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DETERMINATION OF MECHANISMS FOR THE IMPLEMENTATION OF LEGAL MONITORING FOR COMPLIANCE WITH NATIONAL INTERESTS IN ACCORDANCE WITH CURRENT REGULATORY LEGAL ACTS

The collective article discusses the issues of improving the mechanism of legal monitoring of regulatory legal acts of Kazakhstan. When conducting legal monitoring, state bodies, in accordance with regulatory requirements, have the right to involve public and scientific organizations, citizens in accordance with the procedure established by the legislation of the Republic of Kazakhstan. And it is imperative to involve appropriate qualified researchers. In this case, only deep, systematic scientific research can determine the negative consequences of law-making, the subject of which is directly the requirements for ensuring national security.

Scientific research on topical legal problems of Kazakhstan has been conducted and is being conducted in research institutes and higher educational institutions of Kazakhstan, which have revealed the shortcomings of the institute of legal monitoring. Using the example of the analysis of the Code of the Republic of Kazakhstan "On Health and the Healthcare system" and the "Water Code of the Republic of Kazakhstan", the necessity of inclusion in scientific expert legal analysis as a mandatory element in conducting legal monitoring expertise in terms of substantiation of ensuring and observing the national interests of the Republic of Kazakhstan is justified.

Key words: Legal monitoring, regulatory legal acts, national interests, corruption norms, water legislation, healthcare, population, scientific research.

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Қолданыстағы нормативтік құқықтық актілер бойынша ұлттық мүдделерді сақтау тұрғысынан құқықтық мониторингті іске асыру тетіктерін айқындау

Ұжымдық мақалада Қазақстанның Нормативтік құқықтық актілеріне құқықтық мониторинг жүргізу тетігін жетілдіру мәселелері қарастырылады. Құқықтық мониторинг жүргізу кезінде мемлекеттік органдардың нормативтік нұсқамаларға сәйкес Қазақстан Республикасының заңнамасында белгіленген тәртіппен қоғамдық және ғылыми ұйымдарды, азаматтарды тартуға құқығы бар. Және міндетті түрде және тиісті білікті зерттеушілерді тарту қажет. Бұл жағдайда заң шығарудың теріс салдарын тек терең, жүйелі ғылыми зерттеулер анықтай алады, олардың тақырыбы ұлттық қауіпсіздікті қамтамасыз ету талаптары болып табылады.

Қазақстанның ғылыми-зерттеу институттары мен жоғары оқу орындарында құқықтық мониторинг институтының кемшіліктерін анықтаған Қазақстанның өзекті құқықтық мәселелері бойынша ғылыми зерттеулер жүргізілді және жүргізілуде. «Денсаулық сақтау және денсаулық сақтау жүйесі туралы» Қазақстан Республикасының Кодексін және «Қазақстан Республикасының Су кодексін» талдау мысалында Қазақстан Республикасының ұлттық мүдделерін қамтамасыз ету мен сақтауды негіздеу бөлігінде құқықтық мониторингтік сараптама жүргізу кезінде міндетті элемент ретінде ғылыми сараптамалық-құқықтық талдауға енгізу қажеттілігі негізделеді.

Түйін сөздер: Құқықтық мониторинг, нормативтік құқықтық актілер, ұлттық мүдделер, сыбайлас жемқорлық нормалары, су заңнамасы, Денсаулық сақтау, халық, ғылыми зерттеулер.

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Определение механизмов реализации правового мониторинга на предмет соблюдения национальных интересов по действующим нормативным правовым актам

В коллективной статье рассматриваются вопросы совершенствования механизма проведения правового мониторинга нормативных правовых актов Казахстана. При проведении правового мониторинга государственные органы согласно нормативным предписаниям имеют право привлекать общественные и научные организации, граждан в порядке, установленном законодательством Республики Казахстан. И привлекать необходимо в обязательном порядке и соответствующих квалифицированных исследователей. В данном случае определить негативные последствия правотворчества способны лишь глубокие, системные научные исследования, предметом которых непосредственно являются требования по обеспечению национальной безопасности.

В научно-исследовательских институтах и высших учебных заведениях Казахстана проводились и проводятся научные исследования по актуальным правовым проблемам Казахстана, которые, выявили недостатки института правового мониторинга. На примере анализа Кодекса Республики Казахстан «О здоровье и системы здравоохранения» и «Водного Кодекса Республики Казахстан» обосновывается необходимость включения в научный экспертно-правовой анализ в качестве обязательного элемента при проведении правовой мониторинговой экспертизы в части обоснования обеспечения и соблюдения национальных интересов Республики Казахстан.

Ключевые слова: правовой мониторинг, нормативные правовые акты, национальные интересы, коррупционные нормы, водное законодательство, здравоохранение, население, научные исследования**.**

Introduction

The Institute of Legal Monitoring is one of the mandatory instruments of state control over the state of the legislative process, which includes improving the quality of its legal regulation.

Legal monitoring is carried out in order to identify in the adopted regulatory legal acts contradictions to the legislation of the Republic of Kazakhstan, duplications, gaps, ineffectively implemented, outdated and corruption-prone legal norms and to develop proposals for their improvement by forecasting, analyzing, assessing the effectiveness of the implementation of adopted regulatory legal acts. State bodies conduct legal monitoring taking into account the recommendations of public and scientific organizations, citizens (https://online.zakon.kz/Document/?doc_id=37312788&pos=3;-106#pos=3;-106).

For the first time, the institution of legal monitoring was legislatively enshrined in the Law of the Republic of Kazakhstan "On Regulatory Legal Acts" (https://online.zakon.kz/Document/?doc_id=30045013&pos=5;-106) in 2006: "Article 43-1. Monitoring of subordinate regulatory legal acts.

1. Authorized bodies are obliged to carry out continuous monitoring of subordinate regulatory legal acts adopted by them and (or) of which they were the developers, in order to identify those that contradict the legislation of the Republic of Kazakhstan and outdated legal norms, assess the effectiveness of their implementation and take timely measures to amend and (or) supplement them or recognize them as invalid.

2. The rules for monitoring subordinate regulatory legal acts are approved by the Government of the Republic of Kazakhstan". The Rules for monitoring subordinate legal acts dated August 25, 2006 were approved.

It should be noted that since the introduction of legal monitoring, the system of its organization and implementation has remained virtually unchanged. Meanwhile, recently there have been significant changes in theoretical approaches to legal monitoring, the implementation of which can contribute to the renewal of the monitoring institution and increase its effectiveness (Collection of analytical reports on the results of legal monitoring). If we rely on the definition of the term "legal monitoring", the object is not limited to a set of regulatory legal acts. Thus, according to subparagraph 20) of Article 1 of the Law "On Legal Acts", legal monitoring is a system of continuous observation, collection, analysis of information on the state of the legislation of

the Republic of Kazakhstan and the practice of its application (Collection of analytical reports on the results of legal monitoring; https://adilet.zan.kz/rus/docs/K1800002018).

Analytical materials of legal monitoring are annually analyzed and prepared by the Institute of Legislation and Legal Information of the Ministry of Justice of the Republic of Kazakhstan.

Results and discussion

Since 2008, monitoring of the current legislation of Kazakhstan has been conducted annually. On average, 10-14 laws are monitored. There are a sufficient number of scientific works devoted to the legal analysis of the institution of legal monitoring in the Republic of Kazakhstan, where problematic aspects and ways to solve them are described in detail (Mamonov 2020; Tlembayeva 2018; Klimkin 2015; Akimova 2018; Collection of analytical reports on the results of legal monitoring 2018).

According to the Rules for Conducting Legal Monitoring (https://online.zakon.kz/).

The objects of legal monitoring are:

1) new constitutional laws, codes, consolidated laws, laws;

2) other regulatory legal acts.

For the purposes of conducting legal monitoring, in these Rules, constitutional laws, codes, consolidated laws, laws adopted in a new version, as well as newly adopted constitutional laws, codes, consolidated laws, laws, laws on amendments and additions to legislative acts within five years from the date of their adoption are considered new.

Other regulatory legal acts subject to legal monitoring are understood to be the following:

3) constitutional laws, codes, consolidated laws, laws, with the exception of new constitutional laws, codes, consolidated laws, laws;

4) regulatory legal decrees of the President of the Republic of Kazakhstan;

5) regulatory legal resolutions of the Government of the Republic of Kazakhstan;

6) regulatory legal resolutions of the Central Election Commission of the Republic of Kazakhstan, the National Bank of the Republic of Kazakhstan and other central government bodies of the Republic of Kazakhstan, regulatory legal orders of ministers of the Republic of Kazakhstan and other heads of central government bodies of the Republic of Kazakhstan, regulatory legal orders of heads of departments of central government bodies of the Republic of Kazakhstan;

7) regulatory legal decisions of maslikhats, regulatory legal resolutions of akimats, regulatory legal decisions of akims and regulatory legal resolutions of audit commissions.

The practice of applying legal monitoring clearly shows the following:

1) Such aspects as "contradictions to the legislation of the Republic of Kazakhstan", "duplications and gaps in the legislation", "outdated and corruptible norms of law", which are solved by developing proposals for their improvement in the form of amendments and additions to the current legislation of Kazakhstan.

2) such objectives of legal monitoring as "inefficiently implemented", "evaluation of the effectiveness of the implementation of adopted normative legal acts" and which cannot be provided in the form of changes and additions to the current legislation of Kazakhstan are practically not solved. Legal monitoring is one of the main means of increasing the effectiveness of legal regulation. It is an effective organizational and legal mechanism of state control over the state of legislation, its improvement, and improvement of law enforcement practice. In essence, legal monitoring acts as one of the ways to protect and ensure the interests of individuals, society and the state (https://online.zakon.kz/Document/?doc_id=31730518&pos=5;-106#pos=5;-106&sdoc_params=text%3D%25D0%25A2%25D0%25B). It is possible to refer to the report of the Commissioner for Human Rights in the Russian Federation for 2012: "The law is judged not by its text, but by the quality of its implementation in practice. A bad Achilles' heel is not so much law-making as law enforcement" (Belousov 2014).

Annual results of legal monitoring show that the level of monitoring by state bodies often does not meet the goals and objectives set in the Concept. The current system of legal monitoring is often of a formal nature, and the information provided by state bodies does not reflect the true state of legislation and law enforcement practice (Belousov 2014). As an illustrative example, it is possible to note the legal monitoring of the Codex of the Republic of Kazakhstan "On the health of the people and the health system" dated September 18, 2009. According to the Report on the results of legal monitoring code of the Republic of Kazakhstan "On the health of the people and the health system" of September 18,

2009 No. 193-iv () revealed certain inconsistencies with the goals of legal monitoring provided for in subsection 20 of article 1 of the Law of the Republic of Kazakhstan "On Legal Acts", the inconsistency of some provisions with the international obligations of the Republic of Kazakhstan, the presence of ineffectively implemented legal norms and redundant blanket and reference norms (for more details, Collection of analytical reference to the results of legal monitoring (2nd quarter of 2018). Moreover, according to indicator 10 "Presence of corruptible factors in the law" according to the results of the legal monitoring of the code of the Republic of Kazakhstan "On the health of the people and the health system" of September 18, 2009, it was noted that the presence of corruptible factors in the law was not detected.

However, the new Code of the Republic of Kazakhstan "On the health of the people and the health system" was subsequently adopted on July 7, 2020 (https://online.zakon.kz/Document/?doc_id=34464437&pos=0;8#pos=0;8&sdoc_params). Its adoption was initiated on January 10, 2018 in the Message of the President of the People of Kazakhstan "New opportunities for development in the conditions of the fourth industrial revolution". In particular, it was noted: "Today we have a unique School of Medicine at Nazarbayev University, at which an integrated university clinic functions. This experience should be translated to all medical universities. For the implementation of these and other measures, a new version of the Code "On health and health system" should be developed (https://adilet.zan.kz/rus/docs/K1800002018).

However, legal monitoring and the subsequent adoption of the new Code could not prevent the pandemic coronavirus that occurred in the spring of 2020, when the number of patients increased tenfold in the last 2 months alone, and on July 14, 2020, it exceeded 60,000 and the number of deaths increased to 375 people. Of course, there are many reasons, and the main one is the lack of mutual connection between the state policy, mainly in the social and economic sphere, aimed at achieving a single result – the constitutional norm for the protection of the population's health.

In fairness, we note that during the pandemic period, especially in 2020, no country in the world, regardless of its economic potential, was able to effectively contain the practical spread of this virus, where complex social and economic problems arose in parallel.

However, according to the results of the external analysis of the health care system of Kazakhstan, where the Code of the Republic of Kazakhstan "On the health of the people and the health care system" is the basis, in 2024 the Anti-corruption Agency of the Republic of Kazakhstan established corruption risks at all stages of the circulation of medicines and medical equipment, starting from the process planning of the volume of purchase of drugs and medical products, their acquisition, maintenance of medical technicians and conclusion of long-term contracts with domestic manufacturers. The facts of the overestimation of the need for medicines, the cost of purchased goods and services, untimely purchase of vaccines against various diseases, the purchase of unnecessary equipment, as well as the calculation of unreasonable payments have been revealed", – explained in Anticor. At the same time, according to Anticor, corruption manifestations and numerous financial violations are reduced. effectiveness of state measures aimed at development of this sphere (https://forbes.kz/articles/antikor-vyyavil-sereznye-korruptsionnye-riski-vsfere-dravoohraneniya-rk).

Researchers highlight the following disadvantages of the institute of legal monitoring:

- formal approach to legal monitoring;
- untimely elimination of deficiencies revealed during legal monitoring;
- weak control of legal services of state bodies over the implementation of legal monitoring by structural units of the state body;
- insufficient attention to the issue of attracting public, scientific organizations, universities and citizens to conduct legal monitoring (Сборник аналитических справок по результатам правового мониторинга 2-квартал 2018: 23).

At the same time, the solution of the abovementioned shortcomings during the legal monitoring will not be able to ensure the observance of national interests in the current normative legal acts of the Republic of Kazakhstan. Therefore, the direct implementation of legal monitoring of the institute should be carried out in the form of legal monitoring for the purpose of observing the national interests of the country according to the current regulatory legal acts. Article 5 of the Law of the Republic of Kazakhstan "On national security of the Republic of Kazakhstan" lists the main national interests that must be directly observed when conducting legal monitoring (https://online.zakon.kz/Document/?doc_id=31106860&pos=3;-106#pos=3;-106). It is no coincidence that Academician M.T. Baimakhanov

noted in 2008: "the peculiarity of monitoring legislation and law enforcement practice is not only the analysis and forecast of their quality, but also the analysis of the real state of social relations, the real life of a person, the activities of state institutions and civil society, the ultimate goals of which can be achieved only through interdisciplinary complex legal regulation" (Baimahanov 2018).

Failure to observe national interests in the conduct of legal monitoring was most clearly demonstrated in the implementation of water legislation in Kazakhstan. The spring flood of significant territories of western and northern Kazakhstan with transboundary water resources clearly showed the population of Kazakhstan the ineffectiveness of the current legislation, but also the entire management system in the water sector of Kazakhstan. Despite numerous publications by domestic scientists, reasonably emphasizing the ineffective management, primarily of transboundary water resources of Kazakhstan and the allocation of significant financial resources for scientific research on water resources of Kazakhstan.

In addition to the ineffective regulation of transboundary water resources, one can cite Article 79 of the Water Code of the Republic of Kazakhstan, which provides for foreign participation, in particular, non-governmental water management organizations are created by individuals and legal entities, including foreign ones, to provide services for the delivery of water, technical maintenance of water management structures and ensuring entrepreneurial activity in the field of use and protection of water resources, water supply and sanitation.

Meanwhile, the practice of foreign companies' participation in water relations of Kazakhstan, when conducting legal monitoring will inevitably reveal violations of Kazakhstan's national interests in terms of Article 5 of the Law of the Republic of Kazakhstan "On National Security of the Republic of Kazakhstan" – "ensuring the rights and freedoms of man and citizen", "preservation and improvement of the environment, rational use of natural resources". Let's consider an example in this case – it is known that after concluding a contract with a French company for servicing the drinking water system of the city of Alma-Ata in the 90s of the twentieth century (the official name of the city in those years), the city's population immediately noted a decrease in the taste and quality of water supplied through the water supply system. And although the foreign company did not violate the terms of the contract and the norms of the current legislation of the country, the result of such activities was the loss of the quality of the supplied water, known to the city's residents and considered its distinctive feature during the functioning of the USSR. This example once again emphasizes the inefficiency of foreign participation, interested primarily in extracting profit in such an important problem for the life support of the population, and which strategically should be in monopoly, state control, ownership and use. Similarly, in Kazakhstan, problems with foreign participation in the food industry have arisen, when the population of the country and especially the younger generation are unfamiliar not only with the quality of the water supplied, but also with many food products that require a special state approach, including foreign participation.

