdgs* (pp. 143-159). Bingley: Emerald Publishing Limited. doi: 10.1108/978-1-83753-826-320231007.
[63] Mazaraki, N., & Tsuvina, T. (2023). Creating an effective mediation scheme for business-related human rights abuses: The case of Ukraine. *Business and Human Rights Journal*, 9(1), 129-149. doi: 10.1017/bhj.2023.34.
[64] McWhirter, R., & Clark, M. (2023). Expertise, public health and the European Convention on Human Rights: Vavřička v Czech Republic. *Modern Law Review*, 86(4), 1035-1038. doi: 10.1111/1468-2230.12800.
[65] Mishyna, N.V. (2023). Decentralisation: European Court of Human Rights' judgements implementation. *Scientific Works of the National University "Odesa Law Academy"*, 32, 94-99. doi: 10.32782/npnuola.v32.2023.11.
[66] Mykhailovskyi, V. (2021). International legal mechanism for ensuring human rights. *Foreign Trade: Economics, Finance, Law,* 117(4), 26-35. doi: 10.31617/zt.knute.2021(117)03.
[67] Najafli, E., Kisiliuk, E., Dubenko, O., Burlakov, S., & Yarmaki, V. (2024). Ensuring human rights in Ukraine during introduction of martial law: Constitutional and administrative aspect. *Sharia: Journal of Law and Thought*, 24(1), 52-72. doi: 10.18592/sjhp.v24i1.12527.
[68] OHCHR. (2024). *41st Periodic report on the human rights situation in Ukraine (1 September to 30 November 2024)*. Retrieved from https://www.ohchr.org/en/documents/country-reports/41st-periodic-report-human-rights-situation-ukraine-1-september-30.
[69] Opinion of the Supreme Court of the United States in Case "Dobbs v. Jackson Women's Health Organization". (2022, June). Retrieved from https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf.
[70] Ploszka, A. (2022). It never rains but it pours. The Polish constitutional tribunal declares the European Convention on Human Rights unconstitutional. *Hague Journal on the Rule of Law*, 15, 51-74. doi: 10.1007/s40803-022-00174-w.
[71] Report on the Human Rights Situation in Ukraine. (2024). Retrieved from https://ukraine.un.org/sites/default/files/2024-07/24-07-02-OHCHR-39th-periodic-report-Ukraine_1.pdf.
[72] Santosh, T.Y.S.S., San Blas, M.P., Kemper, O., & Grabmair, M. (2023). Leveraging task dependency and contrastive learning for case outcome classification on European Court of Human Rights cases. In *Proceedings of the 17th conference of the European Chapter of the Association for Computational Linguistics* (pp. 1103–1111). Dubrovnik: Association for Computational Linguistics. doi: 10.18653/v1/2023.eacl-main.78.
[73] Semeniuk, S., & Horbach-Kudria, I. (2024). Administrative legal principles of human rights-based approach by the police. *Law Journal of the National Academy of Internal Affairs*, 14(3), 87-97. doi: 10.56215/naia-chasopis/3.2024.87.
[74] Smokov, S.M., Horoshko, V.V., Korniienko, M.V., & Medvedenko, S.V. (2022). Rule of law as a principle of criminal procedure (on materials of the European Court of Human Rights). *Pakistan Journal of Criminology*, 14(3), 37-46.
[75] Sopelnyk, I. (2025). The essence of human rights and the transformation of their protection mechanisms. *Law. Human. Environment*, 16(1), 122-146. doi: 10.31548/law/1.2025.122.

[76] Stepanian, R. (2022). Implementation of the European Court of Human Rights doctrines into national law: Methodological aspect. *Knowledge, Education, Law, Management*, 47(3), 320-324. doi: 10.51647/kelm.2022.3.52.

[77] Suspension clause (Article 7 of the Treaty on European Union). (2016). Retrieved from https://eur-lex.europa.eu/EN/legal-content/glossary/suspension-clause-article-7-of-the-treaty-on-european-union.html.

[78] Taran, O., & Hryha, M. (2024). Application of international humanitarian law by the European Court of Human Rights. *Scientific Journal of the National Academy of Internal Affairs*, 29(2), 9-17. doi: 10.56215/naia-herald/2.2024.09.

[79] The right to a fair trial: A guide to the implementation of Article 6 of the European Convention on Human Rights. (2006). Retrieved from https://www.refworld.org/reference/research/coe/2006/en/67017.