Similarly, violation of national interests in terms of protecting human rights and ensuring human life can be easily identified during legal monitoring of the road legislation of Kazakhstan. In the road transport sector of the country, there is active construction of highways and interchanges, to which multibillion allocations are allocated from the republican budget. Moreover, this is carried out with the aim of reducing, mainly, the transport load, ensuring road safety and, what is important, improving the environmental situation in these cities. Of course, this is a necessary and strategically important task in the complex, in the implementation of which the relevant authorized bodies should be guided by the above-mentioned good goals, but this activity, although undoubtedly necessary, nevertheless has, first of all, an economic basis and, therefore, is aimed at improving the transport infrastructure of cities. The task of prioritizing the life and health of citizens participating in road traffic over the economic results of economic activity in this case is realized, however, not directly, but only indirectly. For example, during the active construction of road and transport infrastructure in conditions of automobile congestion in such a megalopolis as Almaty, such an important aspect of road and transport relations as pedestrian safety is practically not ensured and there is no procedure for its regulation. In this case, we are talking about regulated pedestrian crossings (with traffic lights) and unregulated pedestrian crossings. And the essence of the problem lies in the failure to comply with legislative norms to ensure the priority of human life over economic results in road and transport relations, and during the time when the danger of such measures comes to be realized,

irreversible consequences may occur. In Article 3 of the Law of the Republic of Kazakhstan "On Road Traffic" dated April 17, 2014, the main principles of road traffic are: 1) priority of life and health of road users over economic results of business activities (Salimgerey 2022).

Methods and materials

In the context of studying the identified aspects, we consider it necessary to rely on scientific provisions regarding objectivity, scientific character, comparative research, taking into account foreign experience.

The theoretical basis for writing the article was the materials of scientific and educational literature on the theory of state and law, constitutional law, public administration, international law, materials of scientific conferences reflecting issues of rule-making in the Republic of Kazakhstan.

Conclusions

The mechanism for conducting legal monitoring should be based, as noted, on ensuring the national interests of Kazakhstan. In addition, the Rules for Conducting Legal Monitoring should expand the objects of legal monitoring, including not only monitoring of regulatory legal acts, but also the practice of their implementation (law enforcement practice).

As a rule, government agencies, according to Tlembaeva Zh.O., Kaliyeva A.U. (Belousov 2014), do not pay attention to theoretical research, the use of which may directly affect the solution of practical issues. In this regard, it became advisable to develop and adopt such a methodology that should show the ways and means of identifying the shortcomings of laws, as well as provide practical assistance in forecasting. For example, the Institute of Legislation and Comparative Law of the Russian Federation has developed recommendations that highlight additional criteria for the effectiveness of regulatory legal acts (Belousov2014).

When conducting legal monitoring, government agencies, in accordance with regulatory requirements, have the right to involve public and scientific organizations, citizens in the manner established by the legislation of the Republic of Kazakhstan. And it is imperative to involve the appropriate qualified researchers. In this case, only deep, systematic scientific research, the subject of which is directly related to the requirements for ensuring national security, can determine the negative consequences of lawmaking.

In this regard, we would like to especially note that research institutes and higher educational institutions of Kazakhstan have conducted and are conducting research on current legal issues in Kazakhstan that are directly related to the coronavirus pandemic or the flood this spring in Kazakhstan.

The Concept of Legal Policy notes:

- Today, priority is given to rule-making as the main means of achieving the goals of the policy in a particular area. Considering that as a result of the preferential resolution of public issues through the adoption of regulatory legal acts, a large number of regulatory measures are formed, an unreasonable regulatory burden, the Concept of Legal Policy of the Republic of Kazakhstan notes. It is important to give new impetus to the retrospective assessment of legislation and alternative methods not related to regulatory intervention. Alternative methods may include more flexible and less traditional rules, conditioned by the needs of practical activities and providing effective incentives for the behavior of subjects of legal relations (https://online.zakon.kz/Document/?doc_id=39401807#sdoc_params=text%3d%25d0%259a).

Given the ineffectiveness of the legislation in the healthcare system, when the coronavirus pandemic has proven its inability to protect human health in Kazakhstan, the institution of legal monitoring of regulatory legal acts, in our opinion, requires change. Similarly, this is confirmed by significant floods in Western and Northern Kazakhstan, when the local population was left without housing and livelihoods – the water legislation of Kazakhstan and the management system require improvement.

The above justifies the need, first of all, to comply with national interests when conducting legal monitoring of regulatory legal acts in the Republic of Kazakhstan. And in the event of contradictions, only that set of interests can be attributed to national interests that allows achieving a balance of relations by means established by law. In turn, conflicts of interest that cannot be resolved within the legal field always pose a threat to national security. Consequently, not all interests that in objective reality diverge, are in confrontation or other contradiction can be considered as national interests (Mamonov 2020: 39). Identification of contradictions to the legislation of the Republic of Kazakhstan, duplications, gaps, ineffectively implemented, outdated and corruption-prone legal norms in adopted regulatory legal acts and development of

proposals for their improvement through forecasting, analysis, and assessment of the effectiveness of the implementation of adopted regulatory legal acts during legal monitoring should ensure the national interests of Kazakhstan.

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PROBLEMS OF THE EFFECTIVENESS OF REGULATORY LEGAL ACTS IN THE HEALTHCARE SYSTEM FOR MAINTAINING THE QUALITY OF ACTIVE LONGEVITY IN THE REPUBLIC OF KAZAKHSTAN

The article analyzes the institute of active longevity in the Republic of Kazakhstan, which has been called "antiaging" in science from the point of view of legal regulation of basic socio-economic directions. This covers, first of all, the health care system, social security, social services, etc. The article examines the socio-legal policy of the state on issues of ensuring a fruitful human life expectancy. The authors draw attention to the priority, from their point of view, directions of state policy in the field of regulation of healthy lifestyle issues and ensuring human life expectancy. Special attention is paid to the lack of legal regulation of the conceptual category of active longevity and its definitions in Kazakhstan. Attention is drawn to the fact that today in Kazakhstan there is no full-fledged, multidimensional legal framework, in addition, there is a clear need for a clear definition of the object of regulation in the sphere of these legal relations and the differentiation of hierarchy, that is, the levels of regulatory legal regulation. The article notes the need to conduct special research on increasing human life expectancy. The lack of organizational and legislative measures create the main difficulties in the practical implementation of the achievements of medical science in the practical life of the country. The scientific achievements available to medicine to prolong human life and maintain its quality are based primarily on the fight against diseases caused by aging, rather than on intervention in the aging process itself. The author emphasizes the latest achievements of scientists that genetically a person has a complex program to counteract aging. And without a theoretical understanding of the aging process and the identification of technologies to overcome the limit of human life expectancy, the whole complex of biomedical sciences, from the point of view of practice, may not be so effective without direct interaction with other branches of science and, above all, right-wing science.

Key words: The Constitution of the Republic of Kazakhstan, active longevity, effectiveness of regulatory legal acts, standard of living, life expectancy, pension provision, health care system, current legislation.

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Қазақстан Республикасында Белсенді ұзақ өмір сүру сапасын қолдау тұрғысынан Денсаулық сақтау жүйесіндегі нормативтік құқықтық актілердің тиімділігі мәселелері

Мақалада негізгі әлеуметтік-экономикалық бағыттарды құқықтық реттеу тұрғысынан ғылымда «антиэйджинг» деп аталатын Қазақстан Республикасындағы белсенді ұзақ өмір сүру институты талданады. Бұл, ең алдымен, денсаулық сақтау, әлеуметтік қамсыздандыру, әлеуметтік қызмет көрсету және т.б. Адамның жемісті өмір сүру ұзақтығын қамтамасыз ету бойынша мемлекеттің әлеуметтік-құқықтық саясаты зерттеледі. Авторлар салауатты өмір салты мәселелерін реттеу және адам өмірінің ұзақтығын қамтамасыз ету саласындағы мемлекеттік саясаттың басым бағыттарына өз көзқарасы бойынша назар аударады. Қазақстанда белсенді ұзақ өмір сүрудің концептуалды категориясын және оның анықтамаларын құқықтық реттеудің жоқтығына ерекше назар аударылады. Бүгінгі таңда Қазақстанда толыққанды, көп өлшемді құқықтық базаның жоқтығына назар аударылады, сонымен қатар, осы құқықтық қатынастар саласындағы реттеу объектісін нақты анықтау және иерархияны, яғни нормативтік құқықтық реттеу деңгейлерін ажырату.

Мақалада адамның өмір сүру ұзақтығын арттыру бойынша арнайы зерттеулер жүргізу қажеттігі атап өтілген. Ұйымдастырушылық және заңнамалық шаралардың болмауы медицина ғылымының жетістіктерін еліміздің практикалық өміріне іс жүзінде жүзеге асыруда негізгі

ғылыми жетістіктері қартаю процесіне араласуға емес, ең алдымен қартаюдан туындаған аурулармен күресуге негізделген. Автор ғалымдардың адамда генетикалық тұрғыдан қартаюға қарсы кешенді бағдарлама бар деген соңғы жетістіктерін атап көрсетеді. Ал қартаю процестерін теориялық түсінбестен және адам өмірінің ұзақтығының шегін еңсеру технологияларын анықтамайынша - медициналық және биологиялық ғылымдардың бүкіл кешені тәжірибе тұрғысынан ғылымның басқа салаларымен тікелей өзара әрекеттесусіз тиімді болмауы мүмкін. және ең алдымен оңшыл ғылым.

Түйін сөздер: Қазақстан Республикасының Конституциясы, Белсенді ұзақ өмір сүру, нормативтік құқықтық актілердің тиімділігі, өмір сүру деңгейі, өмір сүру ұзақтығы, зейнетақымен қамсыздандыру, денсаулық сақтау жүйесі, қолданыстағы заңнама.

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Проблемы эффективности нормативных правовых актов в системе здравоохранения на предмет поддержания качества активного долголетия в Республике Казахстан

В статье анализируется институт активного долголетия в Республике Казахстан, получивший в науке название «антиэйджинг» с точки зрения правовой регламентации базовых социально-экономических направлений. Это охватывает, прежде всего, систему здравоохранения, социального обеспечения, социального обслуживания и др. Исследуется социально-правовая политика государства по вопросам обеспечения плодотворной продолжительности жизни человека. Авторы обращают внимание на приоритетные, с их точки зрения, направления государственной политики в сфере регулирования вопросов здорового образа жизни и обеспечения продолжительности человеческой жизни. Особое внимание обращается на отсутствие в Казахстане правового регулирования понятийной категории активного долголетия и ее дефиниций. Обращено внимание на то, что сегодня в Казахстане отсутствует полноценная, полиаспектная правовая база, кроме того, существует явная необходимость чёткого определения объекта регулирования в сфере указанных правоотношений и разграничения иерархии, то есть уровней нормативного правового регулирования.

В статье отмечается о необходимости проводить специальные исследования по вопросам увеличения продолжительности жизни человека. Отсутствие организационных и законодательных мер создают основные затруднения по практической реализации достижений медицинской науки в практическую жизнь страны. Имеющиеся в распоряжении медицины научные достижения по продлению жизни человека и поддержания её качества основаны преимущественно на борьбе с болезнями, вызываемыми старением, а не на вмешательстве в сам процесс старения. Автор подчеркивают последние достижения ученых о том, что генетически в человеке заложена сложная программа по противодействию старению. И без теоретического понимания процессов старения и выявления технологий преодоления предела продолжительности человеческой жизни – весь комплекс медико-биологических наук, с точки зрения практики, может оказаться не столь эффективным без непосредственного взаимодействия с другими отраслями науки и прежде всего правой науки.

Ключевые слова: Конституция Республики Казахстан, активное долголетие, эффективность нормативных правовых актов, жизненный уровень, продолжительность жизни, пенсионное обеспечение, система здравоохранения, действующее законодательство.

Introduction

Today, one of the most pressing issues in the Republic of Kazakhstan is the creation of conditions for maintaining active longevity and healthy productive aging. New approaches to understanding the socio-economic policy of the state and the implementation of the Constitution, further modernization of the economy, raising the standard of living of the population and much more are impossible without active intervention of the state (Karayev 2017: 397).

According to various studies, residents of developed countries live an average of 70-80 years with a tendency to increase. According to official statistics, the list of countries with the leading population in terms of average life expectancy is headed by Andorra (82.75 years) and, traditionally, Japan (more than 82 years) (http://ostranah.ru/_lists/life_expectancy.php).

According to the Bureau of National Statistics of Kazakhstan, "Life expectancy at birth of the population for 2023 was 75.09 years and thus became the highest record in the last 25 years. In urban areas, life expectancy is higher than in rural areas – 75.73 and 74.02 years, respectively. In terms of gender, life expectancy for women also showed an increase and amounted to 79.06 years (2022 – 78.4), among men, the figure was 70.99 years (2022 – 70.2 years).

The highest life expectancy at birth of the population in the city of Almaty is 78.28 years, and the lowest in the Ulytau region is 72.41 years" (https://stat.gov.kz/ru/news/ozhidaemaya-prodolzhitelnost-zhizni-kazakhstantsev-vy82).

Given the high level of modern medicine and the state policy to improve the quality of human life, which, in our opinion, should be recognized as not so successful, there are grounds for defining and implementing specific measures of various directions aimed at maintaining an active long-term human life.

According to paragraph 1 of Article 1 of the Constitution, the Republic of Kazakhstan asserts itself as a democratic, secular, legal and social state, the highest values of which are a person, his life, rights and freedoms. The inclusion of this norm, like all other norms of direct action, in the text of the Basic Law of the country indicates the priority of human life for the Republic of Kazakhstan (https://online.zakon.kz/document/?doc_id=1005029).

The state, ensuring active longevity of a person, must create such conditions that would serve as the basis for high-quality longevity of a person.

Methods and materials

In the context of studying the identified aspects, we consider it necessary to rely on scientific provisions regarding objectivity, scientific nature, comparative research, taking into account foreign experience. Studying the current legislation of the Republic of Kazakhstan from the standpoint of objectivity and scientificity, it is determined that the concept of active longevity in the health care system is not distinguished from other groups of the population, with the exception of children and young people, and is not allocated to a separate category for persons to whom the concept of active longevity applies. Based on a comparative analysis of the dynamics of human life development and its legislative support in Kazakhstan and foreign countries, common state approaches aimed at increasing human life expectancy are identified. At the same time, the article distinguishes between human life expectancy due to the socio-economic policy of the state, and life expectancy based on a special interdisciplinary approach. When analyzing the international legal obligations of Kazakhstan, it was revealed that the socio-economic policy of the state does not fully comply with the definition of Article 11 of the Covenant on Economic, Social and Cultural Rights of December 16, 1966, "the right of everyone to an adequate standard of living." In this regard, the authors of the article propose to consider the concept of an adequate standard of living in the Constitutional Court of the Republic of Kazakhstan.

The theoretical basis for writing the article was the materials of scientific and educational literature on labor law, social security law, constitutional and international law, materials of scientific conferences reflecting the issues of active longevity in the legislative process in the Republic of Kazakhstan.

Results and discussion

According to Art. 11 of the International Covenant on Economic, Social and Cultural Rights of December 16, 1966, the States Parties recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. States Parties will take appropriate measures to ensure the implementation of this right …. (http://adilet.zan.kz/rus/docs/Z050000087).

With regard to Kazakhstan, this norm, in addition to the current internal norms, obliges all authorized bodies of the country, management and organizational structures, to adhere to a unified policy on compliance and creation of the necessary conditions for the fulfillment of the country's international legal obligation for those persons who have such rights (Salimgerey 2023). However, not all structures in the management system in their activities are fully guided by the normative definition of Art. 11 "the right of everyone to an adequate standard of living" (http://adilet.zan.kz/rus/docs/Z050000087). In many ways, this fact is explained not only by the failure to fulfill, incomplete understanding of the subject of the country's international obligation, but also by the lack of political will on the part of authorized bodies to revise not only low pensions, but also the unfairly established wage system (https://online.zakon.kz/Document/?doc_id=33557568&pos=6;-108#pos=6;-108). The numerous holdings, quasi-state enterprises created in

Kazakhstan, are practically state property, with the payment of incomparable wages to their employees, incomparable with the remuneration of labor in other state enterprises, institutions, educational institutions. Thus, the constitutional principle of equality is violated. Or, for example, the level of pensions of teachers, doctors, whose salaries throughout their lives were extremely low, despite the heavy workload. The average pension in economically developed European countries is, for example, from 1632 euros in Finland, up to 1290 euros in Germany. In these countries, people over 60 account for almost a third of the purchasing power of the population. As active consumers, Western pensioners intensively stimulate the economy of their countries. And most importantly, they are recognized by the state and young people as full members of society. Pensions are high in Iceland, the Netherlands, Luxembourg, Denmark, they range from 3903 to 4724 US dollars. In total, pensions and income from personal savings for citizens of developed countries reach 60-80% of their income during their working life (https://legalacts.egov.kz/application/downloadconceptfile?id=3972490).

In this regard, the question arises – What quality of active longevity and more can we talk about in Kazakhstan, when the level of pensions does not correspond to the real standard of living. Will a pension of 130-140 thousand tenge provide for adequate food, accommodation, inevitable medical, transport, household and other expenses?

Within the framework of the legal regulation of pension provision in the Republic of Kazakhstan, we consider it necessary to dwell on the following negative fact, as a result of the pension reform of 1998, pensions for length of service and old-age pensions on preferential terms were significantly reduced in the country, or rather almost completely abolished. At the same time, the factors of industrial and biological (physiological) risks of work in the abolished areas of activity were completely ignored. This state of affairs affected not only the factor of labor safety, but also the life expectancy of persons working in harmful and especially harmful, dangerous and especially dangerous industries, jobs, industries and areas associated with the loss of professional (special) working capacity by workers. Today in the Republic of Kazakhstan the retirement age for men and women is set at 63 years, although for women this age limit is being introduced in stages. The standard of living in Kazakhstan is not fully defined in a substantive and normative manner, despite the various criteria with an attempt to clarify the concept of "standard of living" in regulatory legal acts. Of course, the wages of workers in Kazakhstan are the main indicator of assessing an adequate standard of living, since sufficient food, quality clothing, normal living conditions and much more largely depend on wages. We believe that today's Constitutional Court of Kazakhstan could accept for its appeal the question regarding the concept of "adequate standard of living" and its compliance with the socio-economic policy of Kazakhstan.

We consider it possible to note that the issue of the sufficiency of the minimum consumer basket was the subject of consideration of the first Constitutional Court of the Republic of Kazakhstan. This was the first case considered within the framework of constitutional proceedings in 1992. However, today the text of this resolution cannot be found in any informational legal source, despite the fact that it has not lost its legal force, it was also removed from the general Internet information space. In addition, the Constitutional Court of the Republic of Kazakhstan, which is currently in force, is not the legal successor of the first similar Kazakhstani court and, accordingly, there are no primary sources of this body in its archives and records.

The main provisions of the state policy regarding the elderly are enshrined in the Constitution of the Republic of Kazakhstan, the codes "On Public Health and the Healthcare System", "On Marriage (Matrimony) and Family", the Labor and Social Codes, as well as the law "On Pension Provision in the Republic of Kazakhstan" (https://adilet.zan.kz) and some others. Until recently, the laws "On State Social Benefits for Disability, Loss of a Breadwinner and Old Age in the Republic of Kazakhstan", "On Special State Benefits in the Republic of Kazakhstan", "On Social Protection of Disabled Persons in the Republic of Kazakhstan", "On Special Social Services", "On Employment of the Population", "On Public Associations", "On Benefits and Social Protection of Participants, Disabled Veterans of the Great Patriotic War and Persons Equivalent to Them" and some others were in force. Today, all of them are combined into a single codified act "Social Code of the Republic of Kazakhstan", adopted on April 20, 2023 (https://adilet.zan.kz).

In accordance with the Code of the Republic of Kazakhstan on Public Health, medical care for WWII veterans is provided free of charge within the guaranteed volume of free medical care, both at the republican and regional levels. However, according to the Ministry of Labor and Social Protection

of the Population, as of April 2024, there are 274 veterans of the Great Patriotic War living in Kazakhstan (https://tengrinews.kz/kazakhstan_news/skolko-veteranov-velikoy-otechestvennoy-voynyi-ostalos-533812/). Every year their number is decreasing, the more important and valuable is the assistance provided to them by the state to maintain a decent standard and extend their life.

In subparagraph 74 of Article 1 of the Code of the Republic of Kazakhstan "On Public Health and the Healthcare System" (https://adilet.zan.kz/rus/docs/K2000000360), healthcare is defined as a system of measures of a political, economic, legal, social, cultural, medical nature aimed at preventing and treating diseases, maintaining public hygiene and sanitation, preserving and strengthening the physical and mental health of each person, maintaining his active long-term life, providing him with medical care in case of loss of health. In the above definition, the phrase "on supporting an active long-term life of a person" is one of the goals of the system of measures aimed at a person in the context of the implementation of a political, economic, legal, social, cultural, medical nature. That is, the provisions of the Code "On Public Health and the Healthcare System" do not distinguish between age differentiation of the population, with the exception of children and young people, and do not single out a separate category of persons to whom the concept of active longevity applies. Thus, Article 128 of the Code "On Public Health and the Healthcare System" regulates an integrated model of medical care, which consists of providing a set of medical and social services throughout a person's life to prevent, timely detect, treat and reduce the risk of developing complications of the disease in order to increase life expectancy. Or, defining priority areas of public health protection (Article 74) no conditions are established in the form of a separate subparagraph for the elderly, long-livers. In particular, the following areas are defined:

1) health promotion through the formation of medical and social activity and attitudes towards a healthy lifestyle among the population;

2) raising the level of public awareness of the main aspects of health and risk factors;

3) epidemiological surveillance of infectious and priority non-communicable diseases;

4) organization of interaction between all interested government agencies, organizations and departments, public associations, business communities and other individuals and legal entities (https://adilet.zan.kz/rus/docs/K2000000360).

For persons of retirement age, who may be "pensioners" at the age of 43 (military personnel) or from 59 to 63 years old, the provisions of the Code establish certain requirements, taking into account age characteristics. A system of measures and guarantees is provided for pensioners that take into account the rights and characteristics established for pensioners. For example, Article 227 of the Code, paragraph 6 provides: "For the following categories of persons, biomedical research is carried out only in cases where it cannot be carried out on other persons and there are scientific grounds to expect that participation in such biomedical research will bring them direct benefits that outweigh the risks and inconveniences associated with biomedical research" – established in subparagraph 5 of paragraph 6 of Article 227 of the Code "5) old-age pensioners in need of outside assistance" (https://adilet.zan.kz/rus/docs/K2000000360).

Thus, the cited Code does not single out a separate category of persons who are considered long-livers (apps.who.int/gb/ebwha/pdf_files/WHA73/A73_INF2-ru.pdf). The entire system of measures according to the norms of the Code provides for the provision of medical services in the treatment of a person in case of his illness, medical examinations, mandatory preventive measures, some of which require coordination with the World Health Organization. Consequently, the Code applies the concept of "active long-term human life" not to a separate category of people and regardless of age, but directly to each person who is an object of the healthcare system. This is confirmed by the established provisions of the Code. There are no exceptions in other provisions of the Code. At the same time, in accordance with subparagraph 32) of Article 7 of the Code of the Republic of Kazakhstan dated July 7, 2020 "On Public Health and the Healthcare System", the Standard for the Organization of Geriatric and Gerontological Care in the Republic of Kazakhstan was approved on June 23, 2021 (https://adilet.zan.kz/rus/docs/V2100023329). An important feature of the Standard is the establishment of requirements and procedures for the processes of organizing the provision of geriatric and gerontological care to patients of older age groups with signs of premature aging in outpatient, inpatient replacement, inpatient settings and at home.

The Standard includes special terms and definitions related to the process of providing geriatric and gerontological care:

- geriatric syndrome – a set of various symptoms characteristic of older age groups, taking into ac-

count age characteristics; – a geriatrician is a specialist whose area of activity includes providing medical care to elderly and old people, which consists of diagnosis, treatment and prevention of diseases taking into account the characteristics of old age;

- gerontological care is a set of medical, social, psychological measures aimed at ensuring healthy aging;

- older age groups are a generalized concept for three age structures of the population – 60-74 (elderly people), 75-90 (old age), after 90 years (centenarians), established by the World Health Organization;

- geriatric care for the population is a system of measures to provide long-term medical and social services in order to preserve or restore the ability to self-care, partially or completely lost due to chronic diseases, facilitating the reintegration of elderly patients into society, as well as ensuring an independent existence.

It should be noted that the Standard is medical care for older people and those with signs of premature aging, which is provided at all levels of medical care and has three levels officially enshrined in law.

1) primary level – the level of medical care provided by primary health care specialists in outpatient, inpatient and home settings;

2) secondary level – the level of medical care provided by specialized specialists providing specialized medical care in outpatient, inpatient and inpatient settings, including by referral from specialists providing medical care at the primary level;

3) tertiary level – the level of medical care provided by specialized specialists providing specialized medical care using high-tech medical services, in outpatient, inpatient and inpatient settings, including by referral from primary and secondary level specialists (https://adilet.zan.kz/rus/docs/V2100023329).

This Standard, for the first time in the healthcare system, made it possible to specifically differentiate the process of organizing the provision of geriatric and gerontological care to patients of older age groups with signs of premature aging in outpatient, inpatient replacement, inpatient settings and at home.

In addition, the Action Plan to Improve the Situation of Senior Citizens "Active Longevity" until 2025 was approved (Order of the Minister of Labor and Social Protection of the Republic of Kazakhstan dated February 22, 2021 No. 47) (http://adilet.zan.kz/rus/docs/V2100023329), which provides for 38 measures of a social, medical, and managerial nature, we will name some of them: the creation of an Interdepartmental Commission on Issues of Senior Citizens; consideration of the issue of amending and supplementing certain legislative acts of the Republic of Kazakhstan on issues of improving the situation of older persons; provision of free legal assistance to senior citizens as part of events dedicated to the celebration of the International Day of Older Persons; monitoring of vacancies for older persons; conducting information campaigns on combating and preventing abuse and violence against older citizens; congratulating senior citizens who have reached the age of 90, 95, 100 years and older; opening of geriatric offices at polyclinics, improvement of continuous training of medical workers in gerontology and geriatrics courses; organization of events to maintain a healthy lifestyle, involvement of older citizens in physical education and sports, including events that cause sustainable motivation for active longevity; creation of Active Longevity Centers, registration of citizens, compilation of a map of needs, formation of interest groups, social clubs for leisure and education; holding training seminars on improving the activities and improving the quality of services provided in Active Longevity Centers, ensuring accessibility of use by older people of sports and health facilities for sports; formation of a positive image of older people in society, allowing them to be perceived as bearers of cultural traditions, professional and life experience, capable of taking an active part in the socio-economic development of the country and the upbringing of the younger generation, placement of publications and articles in the media, appearances on TV channels; ensuring the participation of older persons in consultative and advisory bodies, Public Councils, as well as in bodies created to develop legislative initiatives and state programs affecting their interests; participation of older persons in the education of the younger generation in schools, colleges and universities, extracurricular activities, clubs, sections, yard clubs; holding campaigns to provide assistance to lonely and lonely elderly citizens, with the participation of students, volunteers, representatives of public organizations; creation of hotlines for counseling and providing psychological support to elderly people in isolation; conducting prompt assessments of the needs of older persons to clarify the necessary protective measures and support measures (http://adilet.zan.kz/rus/docs/V2100023329).

The National Action Plan for Improving the Situation of Senior Citizens "Active Ageing" (not approved) uses the following key concepts:

- active ageing is a state of social, economic, physical and psychological well-being of senior citizens that provides them with the opportunity to meet their needs, engage in various areas of society and is achieved with their active participation;

- quality of life is the satisfaction of human needs determined by culture and a system of values. "This is a broad concept that reflects a person's physical health, psychological state, level of autonomy, social relationships, personal beliefs and connection with the characteristic features of the environment" (World Health Organization, 1994). In older ages, it is largely determined by the ability to maintain independence and autonomy in meeting needs and fully participating in society (http://adilet.zan.kz/rus/docs/V2100023329); The above analysis shows that the normative legal acts governing the rights of citizens in Kazakhstan do not contain discriminatory norms against elderly citizens, but government agencies are extremely slow and not so effective in trying to create conditions for the real implementation of productive development in the country of active longevity (Salimgerey 2020b). Domestic legislation does not always take into account scientific developments and messages. At the same time, it is science that is the basis for the real implementation of the principles of longevity. Today, the largest number of scientific developments on anti-aging issues are focused on medical industry areas. As for the law, a significant number of developments are presented by foreign scientific schools in the format of medical law and international medical law.

The leading direction in this aspect is the Russian Federation. Thus, of considerable interest are the dissertations of E.V. Lazareva "Legal regulation of medical activity in the Russian Federation: Certain aspects of theory and practice" (Lazareva 2006), A.A. Roericht "Juridization of medical law: development of public-law principles" (Roericht 2006), N.K. Elina "Legal problems of rendering medical services" (Elina 2006). and others. Unfortunately, there are no Kazakh legal scholars in this scientific direction. The existing dissertations, even if they concern legal aspects, are defended in medical specialties (Auezova 2014).

Conclusions

The Strategic Development Plan of the Republic of Kazakhstan until 2025 provides for the creation of conditions for increasing human life expectancy, which is consistent with the Strategy "Kazakhstan – 2050" (https://online.zakon.kz/Document/?doc_id=38490966).

The tasks set oblige, within the framework of science, to conduct special research to solve the above-mentioned problems, that is, to increase human life expectancy.

It is the lack of organizational and legislative measures that create the main difficulties in the practical implementation of the achievements of medical science in the practical life of the country. The scientific achievements available to medicine in prolonging human life and maintaining its quality are based primarily on the fight against diseases caused by aging, and not on intervention in the aging process itself. However, without significant success in slowing down aging associated with age-related diseases, it is possible to extend the average life expectancy only within relatively small limits.

Thus, without a theoretical understanding of the aging process and the identification of technologies for overcoming the limit of human life expectancy, the entire complex of medical and biological sciences, from a practical point of view, may not be so effective without direct interaction with other branches of science, and above all, legal science (Salimgerey 2020b). Today, more than 300 theories can be identified to explain the aging process, but so far none of them is generally accepted. Traditional theories of aging claim that aging is not a strictly adaptive process or a genetically programmed process (Champaneria 2006: 394).

Currently, scientists distinguish 3 theories of aging:

- Increased probability of death due to biological causes.

- Implementation of a self-destruction program.

- Violation of homeostasis at various levels of the organization of a living system as a result of an age-dependent decrease in the functionality of systems maintaining the constancy of the internal environment (Sharman 2011: 2).

Modern research by scientists substantiates the conclusions about the identification of a factor limiting the maximum life expectancy of a person – programmed cell death leading to aging of the body, i.e. a complex program to counteract aging is genetically embedded in a person.

The right to life and health refers to the classifier of natural human and citizen rights. Art. 12 of the International Covenant on Economic, Social and Cultural Rights of December 16, 1966 proclaims the right of everyone to the highest attainable standard of physical and mental health,

enshrines a wide range of measures taken by the state to fully ensure this right (http://adilet.zan.kz/rus/docs/Z050000087_).

The global coronavirus pandemic that has recently engulfed the entire world poses new challenges for humanity. In such a difficult period, only a nation capable of resilience, ahead of its time, and in search of advanced scientific developments can survive.

On September 1, 2020, the President of the Republic of Kazakhstan Kassym-Jomart Tokayev, at a joint session of the chambers of Parliament, in the Address to the people of Kazakhstan "Kazakhstan in a new reality: time for action", noted that today our society is at such a stage of development when the human factor objectively becomes dominant, paramount, fundamental, but, at the same time, the development of public life itself leads to the fact that a person begins to act as a factor that has no price (https://kazpravda.kz/).

National legislation should take into account the special status of older people, their specific needs and interests. The implementation of the principles of active longevity should be based on the inalienable human rights of older people, the inclusion in the current legislation of norms concerning older citizens as a special, special group of people. Currently, the existing system of medical care practically does not take into account the characteristics and needs of elderly people susceptible to various diseases and ailments. The level of pension payments does not allow most of the older generation to live with dignity. In some government documents adopted, there is a subtext about humanity's disrespectful attitude towards itself: "an increase in the population due to an increase in life expectancy creates problems for society and also requires additional costs in the area of health care and social security." Social services, like pension payments, other social guarantees for age, in the event of loss of ability to work, loss of a breadwinner, disability, the need to receive high-quality medical, work and career guidance assistance, etc., from our point of view, do not allow for high-quality longevity for older people.

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По данным Всемирной организации здравоохранения возраст свыше 90 лет относится к долгожителям. ВОЗ определяет здоровое старение как «процесс развития и поддержания функциональной способности, обеспечивающей благополучие в пожилом возрасте» // Десятилетие здорового старенияhttps://apps.who.int/gb/ebwha/pdf_files/WHA73/A73_INF2-ru.pdf

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КОНСТИТУЦИЯЛЫҚ ЖӘНЕ ӘКІМШІЛІК ҚҰҚЫҒЫ

Section 2

CONSTITUTIONAL AND ADMISTRATIVE LAW

Раздел 2

КОНСТИТУЦИОННОЕ И АДМИНИСТРАТИВНОЕ ПРАВО

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LEGAL REGULATION OF INFORMATION ON INTERNET RESOURCES IN THE REPUBLIC OF KAZAKHSTAN

This article delves into the legal framework governing information on internet resources within the Republic of Kazakhstan. In contemporary times, both information and its legal regulation possess unique characteristics, particularly evident in the context of the internet. The intricate interplay between global phenomena and the internet amplifies the notion of global governance. Within this expansive system, the self-regulation of information on internet resources necessitates legal oversight.Kazakhstan serves as a case study illustrating the internet's pivotal role as the primary and immediate source of information, facilitating interaction among numerous users. This prominence stems from the distinct characteristics of the internet when compared to traditional modes of information dissemination. A current issue in this field is conducting comprehensive research on the legal aspects of regulating information on internet resources. The goal of this study is to formulate recommendations for enhancing the legal framework governing the development of the Internet in Kazakhstan. This will be achieved through an in-depth, systematic analysis of the legal regulation of information on internet resources. The scientific novelty lies in the comprehensive examination of the legal regulation of information on internet resources in Kazakhstan, their systematization, and corresponding differentiation. The scientific significance of the work lies in the possibility of using the conclusions drawn for deeper theoretical research. The practical importance of this work is the potential application of its provisions to improve the existing legislation Kazakhstan and law enforcement.