[80] Tymoshenko, Y. (2022). Human rights and freedoms in Ukraine. In T. Pikovska, A. Pravdiuk, Y. Tymoshenko, N. Opolska, N. Chernyschuk & T. Tomliak (Eds.), *Ensuring the rights and freedoms of people in Ukraine* (pp. 102-128). Riga: Publishing House "Baltija Publishing". doi: 10.30525/978-9934-26-213-5-4.

[81] Urgent Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law of the Council of Europe No. 1181/2024. (2024, May). Retrieved from https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI%282024%29009-e&utm.

[82] Yuzheka, R. (2023). The decision of the European Court of Human Rights and the issue of determining the content of evaluation features. *Scientific Bulletin of the National Academy of Internal Affairs*, 28(4), 58-67. doi: 10.56215/naia-herald/4.2023.58.

[83] Zamboni, M. (2011). *Implementation of the judgments of the European Court of Human Rights: Ukraine*. Strasburg: European Implementation Network.

Забезпечення прав людини в Україні на основі практики Європейського суду з прав людини

Андрій Кучук
Доктор юридичних наук, професор
Сумський державний педагогічний університет імені А.С. Макаренко
40002, вул. Роменська, 87, м. Суми, Україна
https://orcid.org/0000-0002-5918-2035

Євген Кобко
Кандидат юридичних наук, доцент
Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
https://orcid.org/0000-0002-3121–0823

Анатолій Радчук
Кандидат юридичних наук, Голова Одеського окружного адміністративного суду
Одеський окружний адміністративний суд
65062, вул. Фонтанська, 14, м. Одеса, Україна
https://orcid.org/0009-0004-0786-815X

Вадим Книшов
Директор Одеського центру початкової професійної підготовки «Академія поліції»
Одеський державний університет внутрішніх справ
65014, вул. Успенська, 1, м. Одеса, Україна
https://orcid.org/0009-0006-8189-5505

Тетяна Волошанівська
Кандидат юридичних наук, доцент
Одеський державний університет внутрішніх справ
65014, вул. Успенська, 1, м. Одеса, Україна
https://orcid.org/0000-0002-1060-5412

Анотація. Дослідження мало на меті проаналізувати, як українська правова система виконує рішення Європейського суду з прав людини, а також виявити проблеми та перспективи вдосконалення цього процесу. У статті були використані методи юридичного аналізу рішень Європейського суду з прав людини, порівняння національного законодавства з Європейською конвенцією з прав людини, аналіз статистики Європейського суду з прав людини, дослідження реалізації рішень Європейського суду з прав людини на національному рівні, герменевтичний метод для виявлення термінологічних прогалин, аналіз впровадження європейських стандартів у національну правову систему та дедукція для виявлення основних проблем у справах проти України. Аналіз рішень Європейського суду з прав людини показав наявність численних системних порушень прав людини в Україні, зокрема у сфері умов утримання в місцях позбавлення волі, незаконних арештів і тривалих судових процесів. Проблеми з невиконанням судових рішень та порушеннями прав на свободу і гідність були підтверджені численними справами, такими як Гонгадзе проти України та Харченко проти України. Внесення змін до Кримінального кодексу України після рішень Європейського суду з прав людини, зокрема обмеження терміну попереднього ув'язнення, дозволило зменшити випадки довготривалих затримань без достатніх підстав. Однак в статті також вказуються труднощі у виконанні рішень Європейського суду з прав людини, такі як брак ресурсів, політична воля та недостатні реформи в судовій сфері. Роль міжнародного співробітництва та громадянського суспільства в процесі реалізації рішень Європейського суду з прав людини в Україні є критично важливою для подальшого розвитку правозахисної ситуації в країні. Практичне значення статті полягає в тому, що вона надає цінні рекомендації для удосконалення правозахисної практики в Україні, зокрема у сфері виконання рішень Європейського суду з прав людини

Ключові слова: правосуддя; імплементація; законодавство; свобода слова; війна; міжнародні стандарти

Науково-аналітичний журнал
«СОЦІАЛЬНО-ПРАВОВІ СТУДІЇ»

Том 8, № 2
2025

Відповідальний редактор:
В. Боровікова

Редагування бібліографічних списків:
В. Боровікова

Підписано до друку з оригінал-макета 25.06.2025
Ум. друк. арк. 39,6
Тираж 100 прим.

Видавництво: 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
www: https://sls-journal.com.ua/uk

The scientific and analytical journal
"SOCIAL AND LEGAL STUDIOS"

Volume 8, No. 2
2025

Managing Editor:
V. Borovikova

Editing Bibliographic Lists:
V. Borovikova

Signed to the print with the original layout 25.06.2025
Conventional Printed Sheet 39.6
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