Key words: legal regulation, information, internet, legislation, information and communication technology.

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Қазақстан Республикасының интернет ресурстарындағы ақпаратты құқықтық реттеу

Бұл мақалада Қазақстан Республикасының интернет-ресурстарындағы ақпаратты құқықтық реттеу қарастырылды. Қазіргі кезеңде ақпараттық-құқықтық реттеудің Интернет құбылысын айқын көрсететін өзіндік ерекшеліктері бар. Жаһандық үдерістер мен Интернет арасындағы тығыз байланыса отырып, жаһандық саясат тұжырымдамасын жандандырады. Интернет-ресурстардағы ақпаратты өзін-өзі реттеуді ғаламдық жүйесінде құқықтық тұрғыдан қарастыру қажет. Қазақстан Республикасы Интернеттің ең ауқымды және тікелей ақпарат көзі екенін және көптеген пайдаланушылар үшін өзара әрекеттесу құралы екенін көрсетеді. Бұл ақпаратты берудің дәстүрлі құралдарымен салыстырғанда Интернеттің сипаттамаларына байланысты. Бұл тақырыптағы өзекті мәселе интернет-ресурстардағы ақпаратты реттеудің құқықтық мәселелерін кешенді түрде зерттеу болып табылады. Жұмыстың мақсаты – интернет-ресурстардағы ақпаратты құқықтық реттеуді кешенді, жүйелі зерттеу негізінде Қазақстан Республикасында Интернет желісін дамытудың құқықтық негіздерін жетілдіру бойынша ұсыныстар әзірлеу. Ғылыми жаңалық Қазақстан Республикасының интернет-ресурстарында ақпараттың құқықтық реттелуін жан-жақты қарастыруда, оларды жүйелеу және сәйкес саралау болып табылады. Жұмыстың ғылыми маңыздылығы ондағы жасалған қорытындыларды тереңірек теориялық зерттеуге пайдалана білуінде. Бұл жұмыстың практикалық маңыздылығы Қазақстан Республикасының қолданыстағы заңнамасын және құқық қорғау қызметін жетілдіру мақсатында ережелерді қолдану мүмкіндігі болып табылады.

Түйін сөздер: құқықтық реттеу, ақпарат, интернет, заңнама, ақпараттық-коммуникациялық технология.

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Правовое регулирование информации на интернет-ресурсах Республики Казахстан

В данной статье рассматривается правовое регулирование информации на интернет-ресурсах Республики Казахстан. В настоящее время как информация, так и ее правовое регулирование обладают уникальными характеристиками, особенно очевидными в условиях Интернета. Сложное взаимодействие между глобальными явлениями и Интернетом расширяет понятие глобального управления. В рамках этой обширной системы саморегулирование информации на интернет-ресурсах требует юридического контроля. Казахстан служит примером, иллюстрирующим ключевую роль Интернета как основного и непосредственного источника информации, облегчающего взаимодействие между многочисленными пользователями. Эта известность обусловлена отличительными характеристиками Интернета по сравнению с традиционными способами распространения информации. Актуальным вопросом данной тем является проведение комплексного исследования правовых вопросов регулирования информации на Интернет-ресурсах. Целью данного исследования является формулирование рекомендаций по совершенствованию правовой базы, регулирующей развитие Интернета в Казахстане. Это будет достигнуто за счет углубленного системного анализа правового регулирования информации на интернет-ресурсах.. Научная новизна заключается в комплексном рассмотрении правового регулирования информации на интернет-ресурсах РК, их систематизации и соответствующей дифференциации. Научная значимость работы заключается в возможности использовать выводы, сделанные в ней, для более глубокого теоретического исследования. Практическая важность этой работы – возможность применения положений в целях совершенствования действующего законодательства Республики Казахстан и правоприменения.

Ключевые слова: правовое регулирование, информация, интернет, законодательство, информационно-коммуникационная технология.

Introduction

The Internet was not established on a secure footing. Its design aimed for openness, with distributed control and mutual trust among its users (Bowrey 2005).

Ensuring free access to information on internet resources is regarded as a key priority for any democratic state. Consequently, state law enforcement agencies, including the prosecutor's office, would be mandated to guarantee this unrestricted operation.

Advancements in technologies like big data, cloud computing, and logistics warehousing have transformed the internet platform industry. It has evolved beyond merely providing network services to integrating deeply with traditional sectors like transportation, communications, education, culture, entertainment, and healthcare. As the number of users, transaction sizes, and usage scenarios of internet platforms rapidly increase, the technological monopoly advantage they hold has become more pronounced (Daniel Sokol 2021).

To make matters worse, the internet, like any technological innovation, can be abused and used against people. For this reason, it is critical that authorities act quickly to stop abuses. The government of our nation has steadfastly and consciously worked to legally regulate the internet. In light of this, Kazakhstan has approved a number of legislative acts with the aim of regulating material found on online platforms. These include Laws of the Republic of Kazakhstan:

- Law of the Republic of Kazakhstan "On Mass Media" dated July 23, 1999 No. 451-I;
- Law of the Republic of Kazakhstan "On Communications" dated July 5, 2004 No. 567-II;
- Law of the Republic of Kazakhstan "About advertising." dated December 19, 2003 No.508-I;
- Law was adopted and the state program "Digital Kazakhstan" was developed (2018-2022);
- Law of the Republic of Kazakhstan "On Access to Information";
- Law of the Republic of Kazakhstan "On Informatization";
- Concept of digital transformation, development of the Information and Communication Technologies Industry and Cybersecurity for 2023-2029, etc.

Kazakhstan passed the Law on Access to Information at the close of 2015. Its enactment was meant to spur significant social reforms and improve the standard of public administration, along with laws pertaining to public consultations and fighting corruption.

In today's era, the regulation of information law has unique characteristics that highlight the role of the internet. The interconnection between global dynamics and the internet fosters the idea of global politics. This global system of self-regulation of information on internet platforms necessitates legal oversight.

The goal of this study is to formulate recommendations for enhancing the legal framework governing the development of the Internet in Kazakhstan. This will be achieved through an in-depth, systematic analysis of the legal regulation of information on internet resources.

The scientific novelty lies in the comprehensive examination of legal regulation of information on internet resources in Kazakhstan, their systematization, and corresponding differentiation.

The scientific significance of the work lies in the possibility of using the conclusions drawn in it for deeper theoretical research.

The practical importance of this work lies in the possibility of applying its provisions to improve the existing legislation of the RK and law enforcement.

Materials and methods

The methodological basis of the research consisted of general scientific (analysis, synthesis, etc.) and individual-scientific (formal-legal, comparative-legal, methods of legal modeling of legal processes) methods of cognition of the legal and ontological nature, structure, and characteristics. All this allowed to comprehend, investigate, and provide a comprehensive constitutional and legal characteristic of the studied subject area, to develop and substantiate the main ideas and concepts of the article. The use of these methods allowed for a comprehensive and thorough study of the object of research. The scientific basis consists of a number of scientific works by Kazakhstan, Russian, and foreign scholars specializing in the field of constitutional and information law: Almeida, V.A., Doneda, D., & De-Souza, A.J., Dutchak S., Opolska N., Shchokin R., Durman O., Shevtsiv M., Froomkin A.M., Gaydareva I.N., Eshev M.A., Markov P.N., Abudzhalilov A.A., Anisimova A.S., Kazaryan E.A., Kasenova M.B., Moiseenko Yu.P., Nesterova E.V., Potovoy V.I., Luzan S.N., Strovsky D.L., etc.

Results and discussion

Currently, the number of spheres of human activity utilizing internet technologies is growing worldwide, expanding the list of informational interactions that arise from their use.

Information security should be considered in two aspects. When applying a systemic approach, information security becomes a foundational element. It can be likened to the status of the international relations system, characterized by stability and protection from information-based weapons and threats. Additionally, information security can be seen as an idealized model. Various conceptualizations exist regarding what information security should entail. It is viewed through sociological lenses (as a specific state of social relations), technical lenses (adherence to standards and other technical requirements), and legal lenses (adherence to prohibitions and restrictions on the dissemination of data). Drawing from conceptual ideas, information security can be defined as a model for the stable functioning of the information relations system (Talimonchik 2019).

Russian scientist V.I. Potovoy also emphasizes the peculiarities of modern internet legal relations. Legislative norms concerning such relationships should be interdisciplinary and quasi-normative because the specific technological features of internet-related interactions need to be formulated in accordance with the specific technical characteristics of internet-related relationships. This does not presuppose the existence of a unified set of norms encompassing universal regulatory rules (Potovoy & Luzan, 2016).

In order to achieve positive outcomes in optimizing relationships stemming from internet network usage, it's essential to address the practical gaps encountered. This can be accomplished by developing and implementing appropriate legislation. Therefore, the primary task is to steer the state's efforts in internet regulation towards a new qualitative basis, based on factual information and monitoring, ultimately providing us with a chance (Schulz 2005).

On one hand, some regulatory (or deregulatory) strategies pursue objectives that are largely internal to the first sector. For instance, in the current architecture of the internet, unique assignment of Internet Protocol numbers; control over mechanisms governing the allocation of potentially critical resources; and determining when, how, and by whom standards underlying them can be changed are critical for the internet, which is currently internal to the first sector. Similarly, regulating the creation of new top-level domains (TLDs) and regulating the allocation of second-level domains (SLDs) primarily concern issues within the first sphere, although they are

influenced by external rules such as trademark law (Froomkin 2003).

The amount of governmental and legal data that is available online has grown dramatically. Governments' distribution of this information as well as researchers' access to it have changed as a result of information technology advancements. Governmental efforts to create an online library of publications and the ability of Internet technology to provide topic-specific information in customized streams via Web logs and RSS news aggregators are the two main causes of this publication boom (Yvonne 2005).

Website traffic is frequently used by internet platforms as the pricing benchmark for market transactions. In order to influence user behavior, many platforms create reward and punishment systems that match to the amount of traffic generated. As a result, users are more likely to prioritize attention maximization than honesty. The dynamics of political and social discourse on online platforms often involve users engaging in discussions through methods such as commenting, expressing strong opinions, and participating in trending topics. These discussions can be emotionally charged and have the potential to incite online violence and group antagonism (Tian 2022).

Furthermore, governments often rely on internet platforms to regulate user behavior and content due to technical limitations and the high costs associated with law enforcement. Consequently, platforms are mandated to assume primary responsibility for managing information, reviewing content, identifying violations, and implementing disciplinary actions. However, the absence of uniform standards and clear delineation of responsibilities in these private regulatory activities poses risks of infringing upon user rights (Kong 2020).

As Internet platforms gradually expand their power, there is a simultaneous increase in the risk of infringing user rights and triggering governance crises due to encroachment on public rights. Consequently, Internet platform governance presents a significant challenge to modernizing government governance capabilities. Balancing private and public rights is crucial to safeguarding the legitimate interests of all parties while harnessing the role of Internet platforms in optimizing resource allocation, advancing technological progress, and improving efficiency (Tian Yifei, 2023).

Platform power primarily stems from technical capabilities, enabling Internet platforms to control data and influence the behavior of other parties. By analyzing big data, platforms can create accurate user profiles, enhancing trust and transaction dependence while unilaterally affecting users' realization of rights and behavioral choices, thus consolidating their influence and control. The dominance of these platforms extends to critical data, algorithms, and infrastructure, giving them substantial control not only over non-platform entities within the industrial chain but also over goods and service producers through their platform users. This concentration of power creates imbalances in the pluralistic relationship between various stakeholders (Rahman 2017).

In conclusion, Internet platforms derive power from three main sources: technological empowerment, user agreement rights transfer, and government authorization (Ma Zhiguo, Zhanni, 2003). Platform power emerges from the amalgamation of private law regulations and public law regulations, embodying a fusion of private and public authority.

The concept of equity imposes more rigorous requirements on internet platforms to safeguard public interests and protect users' lawful rights and interests. Consequently, the regulatory obligations of internet platforms encompass ensuring fair competition, safeguarding the security of user data, monitoring platform content and user interactions, overseeing online trading activities, and collaborating with law enforcement agencies. To overcome the limitations of a singular regulatory approach, the legal framework governing internet platforms can be strengthened through three primary regulatory approaches: self-regulation, administrative regulation, and cooperative regulation (Sutter, 2003).

In Kazakhstan, various levels of regulatory legal acts are actively being developed to regulate digitization, the utilization of information technologies, data processing, and other related processes. This process reflects a natural phenomenon that facilitates the digital transformation of industries and the advancement of digital technologies, with an innovative economy serving as a crucial component in achieving global competitiveness.

The National Development Plan of Kazakhstan until 2025 outlines specific objectives and strategies for advancing digitalization, including the establishment of infrastructure for implementing analytics, automation, and digitization leveraging artificial intelligence and big data. Additionally, it emphasizes the digital transformation of enterprises across various industries and aspects of daily life.

In line with this, the Government of Kazakhstan has approved the Concept of Digital Transformation, Development of the Information and Communication Technology Sphere, and Cybersecurity for

2023-2029. This concept provides a framework for addressing contemporary challenges in public services, serving the population and business community, modernizing public administration, and further leveraging digital technologies for economic sector development.

It's crucial that all digitalization and informatization initiatives adhere strictly to the regulatory legal framework. Despite being similar to many countries worldwide, Kazakhstan is yet to establish a comprehensive legal framework governing the introduction and development of digital processes at an appropriate level. A significant concern in Kazakhstan's legal regulation of the digital environment is the absence of legislatively defined principles and methods for developing regulatory requirements.

The Concept of Legal Policy until 2030, endorsed by the President of Kazakhstan, highlights several key objectives, including the need for legal regulation of artificial intelligence and robotics. This involves determining liability for damages caused by their actions and defining intellectual property rights concerning creations produced with the involvement of artificial intelligence. Additionally, it explores the feasibility of granting legal status to robots and, consequently, holding artificial intelligence accountable under the law.

The effort to revise legislation on personal data and its protection aims to harmonize it with several fundamental principles derived from the existing legal framework in this domain. This includes regulating non-discrimination in the utilization of big data technologies and imposing constraints on unchecked gadget usage for citizen surveillance.

The Law "On Informatization" governs public relations within the realm of informatization within the territory of Kazakhstan. This law outlines the responsibilities and interactions among state bodies, individuals, and legal entities concerning the creation, development, and operation of informatization objects, as well as state support for the growth of the information and communication technology industry.

However, the cornerstone legislation defining the principles, methods of regulation, and foundational legal institutions and structures of digital environment regulation should ideally be the Digital Code of Kazakhstan. Its adoption is scheduled for 2024 as part of the action plan for implementing the concept of digital transformation, development of information and communication technologies, and cybersecurity for 2023-2029. Nonetheless, ongoing development of legal acts at various levels is underway in anticipation of the Digital Code's adoption. For instance, in the past three years alone, 12 amendments and additions have been made to the Law of Kazakhstan "On Information."

Despite these efforts, many unresolved issues persist regarding the legal regulation of the digital environment, leading to the introduction of individual norms and rules. For instance, while the Civil Code of the Russian Federation (Article 43-2) stipulates state ownership of data acquired through various means, the Civil Code of Kazakhstan does not classify information (data) as objects of property rights. This discrepancy highlights existing challenges in legal harmonization.

In the conceptualization of regulations governing internet usage, it's imperative to delineate the characteristics of these relations to understand the mechanisms for their regulation. The involvement of technical experts is crucial to ensure a comprehensive understanding of both legal and technological aspects, thereby mitigating potential gaps in practical implementation. Approval of such a Concept at the legislative level can serve as the foundation for the legislative framework and offer solutions to various regulation challenges.

Additionally, the Law on Access to Information classifies information into three categories: public information, information with unrestricted access, and information with restricted access. The latter category encompasses state secrets and various sensitive classifications. However, discrepancies in the classification of data, such as designating information as "for use in service" by government agencies, can lead to complaints, disputes, and disagreements.

These rules establish the possibility of broad interpretation of information criteria, the dissemination of which is restricted, and moreover, the list of criteria is not exhaustive, allowing the restriction of access to information if, in the executor's opinion, it may be used to the detriment of the interests of the government agency. These norms, in turn, allow for abuses of restrictions and the unlawful concealment of socially significant information.

Another problem is the non-compliance with the law by government agencies, which often confuse the Law on Access to Information and the Law on Appeals of Individuals and Legal Entities. The differences between similar and ambiguous concepts determine how requests are treated and responded to. The main grievances against government agencies include lack of timely responses, ignoring requests, incomplete responses, references, and refusals. The law does not provide for anonymous appeals, which

hypothetically obstructs the realization of citizens' rights.

Furthermore, the law does not provide for a unified format for publishing information, so this issue remains at the discretion of each government agency. For example, information of a general nature is disclosed on internet resources, but in practice, information about inspections is not disclosed. Or the inspection plan is posted, but there are no inspection results. Information about the government services provided is presented partially, with varying degrees of detail, usually not for all services, but in a simple and understandable format.

The Organization for Security and Co-operation in Europe has released a report titled "Control for Internet," indicating that approximately 20 countries are included in the "black list" for Internet censorship. In some authoritarian nations, information flow and access to the global online space are artificially restricted by blocking specific websites and services. Additionally, certain countries limit their citizens' access to the World Wide Web while providing access to a restricted internet. European governments also submit numerous requests for content blocking and filtering, as shown in the biannual Google Transparency Report. Furthermore, proposals have been made in some states to assign internet users a single open IP address to simplify monitoring all online communications, potentially curtailing freedom of expression (Dutchak 2020).

Many countries impose limitations or partial restrictions on free access to information, often under government control. North Korea is notably the most closed-off country globally, having blocked access to social networks since the internet's inception. Similarly, China restricts access to foreign social media platforms like Google, Facebook, and Twitter, favoring domestic alternatives. Saudi Arabia actively blocks "immoral" websites, including Wikipedia and Google Translate, and completely shut down access to YouTube in 2012 (Dutchak 2020).

Consequently, the Google Transparency Report plays a crucial role in understanding internet users' privacy, security, and access to information. Prior to its creation, Google regularly received requests from authorities in various countries to disclose users' personally identifiable information on a broad scale. Issues of internet security and surveillance have gained significant attention following events such as Edward Snowden's revelations and cyberattacks on Sony Pictures Entertainment, sparking discussions on encryption and privacy (Dutchak 2020).

Indeed, almost all states enforce certain restrictions on internet resources to manage the dissemination of content. For example, countries like the USA, France, Germany, and the UK criminalize the production and storage of prohibited content, with internet service providers mandated to report such content to relevant authorities. However, despite efforts to restrict access to undesirable content, modern technologies for censorship and surveillance often fall short of achieving complete effectiveness. Many researchers note the persistent operation of resources even after being blocked, allowing owners to continue generating income. Various methods for circumventing content blocks exist and are continuously evolving. Ordinary internet users can readily find specific instructions for accessing blocked websites online. The widespread acknowledgment of methods such as specialized proxy servers, browser extensions, and applications for computers and smartphones underscores the ongoing challenges in regulating internet content access (Balashov 2016). However, implementing measures to counteract these bypassing techniques poses significant challenges due to resistance from internet users, prompting the continuous search for new circumvention methods.

A survey conducted by the "Public Opinion" Foundation revealed that only 22 percent of respondents believe internet users should pay for the content they consume, while 52 percent hold the opposing view. Notably, low-income groups are particularly prominent among those who advocate against user payment for accessing online content.

While efforts to regulate the internet space may be viewed as undemocratic, the absence of clear legal standards for internet regulation leaves authorities with limited options to protect information security. Consequently, attempts to block unnecessary and harmful information distribution remain a primary recourse for modern countries' authorities.

In Germany, laws prohibit online gambling and casino websites. Internet service providers are mandated to shut down such sites upon authorities' request, and banks are required to block transfers to these resources. Additionally, online betting through companies located outside the country is illegal in Germany (Hu 2016).

Article 6, Paragraph 2 of the Law on Gambling Business in Kazakhstan explicitly prohibits the provision of online casino and electronic casino services within the territory of Kazakhstan. (https://online.zakon.kz/Document/?doc_id=30085891).

The direction of electronic entertainment, particularly online gaming through the internet, is a significant aspect shaping the development of information technologies today. With hundreds of millions of people worldwide spending billions of hours each year playing computer and mobile games, it's evident that online gaming holds considerable sway. It's worth noting that online casinos utilize applications from various manufacturers.

In the realm of online gaming, one important concept is the Return to Player (RTP), which represents the player's chance of winning in the casino and is expressed as a percentage in a specialized program code. In official casinos, manufacturers typically receive a certain percentage of the production of their creations within the gaming sphere.

Given the legislator's negative stance on gambling, as evidenced by its prohibition, it's apparent that gaming establishments influencing gambling organization operate from outside the jurisdiction. In cases where internet service providers solely offer internet access without any connection to online casino owners, their activities cannot be considered as facilitating gambling organization or implementation. Visitors accessing gambling through foreign casino sites on the internet, such as via home computers, highlight the need for a new approach to regulating this activity, considering its organization and legal definition.

In light of this, online casinos are explicitly prohibited by law as their establishment revolves around entering into contracts for participation in gambling activities. To counteract attempts to circumvent regulations governing gambling organization and conduct on casino sites, the prosecutor's office has developed a practice of restricting access to such sites by implementing rules for filtering online IP addresses through court websites targeting internet service providers. However, many casino users can still access these gambling platforms by using virtual private networks (VPNs).

The procedure for blocking a gaming platform, as well as any resources prohibited by law, typically unfolds as follows: within three days, the supervisory authority issues a notification to the resource owner or hosting provider mandating the removal of prohibited content. Upon compliance, the site is removed from the registry; otherwise, the operator restricts user access to the resource.

Currently, there are two legal grounds for blocking a site: by a legally binding court decision or by a decision of the competent state information authority endowed with relevant powers. Judicial proceedings concerning the blocking of gaming sites usually involve prosecutors as initiators of the lawsuit, with the case deliberated in a court hearing.

Conclusion

The analysis suggests that the internet serves as a contemporary platform for freedom, enabling individuals to express themselves and access reliable information. Absolutely, the evolution of modern society has introduced considerable challenges in the legal regulation of telecommunications, the protection of rights, and the safeguarding of interests in transmitting information across global computer networks. As technology continues to advance rapidly, traditional legal frameworks may struggle to keep pace with emerging issues such as privacy concerns, cybersecurity threats, and the proliferation of misinformation. Finding a balance between fostering innovation and ensuring accountability and protection for users is an ongoing and complex task for lawmakers and regulatory bodies worldwide.

Given these circumstances, it is imperative to implement a series of measures to enhance the management of the internet. This includes:

Thus, in particular, it is necessary to:

Conducting a systematic review of legal statutes governing internet public relations and enhancing the regulatory framework through specialized legislation, such as the "Regulation of Information on Internet Resources" Code;

Addressing gaps in the current legislation of the Republic of Kazakhstan (RK) to ensure comprehensive coverage.

Organizing and consolidating norms governing internet public relations to establish fundamental principles and a unified conceptual framework.

Some social networks and browsers (YouTube, TikTok, Facebook, Twitter, etc.), such as the Chinese government, should be restricted by law.

Additionally, integrating the public-law principle of justice into the legal framework governing internet platforms would entail obliging platforms to offer alternative services in line with user rights, ensuring equitable access to platform services, and adherence to legal standards.

In essence, these measures aim to strike a balance between upholding freedom of expression, protecting individual rights, and maintaining the integrity of online information within the evolving landscape of internet governance.

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THE INSTITUTE OF ADOPTION IN TNE REPUBLIC OF KAZAKHSTAN AND THE CONSTITUTIONAL RIGNTS OF ADOPTED CHILDREN

Adoption is the legal adoption of a child into a family. A child as a relative acguires whether son or daughter all rights and obligations. Parents thereby acguire the highest responsibility for the child and his full development. The article talks about the importance of the institution of adoption, that in our state great attention is paid to the priority of family education, and for children who have fallen into care, such an educational facility can only be provided by the institute of adoption. At the same time, the adoption of children is always a very complicated legal procedure. This is due to the fact that this issue is very important and, depending on the child's prospects, places great responsibility on the state and parents.

A number of problems in the process of adoption about the peculiarities of the adoption of Kazakhstani children by foreign adoptive parents, including from same-sex families is described by the authors. The difficulties of monitoring adopted children, especially those adopted by foreign citizens, are described. Therefore, it is concluded that main task is the protection of children's rights. The issues of adoption of disabled children, protection of their rights is also touched upon.

Key words: law; family; orphan; Constitution; convention.

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Қазақстан Республикасында бала асырып алу институты және асырап алынған балалардың конституциялық құқықтары

Баланы асырап алу-бұл тобасына заңды қабылдау.Бала туысқаны ретінде ұл немесе қыз болсын, барлық құқықтар мен міндеттерді алады.Ата-аналар сол арқылы баланың тағдыры мененың толық дамуы үшін ең жоғары жауапкершілікке ие болады. Мақалада бала асырап алу институтының маңыздылығы, біздің мемлекетімізде отбасылық білім берудің басымдығына көп көңіл бөлінетіндігі туралы айтылады, ал қамқорлыққа алынған балалар үшін мұндай білім беру мекемесін тек бала асырап алу институты қамтамасыз ете алады. Сонымен бірге балаларды асырап алу әрқашан құқықтық жағынан өте күрделі процедура болып табылады. Бұл мәселе аса маңызды болғандықтан және баланың келешегіне байланысты мемлекетке, ата-аналарға үлкен жауапкершілік жүктейді.

Авторлар бала асырап алу процесінде шетелдік асырап алушылардың, оның ішінде бір жыныстыотбасылардың қазақстандық балаларды асырап алу ерекшеліктері туралы бірқатар проблемаларды сипаттайды. Асырап алынған, әсіресе шетелдік азаматтармен асырап алынған балаларға бақылау жүргізудің қиындықтары сипатталған. Сондықтан балалардың құқықтарын қорғау-басты міндет деген қорытынды жасалады. Мүгедек балаларды асырап алу, олардың құқықтарын қорғау мәселелері де қозғалады.

Түйін сөздер: заң; отбасы; жетім; Конституция; конвенция.

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Институт усыновления в Республике Казахстан и конституционные права усыновленных детей

Усыновление – это законный прием ребенка в семью. Ребенок как родственник приобретает, будь то сын или дочь, все права и обязанности. Родители тем самым приобретают самую высокую ответственность за судьбу ребенка и его полное развите. В статье говорится о важности института усыновления, о том, что в нашем государстве большое внимание уделяется приоритету получения семейного образования, а для детей, попавших под опеку, такой образовательный объект может обеспечить только институт усыновления. В то же время усыновление детей-это всегда очень сложная юридически процедура. Это связано с тем, что этот вопрос очень важен и в зависимости от перспектив ребенка возлагает большую ответственность на государство, родителей.

Авторы описывают ряд проблем в процессе усыновления детей, об особенностях усыновления казахстанских детей зарубежными усыновителями, в том числе однополыми семьями. Описывается о трудностях проведения контроля за усыновленными детьми, особенно зарубежными гражданами. Поэтому делается вывод, что защита прав детей – это главная задача. Затрагиваются проблемы усыновления детей-инвалидов, проблемы защиты их прав.

Ключевые слова: закон; семья; сирота; Конституция; конвенция.

Introduction

One of the most pressing issues of social regulation of Kazakhstan and other countries is adoption of orphans and children left without parental care. For various reasons, children are deprived of parental care and are forced to live in an orphanage. Adopting a child solves several problems. First of all, the child will find his own family, secondly, young couple will have the opportunity to fulfill their parental duties, and thirdly, the state won't lose financially invincible, because it costs a certain amount to send orphans to an orphanage.

Therefore, complex mechanisms for adequate regulation of appropriate procedures of adoption are considered by legal systems of different countries of the world. The analysis of the different experience of adoption in Kazakhstan and other countries is carried out in order to alleviate this problem in our country.

The term "child adoption" is defined in different ways by scholars. According to many, one type of adoption is children who have been separated from their parents for various reasons.

Today, it is known that this action is recognized as a legal relationship arising on basis of act of "child adoption" because of new legal relations between child to be adopted and adopter of the child, as indicated in the scientific literature (https://goo.edu.kz/content/view/113/7632?lang=kz; http://cbd.minjust.gov.kg/act/view/ru-ru/203700). In addition, as a result of this legal act, legal relationship between child and his biological parents is determined. According to legislation of the Republic of Kazakhstan, legal relations arise on the one hand, with the adopter, his biological relatives, and on the other hand, with the child ready for adoption, based on adoption act. In fact, the purpose of adopting a child who has lost his parents is to enable the orphan to live in a family, to protect his rights, to educate him, and to create appropriate conditions for the child's education.

The goals and grounds for adoption are defined in Article 28 of the law of the Republic of Kazakhstan "On the rights of the child in the Republic of Kazakhstan", but definition of this concept isn't given. And the adoption as a measure to protect the rights and legitimate interests of a child deprived of parental care in his family environment is defined in the Code of Kyrgyz Republic on children in Article 44 of Chapter 8. At the same time, the adoption law is allowed only in the interests of children deprived of parental care in their family environment as an acceptable way to protect the rights of children.

Materials and methods

The historical research method is used within this article in accordance with the task of analyzing theoretical basis of regulating constitutional rights of adopters and adopted children. This method pro-

vides a detailed analysis of retrospective protection of constitutional rights of adopted children in the territory of the Republic of Kazakhstan since gaining independence.

Regulation of constitutional rights of adopters and adopted children is also used by the method of comparative analysis.

Using a comparative analysis, the study of current state of constitutional right protection of adopted children allows to identify and analyze main issues of this question, there is a need to supplement the legislation on constitutional right protection of adopters and adopted children in the Republic of Kazakhstan according to its content. We used sociological tools based on the quantitative mass survey sociological method to fully study and implement the task of conducting a sociological analysis to determine regulation of constitutional rights of adopters and adopted children. The article is also prepared using general and research methods of scientific knowledge, such as dialectical, formal-logical, systematic, technical-legal methods.

It is allowed to adopt only a minor child, in addition, a judge conducts a court at the request of people who wish to adopt a child with a special procedural procedure according to the rules of civil procedure legislation. The consideration procedure of cases of this category is regulated by Chapter 33 of the Code of Civil Procedure.

It is allowed to adopt only children who have lost their parents under 18, who are registered with the relevant rules for adopting a child, and also child's comprehensive physiological, moral, only such adopters are allowed if they make every opportunity for their psychological and spiritual development according to paragraph 1 of Article 84 of the Code of the Republic of Kazakhstan "On Marriage, Matrimony and Family".

In addition, the attention was paid to the rules for adoption of children who are citizens of the Republic of Kazakhstan in the course of the research (https://adilet.zan.kz/kaz/docs/P1200000380).

Results

Many studies have shown that child adoption is the most suitable form of care and social protection for a child who has lost a parent, because the child's interests are fulfilled and young childless families have the opportunity to raise a child.

For example, G. Karpushina's work "Family Law" tells about the history of child adoption as follows: "the first act of child adoption" was adopted in 1851 in the United States in Massachusetts. According to this act, the adopted child is given all the same rights as the biological children of the adoptive parents (https://adilet.zan.kz/kaz/docs/K1100000518). Here it is established and committed not only to the issue of providing the adopted child with food, but also to the interest of the adoptive parents in educating the adopted child, increasing his chances for education and creating conditions for this.

The history of our country shows that orphans were taken care of during difficult times. For example, during Soviet era, during severe conditions of the country, the government of Communist Party took care of orphans, made decisions about need to adopt them, showed kindness to children who lost their parents, and created conditions for placing them in families.

Thus, adoption of a child is an institution of family law. In connection with this issue, the rights and obligations of parties establishing legal relations for adoption, the procedure for adoption, termination and other relevant norms are established in the legislation.

European states have following constitutional experience. For example, the Constitution of the Slovak Republic (Article 15) and the Constitution of the Czech Republic (Article 6) specifically state that human life deserves protection even before birth. Article 40 of the Irish Constitution states: "The state recognizes the right to life of unborn children and, subject to equal right to mother's life, it shall guarantee in its laws respect for and shall, as far as possible, protect and uphold this right in its laws". These examples show that some adopters are willing to adopt a child from the time it is still in the mother's womb (https://doi.org/10.6000/1929-4409.2020.09.210). Neither the Constitution nor other laws in our country consider such adopters, even if they exist. This, of course, shows that the child's rights are protected even in the embryo, and that he has the right to life. That is, it is required to include such norms in our legislation.

According to natural rights, every child has the right to grow up in family that is well-educated, good-natured, spiritually and materially complete. In international law, for example, biological parents are included in the concept of "family" (https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f14&Lang=en).

In some countries, children have the right to know their birth parents (https://www.eshre.eu/~/media/sitecore-files/Annual-meeting/Munich/ART-

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As for traditional Kazakh customs, it is an ancient Kazakh custom to bring someone's child up, to adopt a child.

According to the Kazakh tradition, it is allowed to adopt a child only when there is no offspring. If a family had no children at all, such a family would agree with one of its close people and adopt the child.

According to Kazakh customs, the adopter usually holds shildekhana party, and when a son was adopted, he would hold assyk zhilik on his hand, and a daughter would hold tokpak zhilik on her hand. We can see that there is a great educational meaning in this. In public, he expresses gratitude for accepting the children, for giving the child to both sides by accompanying child. Among Kazakhs, it is common for children to be placed under the care of their parents. This is the selfishness of the grandmother and grandfather who consider their grandson to be their own son.

This is a traditional form of kinship that is not called adoption (https://goo.edu.kz/content/view/113/7632?lang=kz).

There was no word "Orphanage" in Kazakh history before. It is known to all of us. Even orphan is a very difficult word. Before the Soviet era, mothers of children who lost their fathers were arranged to marry their fathers' brothers or sisters, so that children did not become orphans. And the children who lost their parents remained children of their father's brother. Even a child with no blood relation was adopted by a relative. Therefore, there were no orphans in Kazakh society.

According to information, such orphanages began to appear during Soviet Union, and the number of orphans there increased significantly after Soviet years. Currently, we are in such a situation that we do not feel that the word "orphan" is a shame for the nation. Because there are many abandoned children and children with serious health problems. Divorce has also big influence on it.

The most sensitive part of any society is orphans who have lost their parents and are left out of their care. Every state tries to solve this social problem comprehensively. For example, orphaned children were abandoned, parents were absent, disabled data were registered at the level of the Republic of Kazakhstan. Its databases include: Children's Fund, Children's Archive, Organized Children. At the same time, a list of citizens who are ready to adopt such children will be made there.

It is known that the institution of adoption is an important legal institution. Adoption of children who are citizens of the Republic of Kazakhstan to foreigners in accordance with paragraph 3 of Article 76 of the Law of the Republic of Kazakhstan "On Marriage and Family". Citizens of this country permanently residing in the Republic of Kazakhstan are allowed to adopt only when there is no opportunity for adoption. Adoption of a child is carried out only in accordance with the laws of the Republic of Kazakhstan to people with citizenship in the territory of the Republic of Kazakhstan, foreign citizens, stateless people.

A state document on the financial status of potential parents, that is, a written application about moral character of license must be submitted to the relevant child protection services. At the same time, foreign adoptive citizens intending to adopt a child who has lost their parents within two weeks are allowed to choose the child themselves and get closer to him. Adoption is carried out by the court at person's request who wishes to adopt a child. Adoption cases are carried out by the court within framework of special procedures in accordance with norms provided by the legislation of civil procedure. It is known that a foreign adoptive citizen wishing to adopt an orphaned child of the Kazakh state must be immobilized in accordance with the legislation of the Republic of Kazakhstan, Article 155, Part 1 of the Civil Procedure Code of the Republic of Kazakhstan (https://adilet.zan.kz/kaz/docs/K1500000377). Recognizing the need for education in the framework of happiness and love for child's full development in a family environment, recognizing that adoption of a foreign child provides an opportunity to create a stable family in the absence of family in the country of origin, to prevent child abduction and keeping child in the family as a priority goal of each state, in international documentation , in particular, the need to take measures to stop trade is taken into account.

In some cases, an adopted child may encounter an unfavorable family and parents and develop in a negative way. Minor children, taking into account their physiological, mental and social characteristics, being one of the most vulnerable groups of the population, are considered a separate category of

criminals. Therefore, the crime of minors is not only caused by damage to social relations and the personality of the victim, but also directly affects minors, antisocial behavior is formed in their mind. Taking this into account, the issue of features of criminal liability of adopted minors is still relevant today (Yernar 2020).

For example, Khan V.V. believes that crimes against minors, especially sexual inviolability, should be investigated. For this, the crime investigator must be ready to perform the duties of supervision and control of the rights and interests of minors assigned to him (Khan 2022).

Taking into account the provisions set forth in the UN Convention on the Protection of Children published on November 20, 1989 "On social legal principles related to the interests and protection of children" 41-85, "Protection and Adoption of Children" published on December 3, 1986, July 25, 1993 The adoption of the "Convention on Cooperation in Matters of Child Protection and Adoption" were widely considered in history.

When foreign citizens adopt Kazakhstani children, the rights of these children will be protected. We can see about it in the Convention dated 2022. It is about protecting the rights and interests of adopted orphans. It is intended to take measures of mutual cooperation between states by concluding agreements against the abduction and sale of a child, to ensure that states recognize the adoption of a child in accordance with the requirements of the convention. According to the convention, the diplomatic corps and consulates of the country abroad should monitor the situation of children of Kazakhstan adopted by foreigners.

For example, UNICEF's report "Everyday Lesson: Stopping Violence at Schools" found that half of the world's 13-to 15-year-old schoolchildren (approximately 150 million children) have experienced peer violence both on and off school grounds. That is, the rights of the adopted child in such cases must be protected (https://www.unicef.org/publi-cations/index_103153.html). One of the difficulties here is that we have difficulty knowing the cases of children who have left Kazakhstan. After all, the diplomatic staff of the country has rules of inviolability of the privacy of foreigners and non-interference in their lives.

One of the difficulties here is that we have some difficulties in knowing the cases of children who have left Kazakhstan. After all, the diplomatic staff of the country has rules of inviolability of the privacy of foreigners and non-interference in their lives.

In some foreign countries, adoption permits were issued even to same-sex families. For example, American Psychological Association supported the adoption and upbringing of a child in same-sex families with its official statements in 2004 (https://adilet.zan.kz/kaz/docs/K1500000377).And there are no such norms in Kazakhstan's legislation. Because a same-sex family is not recognized in our country.

At the same time, some foreign citizens will adopt disabled children from Kazakhstan.The mechanism for protecting the rights of children with disabilities is provided by international law, that is, the UN Convention on the Rights of Person with Disabilities. However, it is not possible to monitor the condition of such children, as this is provided by the convention. However, it is not possible to monitor the situation of such children, because there is still work to be done on the implementation of the provisions of this convention [4].

According to the Convention, a special centralized working body was created among the states that signed the contract on children adoption who lost their parents. This body will achieve and work to achieve goals and related tasks specified in the convention for the cooperation between governments of the respective states, as well as the requirements set before the adopters.

In addition, these bodies include the necessary data on children adoption who have lost their parents, statistical documents, information in all necessary forms in the laws issued byrelevant state, and each state shows and determines the implementation of the convention in its country, what are te obstacles to it, and how to solve the obstacles. In textbook "Family Rights" by B.Ye. Aitzhan and G.B. Shirkinbayev that since the evolution of civilization in the country, the status of orphanages and old people's homes in the country has also worsened. Yes, it shows that it is a tragedy not only for individuals, but also for society. Currently, we can see that the number of adopters in the country is increasing. According to the analysis of the Ministry of Foreign Affairs of the Republic of Kazakhstan, this can be evidenced by the increase in the intention of foreigners to adopt children who have lost their parents. According to the authors, adopters from different countries can adopt Kazakh children. As proof of this, the authors say that "it can be seen from the fact that citizens of different states who intend to adopt a child who has lost their parents apply to international courts" (https://goo.edu.kz/content/view/113/7632?lang=kz).

According to the information of many countries, China, Vietnam, and Kazakhstan are the first countries in the world that offer their children for adoption to foreigners. Based on media information of recent years, many organizations and agencies stand in the way of adopting an orphan. All of them function due to funding, and here too it can be seen that the work of adopting a child without parents is not regulated at the required level. In this direction, for example, representatives of 28 foreign organizations work in the territory of Kazakhstan. If we look at the history of our people, we will see that there were no orphanages or abandoned children in our land. We understand that the increase of orphans is influenced by divorce, alcohol addiction, and low social status and etc.

Conclusion

Summing up, adoption is a legal fact. In the life of the country, in no fate, children have never remained indifferent, people have never left indifferent their thoughts about life and future of the child. Thus, as a result of long discussions between various members of the society, the current negative situation on the issue of adoption of Kazakh children by foreigners remains transparent.

Islamic law maintains transparent principle of adoption. It does not deny biological origin, that is, the child's blood is not deliberately denied or hidden. Since Kazakhstan is dominated mainly by Muslim population, we think that this principle of Islamic law can be used quite well. Adoption by transparent principle would have an educational moment, that is, it would not be forced to lie from childhood and would be protected in the future from the stress associated with the disclosure of the secret of adoption. And after reaching the age of 16, when receiving an identity card, a teenager would have every right to change his questionnaire data in favor of foster parents.

Thus, as a result of long discussions between various members of society, the current negative situation on the issue of adoption of Kazakhstani children by foreigners remains transparent.

At the same time,transparent adoption is in accordance with Article 7 of the Convention on the Rights of the Child, which states that a child has the right to receive a name and citizenship of any country, even in appropriate cases, to know his parents and be under their care. Every child has the right to live and be brought up in a family, the right to know his parents and other close relatives, the right to their care and upbringing, except for cases that conflict with their interests, is established in the Law of the Republic of Kazakhstan "On the Rights of the Child". We think that the offenses committed on this issue will make other participants of the international adoption process doubt legalized activities of the institution that provided assistance to sick children. Therefore, if we want the world to respect our nation, our national image, and the future of our children, we must first of all pay special attention to every family in our country, pay special attention to their spiritual and social aspects, and help them not to fall, as well as to respect our national traditions, consciousness, and actions. It is possible to see in the works of our great poets with traditions and customs from the cradle that the future of a child in Kazakh is very consciously attached great importance to his origin and upbringing.

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E-GOVERNMENT: PROBLEMS OF PUBLIC ADMINISTRATION

E-government is a single mechanism of interaction between the state and citizens, as well as government agencies, providing partial coordination using information technology.

This article will focus on the formation and development of e-government in the modern Republic of Kazakhstan. The relevance of the article lies in the fact that a number of problems in the implementation and application of e-government lies in conducting scientific analysis due to the increased demand for e-government services. The purpose of the study is to determine the nature of the implementation of new e-government technology in the public administration of the Republic of Kazakhstan in comparison with foreign countries, as well as to analyze the current state, trends and problems of e-government development based on the analysis of statistics of the e-government development index and national statistics adopted by the United Nations. According to the results of the study, the work performed by the authors will allow us to analyze and study in detail the problems in the implementation and application of e-government, as well as formulate a priority way to solve them.

The topic of e-government development has never lost its relevance: new concepts of the use of ICT in public policy and management have appeared, world and Kazakh empirical data on models and results of e-government functioning in various institutional settings are being updated. The world is rapidly getting better as new technologies penetrate into all areas of our lives. E-government can facilitate citizen participation in public and political life. It provides public access to public information and provides a forum for public discussion that allows citizens to monitor the political decisions of government bodies.

Key words: e-government, information and communication technologies, system of state and municipal government, electronic document management, electronic services, e-government.

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Электронды үкімет: мемлекеттік басқарудың мәселелері

Электронды үкімет – ақпараттық технологиялар көмегімен ішінара келісушілікті қамтамасыз ететін, мемлекет пен азаматтар арасындағы, сондай-ақ мемлекеттік органдардың өзара әрекеттестігінің бірыңғай механизмі.

Бұл мақалада қазіргі Қазақстан Республикасында электрондық үкіметтің қалыптасуы мен дамуы туралы айтылады. Мақаланың өзектілігі мынада: электрондық үкіметті енгізу және қолдану кезіндегі бірқатар проблемалар электрондық мемлекеттік қызметтерге сұраныстың артуына байланысты ғылыми талдау жүргізу болып табылады. Зерттеудің мақсаты шет елдермен салыстырмалы түрде Қазақстан Республикасы мемлекеттік басқару қызметінде электрондық үкіметтің жаңа технологиясын іске асыру сипатын анықтау, сондай-ақ, Біріккен Ұлттар Ұйымы қабылдаған электрондық үкіметтің даму индексінің статистикасын және ұлттық статистиканы талдау негізінде электрондық үкіметтің қазіргі жағдайын, даму тенденциялары мен проблемаларын талдау. Зерттеу нәтижелеріне сәйкес, авторлар орындаған жұмыс электрондық үкіметті енгізу және қолдану кезіндегі проблемаларды егжей-тегжейлі талдауға және зерделеуге, сондай-ақ оларды шешудің басым жолын тұжырымдауға мүмкіндік береді.

Электрондық үкіметтің даму тақырыбы қашан да өзектілігін жойған емес, бірқатар: АКТ-ны қоғамдық саясат пен басқаруда қолданудың жаңа тұжырымдамалары пайда болды, әртүрлі институционалдық жағдайларда электрондық үкіметтің жұмыс істеу модельдері мен нәтижелері туралы әлемдік және қазақстандық эмпирикалық деректер жаңартылуда.

Түйін сөздер: электрондық үкімет, ақпараттық-коммуникациялық технологиялар, мемлекеттік және муниципалды басқару жүйесі, электрондық құжат айналым, электрондық қызметтер, электрондық басқарма.

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**Электронное правительство:
проблемы государственного управления**

Электронное правительство – единый механизм взаимодействия государства и граждан, а также государственных органов, обеспечивающий частичное согласование с помощью информационных технологий.

В данной статье речь пойдет о становлении и развитии электронного правительства в современной Республике Казахстан. Актуальность статьи заключается в том, что ряд проблем при внедрении и применении электронного правительства заключается в проведении научного анализа в связи с возросшим спросом на электронные государственные услуги. Целью исследования является определение характера реализации новой технологии электронного правительства в деятельности государственного управления Республики Казахстан в сравнении с зарубежными странами, а также анализ современного состояния, тенденций и проблем развития электронного правительства на основе анализа статистики индекса развития электронного правительства и национальной статистики, принятого Организацией Объединенных Наций. Согласно результатам исследования, выполненная авторами работа позволит детально проанализировать и изучить проблемы при внедрении и применении электронного правительства, а также сформулировать приоритетный путь их решения.

Тема развития электронного правительства не утратила своей актуальности ни разу: появились новые концепции применения ИКТ в общественной политике и управлении, обновляются мировые и казахстанские эмпирические данные о моделях и результатах функционирования электронного правительства в различных институциональных условиях.

Ключевые слова: электронное правительство, информационно-коммуникационные технологии, система государственного и муниципального управления, электронный документооборот, электронные услуги, электронное управление.

Introduction

The rationality of e-government lies in the fact that, firstly, the level of bureaucracy has significantly decreased; secondly, the level of openness of the activities of state bodies and, accordingly, the level of trust of citizens in them has significantly increased; thirdly, the reduction of political tension and social conflicts in Kazakh society, etc.

E-government cannot be considered as an analogue or an application to traditional government. This is a progressive form of organizing the activities of public administration bodies, capable of providing a qualitatively new level of efficiency and convenience in providing public services to citizens through the introduction of new information and communication technologies into this process.

Thus, e-government tools are designed to reduce administrative barriers and significantly reduce the number of visits by citizens to public institutions. In the future, any resident of the Republic of Kazakhstan can apply for agreements and permits via the Internet, as well as evaluate the quality of public services provided. The transition to electronic service will greatly simplify the interaction of citizens and the business environment with the administrator. Already, through the Unified Portal of state and Municipal services, you can receive a number of services in electronic form.

The topic of e-government development remains relevant: new concepts of ICT use in public policy and management are emerging, and global and domestic empirical data on e-government models and results in various institutional settings are emerging.

The world is rapidly developing as new technologies penetrate all spheres of our lives. E-government can facilitate citizen participation in public and political life. It provides public access to public information and is recommended for public discussions, allowing citizens to control political decisions of government bodies.

Most of the advanced countries of the world use various technologies of electronic government, which is not a big news for our country either. A significant aspect of e-government is that, firstly, the level of bureaucracy has been significantly reduced; secondly, the level of transparency of the activities of state bodies and, accordingly, the level of trust of citizens in them has increased significantly; thirdly, reduction of political tensions and social conflicts in the society of the Republic of Kazakhstan, etc.

This article is about the establishment and development of electronic government in the modern Republic of Kazakhstan. The relevance of the article lies in the fact that a number of problems in the implementation and application of electronic government are carried out in a scientific analysis due to the increased demand for electronic government services. The purpose of the study is to determine the nature of the implementation of new electronic government technology in the state administration of the Republic of Kazakhstan in comparison with foreign countries, as well as the analysis of the current state, trends and problems of the development of electronic government based on the analysis of the statistical index of the development of electronic government and national statistics adopted by the United Nations . According to the results of the research, the work performed by the authors will allow detailed analysis and study of problems in the implementation and use of electronic government, as well as formulating a priority way of their solution. The idea of e-government was first implemented in the Republic of Kazakhstan in 2004, and the formation and development of e-government in the country went through four stages.

Information period. In the first years, during this period, the electronic government portal was launched, and information about the activities of state bodies, especially the types of public services, was widely disseminated.

Electronic services have started to be offered on the interactive stage portal. At this stage, users of the portal can send a request to any state body without standing in a queue and monitor the order of its implementation.

Transactional period. Citizens had the opportunity to pay all types of taxes, fines and utility bills.

Transition period. Immediate speed of service to the public. In order to achieve this goal, interactive and transactional services have become complex services of special importance for Kazakhstanis (https://martebe.kz/jelektrondy-kimet-degenimiz-ne-zh-ne-ol-ne-shin-azhet/).

Electronic government in the Republic of Kazakhstan is a set of interactive communications between government agencies and the public to provide public services electronically. Application of new tools of electronic government and improvement of old tools is an important task in terms of increasing the efficiency of the state and municipal management system. The use of technologies and tools of "electronic government" makes the process of public administration more transparent, as citizens receive the necessary level of awareness of the results of the activities of public authorities.

In 2004, the Decree of the President of the Republic of Kazakhstan "On the State Program for the Formation of Electronic Government in the Republic of Kazakhstan for 2005-2007"3 was issued. This document laid the foundation for the creation of electronic government in the country and defined the key directions of its development.

The main stage of development

First stage (2006-2009): Creation of basic infrastructure

- At this stage, the main components of electronic government were formed:
- Centralized database
- A single gateway for the integration of departmental systems
- The portal is a single point of access
- Unified transport environment
- Authentication center

The second stage (2010-2014): Expansion of the spectrum of services

Electronic services were actively developed during this period. By 2014, more than 700 services and services were provided through the electronic government infrastructure1.

The third stage (2015-present time): Mobile government and open data

An important step was the creation of the eGov mobile application in 2014, which greatly simplified citizens' access to state services1. In 2017, this application was recognized as the best at the international summit «The World Government Summit».

Increase in the number of services: Today, more than 700 services and services are provided through electronic government1.

Growth of users: The number of registered users of the portal exceeded 6 million people1.

Mobile services: Mobile application eGov provides 83 types of services.

Research materials and methods

During the writing of the article, scientific works of domestic and foreign scientists were used. In the course of scientific research, historical, comparative analysis, normative-logical, synthesis, systematic-legal, analysis, etc. are used in legal science and related social sciences as a methodological basis of research. public legal methods were used. The works of domestic and foreign legal scholars who are thoroughly studying the field of electronic state administration were used.

Research results and discussions

The main stage of development

First stage (2006-2009): Creation of basic infrastructure

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Centralized database

A single gateway for the integration of departmental systems

The portal is a single point of access

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Key achievements

Increase in the number of services: Today, more than 700 services and services are provided through electronic government1.

Growth of users: The number of registered users of the portal exceeded 6 million people1.

Mobile services: The eGov mobile application provides 83 types of services, including payments1.

Open Government: Citizens have the opportunity to participate in the public discussion of normative legal acts, draft budgets and evaluation of implementation of budget programs1.

Advantages of electronic government

The introduction of electronic government brought a number of significant advantages for the citizens of Kazakhstan:

Saving time: It is no longer necessary to visit state institutions in person to receive many services2.

Availability: Services are available 24/7 via the Internet and mobile devices.

Transparency: The transparency of the work of state bodies has increased.

Reduction of bureaucracy: the amount of necessary documents and references has been reduced thanks to the automation of processes.

Отправить отзывThe term «electronic government» (electronic government, egovernment) originally appeared in the West in the early 1990s-2000s, when information and communication technologies began to be massively introduced into the political sphere of society. It includes the Internet technology of relations between the authorities and the public, an interactive form of interaction between the authorities and the public in the process of solving socially important tasks, a tool for inter-departmental and intra-departmental interaction of civil servants and a purely technical means of providing public services to the public (remote users). (https://adyrna.kz/post/42333.).

In turn, the concept of electronic government can be interpreted as a set of ideas, systematically ordered and relatively stable views about the principles, forms, mechanisms of public and municipal management of public and political processes through information and communication technologies (ICT). In turn, electronic government as a tool (e-governance) aims at specific goals that unite all interacting areas.

It should be noted that the Electronic Government cannot be considered as an analogue or an addition to the traditional Government. This is a progressive form of organizing the activities of state administration bodies capable of ensuring a qualitatively new level of speed and convenience of providing public services to citizens due to the introduction of new information and communication technologies into this process.

Implementation of information and communication technologies in the public sector is carried out

in various directions both within the authorities and in the field of interaction of public policy actors. It is necessary to distinguish three such directions: e-administration, e-services and e-participation (Shvets 2013: 27).

Electronic administration involves information in bureaucratic processes, from computerization and installation of electronic document circulation to automated support of other sectors of the EU. The electronic services sector includes mechanisms of state (municipal) provision of services through websites, portals or specialized centers. In most cases, this sector is presented as a «G2» matrix. It results from the interaction of three types of actors: the state (government, G), business (business, B) and citizens (citizen, C). For example, the «G2B» and «B2G» modules consider a business to be a customer or a service provider. «G2C» and «C2G» modules include electronic provision of state (municipal) services to citizens, as well as ordering feedback services or monitoring their implementation.

E-participation includes mechanisms to involve citizens in discussing issues and making decisions: from feedback channels to e-voting. In the framework of this direction, E-government is carried out by means of «electronic administration» (electronic government) and «open government» (Open Government), so it is necessary to distinguish between these terms in order to avoid confusion. The first term, «e-government» is associated with the new paradigm of «governance», which is usually translated as «management» or «management» (Cheremnyh 2017: 67). Further: 1) participation of citizens; 2) rule of law; 3) transparency and accountability of government; 4) equality and inclusiveness; 5) efficiency; 6) responsibility; 7) the concept of «(good) good governance» based on the principles of consensus search appears.

Another feature of electronic technology is the possibility of regular and systematic work with gifted children:

- test system of self-examination (self-control);
- control forms: tests that need to be supplemented;
- tests with alternative answers (the solution is correct or incorrect «yes», «no»);
- selective test (several correct answers are selected);
- a test compiled as a dictation (in the case of reading the text, the required word is inserted);
- consistency test (designed to find interconnected facts) (https://articlekz.com/kk/article/16046)

Many researchers consider «e-governance» to be a broader concept than «e-government», as it presupposes a radical change in social relations: the widespread distribution of electronic voting mechanisms in the form of direct democracy, collaborative governance, forms of «network public policy» implementation (Korobov 2016: 55).

As for «Open Government», this concept itself is expressed in the principles of transparency, participation and collaboration. The development of ICT gives new impetus to this concept by technically facilitating information disclosure and civic participation. Currently, «Open Government» has become a paradigm of public administration.

However, the functionality of open government is not limited to the capabilities of information and communication technologies. So, Western researchers A. Meyer, D. Curtin and M. Hillebrandt came to the following conclusion about the nature of Open Government. «On the one hand, it means citizens' free access to government information (openness, transparency) and disclosure of data on government activities, and on the other hand, their participation in decision-making» (Meijer 2016:18).

In this regard, «electronic board», «Open government» and «electronic government» are conceptually linked in the aspects of electronic participation using information and communication technologies. It should be noted that although public sector informatization existed earlier, the emergence of «electronic government» as a concept dates back to the 90s of the 20th century.

In 2002, the international public organization «European Digital Rights» for the protection of human rights on the Internet was established in Brussels.

At the level of the United Nations (UN), a number of international documents have been adopted in a certain way related to the various rights and obligations of subjects of legal relations in the digital space.

In particular, the 2003 Charter for the Preservation of Digital Heritage, whose provisions focus on the preservation of human knowledge and its various forms of representation in the digital environment. It can be said that the charter establishes a new constitutional right within the framework of states – the right of future generations to access the state's digital heritage. This is an important direction in the electronic state, which obliges authorized entities to take all possible measures for timely updating of information devices and programs with elements of digital heritage. This category of international

documents includes the 2005 UN Convention on the Use of Electronic Communications in International Contracts, which «applies to the use of electronic communications in connection with the conclusion or performance of contracts between Parties whose commercial enterprises are located in different states.» This document establishes a special procedure for the implementation of the development of freedom of entrepreneurial activity for legal entities (Dyusenkul 2023: 24).

Comparison with foreign experience

To evaluate the success of Kazakhstan in the development of electronic government, it is advisable to compare it with the experience of other countries.

Estonia: Considered one of the world leaders in the field of electronic government. In Estonia, 99% of public services are available online, and citizens can vote in elections via the Internet.

Singapore: Known for its «smart city» system, which integrates various aspects of urban life, including transportation, healthcare, and education.

South Korea: It has a high level of high-speed Internet penetration and active use of mobile technologies in government.

In comparison with these countries, Kazakhstan demonstrates significant progress, especially considering the later start of electronic government development. However, there is still potential for growth, especially in the field of integration of various systems and expansion of the spectrum of online services.

Analysis of the current state

To assess the current state of e-government in Kazakhstan, we will consider several key indicators:

UN e-Government Development Index (EGDI): This index assesses the level of e-government development in UN member states. In the last ranking, Kazakhstan took the 29th place out of 193 countries, which indicates significant progress.

Number of rendered services: More than 168 million services have been rendered to the population during the entire period of operation of the eGov portal1. This indicates a high level of demand for electronic government services.

Internet penetration level: According to 2024, the Internet penetration level in Kazakhstan is about 85%, which creates a good basis for further development of electronic government.

Mobile government: Mobile application eGov, which provides 83 types of services, is an important step in the development of «mobile government» (https://www.nitec.kz/ru/news/elektronnoe-pravitelstvo-rk-11-let-vo-blago-naselenia).

Development trends

Artificial intelligence: Implementation of artificial intelligence technologies to automate processes and improve service quality.

Blockchain: The use of blockchain technologies to increase the security and transparency of government transactions.

Internet of Things: Integration of IoT devices into the electronic government system for real-time data collection and analysis.

Personalization of services: Development of systems capable of providing personalized services based on the analysis of specific needs

Conclusion

In general, e-government tools are designed to reduce administrative barriers and significantly reduce the number of visits by citizens to government offices. In the coming years, every citizen of the Republic of Kazakhstan will be able to apply for agreements and permits through the Internet, as well as evaluate the quality of the offered public services. The transition to electronic services will greatly facilitate the interaction of citizens and business environment with administrative structures at all levels. It is already possible to receive a number of services completely electronically through the unified portal of state services. These technologies allow citizens to directly interact with government bodies, institutions and organizations by removing administrative barriers.

It should be noted again that «Electronic Government» is based on ensuring the implementation and protection of the right to seek and receive information about the activities of the executive bodies of the Republic of Kazakhstan at all levels in order to achieve the objectively necessary level of transparency of the state for citizens, to exercise public control over the activities of state bodies.

Electronic government in Kazakhstan has undergone significant development since its creation in 2006. During this time, many successes were achieved: the range of electronic services was expanded, the number of users increased, and innovative solutions were implemented, such as the eGov mobile application.

However, Kazakhstan's electronic government still faces serious challenges. Digital inequality, data security problems, the need to integrate vari-

ous systems and overcome cultural barriers – all this requires constant attention and work.

For the further successful development of electronic government, it is necessary to continue investing in education and improving the digital literacy of the population, improve security systems, work on the integration of various state information systems, and adapt legislation to the requirements of the digital age.

The future of electronic government in Kazakhstan is seen in full digitalization of public services, development of proactive services, integration with the concept of «smart cities» and expansion of use of open data. All this should contribute to increasing the efficiency of state administration and improving the quality of life of citizens.

Thus, despite the existing problems, the electronic government of Kazakhstan demonstrates sustainable development and has good prospects for further growth. Continuing work in this direction will allow Kazakhstan to strengthen its position as one of the leaders in the field of electronic government in the region and the world.

Әдебиеттер

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ADMINISTRATIVE AND LEGAL RESPONSIBILITY AS A MEANS OF ENSURING ENVIRONMENTAL LAW AND ORDER

This article examines the institution of administrative and legal accountability for environmental violations in the context of upholding environmental law and order. The objective of the article is to identify specific features and uncover new facets of the institution of administrative and legal responsibility for environmental offenses.

The study focused on the following tasks: characterizing this institution, analyzing administrative offenses in the field of environmental protection and natural resource management, identifying their specific characteristics as offenses, and developing strategies for improving their detection and prevention.

The proposed hypothesis is the importance of administrative and legal responsibility for ensuring environmental law and order.

The article has scientific (the author's definition of an administrative offense in the field of environmental protection, the use of natural resources, the established differences between administrative and criminal offenses in the environmental sphere contributes to the development of the theory of environmental and administrative law) and practical significance (the recommendations are aimed at improving Kazakh legislation, optimizing the system of administrative penalties).

The core outcomes involve the development of a definition for administrative offenses within environmental protection and natural resource usage, as well as the identification of their unique characteristics and their differentiation from other offense types. The study concludes with a recommendation to review the current system of administrative penalties. The value of these findings and conclusions is highlighted by their contribution to the theory of environmental and administrative law.

Key words: Administrative offenses in the field of environmental protection, criminal liability, environmental offense, environmental criminal offense, environmental criminal offense.

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Әкімшілік-құқықтық жауапкершілік экологиялық құқықтық тәртіпті қамтамасыз ету құралы ретінде

Мақала экологиялық құқық бұзушылықтар үшін әкімшілік-құқықтық жауапкершілік институтын экологиялық тәртіпті қамтамасыз ету тұрғысынан қарастыруға арналған.

Мақала жазудың мақсаты-экологиялық құқық бұзушылықтар үшін әкімшілік-құқықтық жауапкершілік институтының ерекше ерекшеліктерін анықтау және жаңа аспектілерін анықтау.

Зерттеу барысында шешілген міндеттерге мыналар жатады: осы институтты, қоршаған ортаны қорғау және табиғи ресурстарды пайдалану саласындағы әкімшілік құқық бұзушылықтарды сипаттау, олардың құқық бұзушылық ретіндегі ерекшеліктерін анықтау, сондай-ақ оларды анықтау және жолын кесуді жақсарту бойынша ұсыныстар әзірлеу.

Ұсынылған гипотеза экологиялық тәртіпті қамтамасыз етуде әкімшілік-құқықтық жауапкершіліктің маңызды рөл атқаратынын білдіреді.

Мақаланың ғылыми маңызы қоршаған ортаны қорғау және табиғи ресурстарды пайдалану саласындағы әкімшілік құқық бұзушылықтардың авторлық анықтамасы мен экологиялық саладағы әкімшілік және қылмыстық құқық бұзушылықтардың айырмашылықтарын анықтауға негізделіп, экологиялық және әкімшілік құқық теориясының дамуына үлес қосуында. Практикалық маңызы ұсыныстардың қазақстандық заңнаманы жетілдіруге және әкімшілік жазалар жүйесін оңтайландыруға бағытталуында.

Мақаланы жазу барысында жалпы ғылыми әдістермен қатар, статистикалық және тарихи-құқықтық әдістер қолданылды. Негізгі нәтижелер ретінде қоршаған ортаны қорғау және табиғи ресурстарды пайдалану саласындағы әкімшілік құқық бұзушылықтардың анықтамасын әзірлеу, оның айрықша белгілерін анықтау және басқа құқық бұзушылық түрлерінен айырмашылықтарын көрсету қарастырылады.

Әкімшілік жазалар жүйесін қайта қарау қажеттілігі туралы қорытынды жасалды.

Қорытындылар мен нәтижелердің мәні экологиялық және әкімшілік құқық теориясына енгізілген үлестермен анықталады.

Түйін сөздер: қоршаған ортаны қорғау саласындағы әкімшілік құқық бұзушылықтар, қылмыстық жауаптылық, экологиялық құқық бұзушылық, экологиялық қылмыстық қылмыс, экологиялық қылмыстық теріс қылық.

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Административно-правовая ответственность как средство обеспечения экологического правопорядка

Статья посвящена рассмотрению института административно-правовой ответственности за экологические правонарушения в контексте обеспечения экологического правопорядка.

Цель написания статьи – установить специфические особенности и выявить новые аспекты института административно-правовой ответственности за экологические правонарушения.

В ходе исследования решались задачи: описание данного института, анализ административных правонарушений в области охраны окружающей среды и использования природных ресурсов, определение их специфических черт как правонарушений, а также разработка рекомендаций по повышению эффективности их выявления и предотвращения. Предлагаемая гипотеза – значимость административно-правовой ответственности для обеспечения экологического правопорядка.

Статья имеет научную (авторское определение административного правонарушения в области охраны окружающей среды, использования природных ресурсов, установленные различия административных и уголовных правонарушений в экологической сфере способствует развитию теории экологического и административного права) и практическую значимость (рекомендации направлены на совершенствование казахстанского законодательства, оптимизацию системы административных взысканий).

При написании статьи использовались общенаучные методы, а также статистический и историко-правовой методы.

Основные результаты заключаются в разработке определения административного правонарушения в области охраны окружающей среды, использования природных ресурсов, выявлении его характерных признаков и отличий от иных видов правонарушений. Сделан вывод о необходимости пересмотра системы административных взысканий.

Ценность выводов и результатов определяется вкладом, внесенным в теорию экологического и административного права.

Ключевые слова: Административные правонарушения в области охраны окружающей среды, уголовная ответственность, экологическое правонарушение, экологическое уголовное преступление, экологический уголовный проступок.

Introduction

In his message to the people of Kazakhstan, "The Economic Course of a Just Kazakhstan," the Head of State, Kassym-Jomart Tokayev, set the main goal of "ensuring strict observance of law and public order" (https://www.akorda.kz). The President noted that "vandalism in streets and nature" has a negative impact on the image of Kazakhstan in the international community.

At the same time, they emphasized the need to reduce violations in the area of water use and strengthen penalties for their occurrence, as well as improve the environmental and technical conditions at enterprises, including those related to infrastructure.

Additionally, it is worth noting that law enforcement agencies are not carrying out their work effectively in preventing and suppressing provocations that aim to disrupt public order.

The goals and objectives outlined in the message are directly or indirectly aimed at ensuring environmental law and order, which is an essential component of public order.

Statistics show that there has been stability in this area regarding the registration of environmental offences, and especially those involving administrative and legal responsibilities.

Although the incidence of reported administrative offenses related to environmental protection and natural resource use has dropped, nearly 60,000 of these offenses are still being committed annually. (see Figure 1).

Moreover, none of the articles concerning pollution of water and air or violations of environmental laws during economic activities have been put into practice.

For example, the amount of damage to the state in 2023 only under three articles of the CRCoAP on environmental pollution (Articles 324, 328, 344) is 8,214,869,636 tenge. According to similar articles of the Criminal Code of the Republic of Kazakhstan (stst.324, 325, 326, 328, 329, 330) – 0! (https://adilet.zan.kz/rus/docs/K1400000235, 2014).

Moreover, none of the articles concerning pollution of water and air or violations of environmental laws during economic activities have been put into practice.

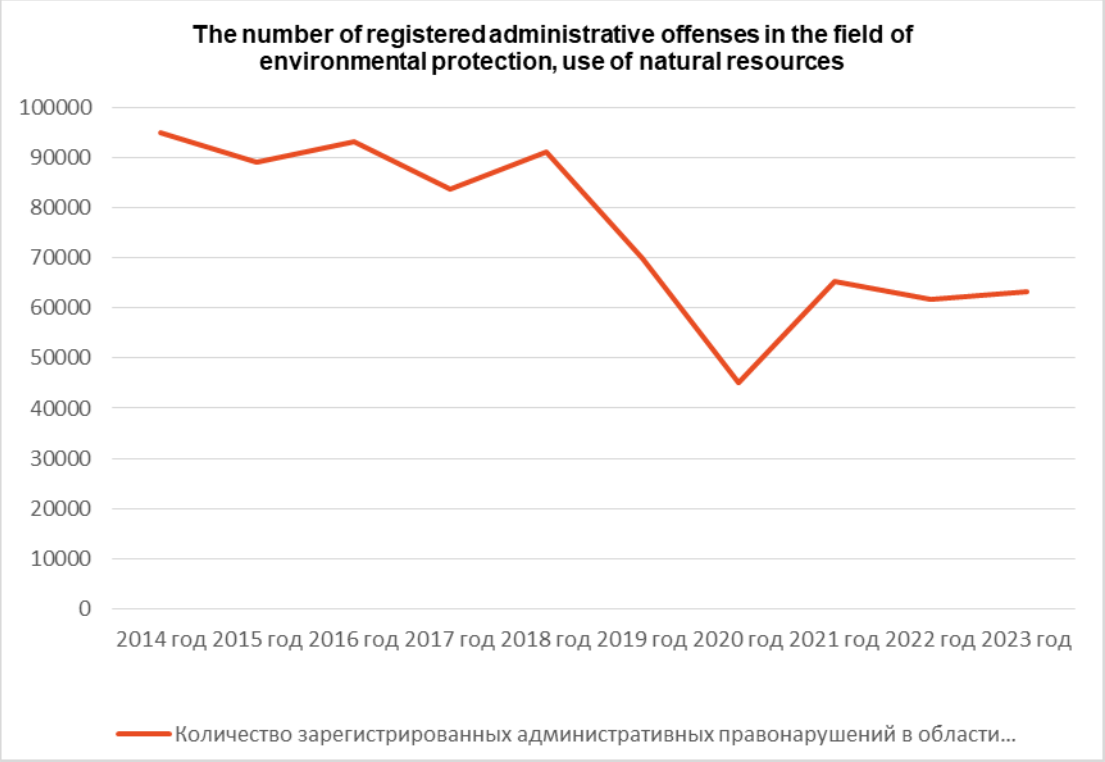

Figure 1 – Dynamics of registered administrative offenses in the field of environmental protection, use of natural resources for 2014-2023

Consequently, several questions come to mind:

- What distinguishes administrative and legal liability from criminal liability if the environmental damage caused by administrative offenses is comparable in extent to the significant, large, and especially large damages considered in criminal proceedings?

- Is there a need for administrative and legal accountability if there is the concept of "criminal misconduct" in the criminal law, which refers to conduct that does not constitute a significant threat to public safety and leads to minor harm or the potential for harm?

- What distinguishes an administrative violation in the context of environmental protection, and what are the potential outcomes of committing such an offense?

Research on this topic has not seen significant advancement, particularly in light of recent updates to administrative legislation (Koshkinbaeva A.S., Zhumagulova S.R., 2019). Over the last four years alone, three laws have been amended and added to Chapter 21, which pertains to administrative offenses concerning environmental protection and natural resource use Overall, since the introduction of the Crop, 15 laws have altered many articles in this chapter (https://adilet.zan.kz/rus/docs/K1400000235, 2014).

However, there is a lack of significant scientific papers on the issues under consideration in modern legal literature. These reasons determine the author's interest in this topic and the relevance of the chosen research subject.

This research focuses on public environmental relations, specifically the dynamics that arise from enforcing administrative responsibility for violations of environmental regulations in the use, management, and protection of land, subsurface resources, water, flora, fauna, and air quality (Anisimov 2019).

The core subject of this study is the norms of the Crop, in particular Chapter 21, and the practice of applying these norms of the Administrative Code (https://adilet.zan.kz/rus/docs/K1400000235, 2014).

The purpose of this study is to determine the scientific novelty of the institution of administrative and legal liability and to define its role as a tool for upholding environmental law and order.

The tasks involve offering a broad description of the institution of administrative and legal liability within the domain of nature conservation and the effective use of natural resources, as well as addressing administrative offenses associated with environmental protection and resource utilization (Sirant 2023). We will identify the specific features of these offenses and develop recommendations for improving their detection and prevention.

The article uses a scientific approach to the consideration of this issue, using a range of scientific research methods.

The proposed hypothesis – the importance of administrative and legal responsibility for maintaining environmental law and order – will be beneficial for the development of both environmental law and administrative law theory.

Materials and methods

The materials for this study were scientific works by Kazakhstani and foreign environmental lawyers, administrators, and legal theorists, including Abdraimova B.J., Baideldinov D.L., Bekisheva S.D., Gabdualiev M.T., Dubovitskaya L.S., Yerkinbaeva L.K., Zhetpisbayeva B.A., Yerezhepkyzy R., Ibragimov H.Y., Podoprigor R.A., Pralieva G.K., Taranova A.A., Tikhomirova Yu.A., and Tukieva A.S. These works were considered in a historical perspective over the past 20 years, including scientific articles and dissertations. The legislation of the Republic of Kazakhstan was reviewed, including environmental, administrative, and criminal laws.

With statistical data sourced from the information services portal of the Committee on Legal Statistics and Special Accounts of the Prosecutor General's Office of Kazakhstan, an infographic was created to represent the trends in registered environmental crimes and administrative offenses in the area of environmental protection and natural resource use from 2014 to 2023. Additionally, the KPIS data were utilized to provide a comprehensive overview of the environmental impact on the state.

Scientific methods such as analysis, synthesis, comparison, hypothesis testing, statistical observation, and historical and legal research, among others, were employed.

The initial three methods were utilized to analyze legislation, allowing for the classification of offenses found in Chapter 21 of the Code of Administrative Offenses. The historical and legal method facilitated the observation of the criminalization and decriminalization processes of administrative offenses. Furthermore, an analysis of the Criminal

Code and its revisions over the last decade was performed.

These methods assisted in reviewing a large body of scientific literature, which contributed to the development of the author's definition of "administrative offense in the field of environmental protection and natural resources use" and in identifying the specific traits of these offenses. Statistical observation made it possible to detect patterns in the trends of administrative offenses in the environmental sector.

Literature review

To write the article, we studied scientific achievements on administrative responsibility:

- directly associated with the determination of responsibility for environmental offenses;
- a general plan that allows a deeper understanding of postulates regarding administrative offences and penalties (Pakhomova 2021; Balabiyev 2016).

To strengthen the justification of the hypotheses proposed, we considered fundamental scientific and educational works by representatives of administrative and legal science (Rakhmetova 2022; Banchuk 2020; Akopova 2014).

We also conducted an overview of scientific and educational works in environmental and legal science, where administrative and legal issues were highlighted (Zhetpisbaev, B. A., 2000; Taranov A.A., 2010).

In order to clarify the specifics of administrative and legal liability for environmental offenses in the Republic of Kazakhstan, (Baideldinov D.L., Bekisheva S.D., 2004; Dyusenov E.A., 2005) we performed a comparative legal analysis of practices in foreign countries on these issues

Results and Discussion

The legal framework for administrative and legal liability concerning offenses in the field of nature protection is established by Chapter 21 of the KRCoAP, as mentioned in the introduction of this article. This chapter enumerates and describes specific offenses related to environmental protection and natural resource use, totaling 80 articles. (https://adilet.zan.kz/rus/docs/K1400000235, 2014).

There is currently no established definition for the term "administrative offense in environmental protection" or other types of administrative offenses. Nevertheless, authors have proposed multiple approaches to defining this term.

One of these approaches is to define administrative offenses based on their main characteristics as defined by law (Yu. E. Vinokurov, O. D. Dubovik, and O. I. Krassov). In this approach, the object of the infringement is usually specified, as well as the signs of guilt, illegality, and punishment.

The second approach narrows the definition to include only one attribute – punishability. This means that the range of regulated relationships is revealed in the concept of the offense itself, such as "environmental violation", and the connection to the type of responsibility is established through an indication of measures specified in the Administrative Code. However, with this level of conciseness, the specific features of the offense are lost, as the object of infringement is not clearly defined (Evsikova 2019)

Drawing from the general concept of an administrative offense described in Article 25 of the Administrative Code, we can refine the definition to eliminate the drawbacks of the earlier version. The general definition does not specifically mention the object or subject of the offense. Therefore, it can be stated that an administrative offense related to environmental protection and the use of natural resources is any unlawful act that disrupts environmental law and order. This act may be committed intentionally or unintentionally by a legal entity or individual, and it results in administrative liability under the provisions of the CRCoAP.

The main differences between criminal offenses and misdemeanors can be understood from this definition and the principles of administrative law. Firstly, there is a difference in the subjects involved. Legal entities are also included in this category. Secondly, according to the level of public danger, as specified in part 2 of Article 25 of the Criminal Code, liability occurs only if the act does not involve criminal liability (https://adilet.zan.kz/rus/docs/K1400000235, 2014).

The object of administrative and criminal offenses in the environmental sphere is the same. Therefore, in our definition, we refer to it as environmental law and order. This is the order established within society to regulate interactions in the field of protecting and using natural resources. However, the object in question is unique and distinct from other offense objects, as it pertains to a specific sphere–the natural environment.

The subject of this discussion includes the environment, natural resources, and related information concerning these natural entities. Kazakh administrative legislation covers this subject in articles like 341, 342, 343-1, and 354 of the Criminal Code of the Republic of Kazakhstan on Administrative Offenses (CRCoAP) (https://adilet.zan.kz/rus/docs/K1400000235, 2014).

These articles provide for liability for concealing, distorting, or failing to provide complete information about land plots, subsoil use, meteorological data, and other aspects related to the environment.

The objective aspects of administrative and criminal offences in the environmental field do not differ significantly from each other, with the exception of the scale of the actions involved. Both can occur through both actions and inactions.

These actions are reflected in pollution, contamination, depletion of natural resources, damage and destruction of ecosystems, and breaches of the regime of specially protected natural areas, habitats of flora and fauna. Inactivity is manifested in non-compliance with environmental regulations enshrined in legislation, such as non-fulfillment of the obligations of nature users, conditions of environmental permits, and reclamation, among others.

Modern administrative responsibility differs from that provided for under the Soviet codes, as the latter did not include the responsibility of legal entities. Thanks to modern innovations, it is now possible to at least partially bring polluting enterprises to justice, which would usually avoid criminal liability due to economic reasons, which are influenced by the state and government.

Unfortunately, the main reason for this is the unwillingness to prevent environmental offenses by legal entities and the fiscal policy that allows the republican budget to be replenished with funds from fines. This is clearly evident from the data on administrative fines, some of which are comparable to criminal fines and even exceed them (see Table 1).

Table 1 – The amounts of administrative fines for environmental pollution in 2023

№№	Fined enterprises	The amount of the administrative fine
1	Karabatan Utility Solutions LLP	7.2 billion tenge
2	Tengizchevroil LLP	2,8 billion tenge
3	Beineu – Shymkent Gas Pipeline LLP	523,01 billion tenge
4	ECO-Semey LLP	296,06 billion tenge
5	Priirtyshskaya Broiler Poultry Farm LLP	252,94 billion tenge
6	LLP JV «Kuatamlonmunai»	132,10 billion tenge
7	Kazzinc LLP »	49,66 billion tenge
8	JSC «SNPS»	10,69 billion tenge
9	State Enterprise «Teplokommunenergo»	8,32 billion tenge

(compiled from the source (Karina 2024)).

The presence of legal entities as subjects of administrative responsibility distinguishes it from criminal liability, which has significantly changed the concept of administrative law.

A special feature of the Crop is the differentiation between legal entities, which can be seen in both the general and specific parts of the law. Articles 33 and 34 specifically mention individual entrepreneurs and structural divisions of companies that are taxpayers, including foreign and international organizations.

Under certain circumstances, these entities can be held independently responsible for any offenses they commit.

In Chapter 21 of the Administrative Code, legal entities are divided into small, medium, and large enterprises and non-profit organizations. This is important for determining the size of administrative

penalties that may be imposed (https://adilet.zan.kz/rus/docs/K1400000235, 2014).

A unique feature of this type of liability is the complex system for calculating fines for this specific type of administrative offense.

The amount of fines is determined by the following factors:

- Multiples of a certain number of MCI
- In MCI for each quota unit in excess of the established volume, uncompensated by acquired quota units and/or carbon units obtained from projects
- As a percentage of the economic benefit received due to violation
- As a percentage of rate of payment for negative impact on environment in relation to exceeded amount of pollutants
- As a percentage of payment rate for waste disposal in relation to amount of waste accumulated over limit
- As a daily percentage payment rate for each day after deadline
- Fee rate in relation to mass of sulfur emitted in excess of established limit- as a percentage of the fee rate related to the mass of sulfur deposited in the environment without an environmental permit.

In addition to fines, Chapter 21 of the Administrative Code also provides for the following penalties:

- Suspension of the license;
- Suspension of an environmental permit or activity;
- Prohibition of activity for a certain period of time;
- Forced demolition of an illegally constructed or erected building;
- Confiscation of objects and tools of offense, including caviar;
- Deprivation of the right to operate a hunting farm.

However, the ratio of fines and other types of administrative penalties does not favor the latter, which ultimately does not fully ensure the educational and preventive objectives of administrative legislation. Instead, it only serves fiscal and punitive purposes.

We believe that the current system of administrative penalties needs to be revised, as an analysis of administrative practices has shown that even increasing penalty amounts does not significantly reduce the activity of administrative offenders.

Conclusion

The study of the institution of administrative and legal responsibility for environmental offences reveals that there are numerous unresolved issues regarding the distinction between administrative and criminal offences, criminal sanctions and administrative penalties.

Our research enables us to respond to the above questions as follows: Administrative and legal liability differs from criminal liability in that it is less repressive in terms of depriving or restricting individual freedom, involves a greater number of people being held accountable (both individuals and legal entities), and the entities imposing punishments include a wide range of officials and state bodies, such as courts for administrative offenses and courts for criminal offenses. Nevertheless, fines are on par with criminal penalties if Kazakhstan had provisions for criminal liability for legal entities.

Administrative and legal measures remain an effective tool for maintaining environmental law and order. Nonetheless, in cases where some citizens are unaware of or lack understanding of the law, coercive measures still need to be applied.

The effectiveness of administrative penalties lies in:

First, the possibility of holding legal entities responsible for environmental violations that are practically impossible to prosecute criminally, despite the significant or even large damage caused to the environment.

Secondly, administrative fines serve as a “wake-up call” for offenders, given that the amounts can be significant.

An environmental administrative offense is characterized by the specific nature of its object (public environmental relations) and subject (the environment and its elements), and objective side (harm to natural resources or failure to take measures to maintain their stability), as well as the lower degree of social danger compared to criminal offenses.

To partially resolve gaps and conflicts in administrative legislation and the theory of administrative law, the following is proposed:

- To propose a definition for an administrative offense in the area of environmental protection and natural resource use, which is an illegal act that infringes upon environmental law and order, committed either deliberately or negligently by a legal entity or individual, and resulting in administrative

responsibility under the norms of the Code of Administrative Offences (CRCoAP).

- To review the system of administrative penalties in Chapter 21 of the CRCoAP "Administrative Offenses in the Field of Environmental Protection and Use of Natural Resources", shifting emphasis from administrative fines to more effective measures such as suspension or termination of harmful activities, revocation of special rights, and permits.

Gratitude, conflict of interest

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3-бөлім

АЗАМАТТЫҚ ҚҰҚЫҚ ЖӘНЕ ЕҢБЕК ҚҰҚЫҒЫ

Section 3

CIVIL LAW AND LABOR LAW

Раздел 3

ГРАЖДАНСКОЕ ПРАВО И ТРУДОВОЕ ПРАВО

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LEGAL ISSUES OF ECONOMIC SUPPORT FOR PERSONAL SUBSIDIARY FARMS OF CITIZENS IN THE REPUBLIC OF KAZAKHSTAN

This article addresses the legal challenges of providing economic support to personal subsidiary farms (PSFs) in the Republic of Kazakhstan. PSFs play a crucial role in the agricultural sector, contributing to food security and economic stability in rural areas. Despite their importance, private investment funds often encounter numerous issues, particularly in accessing economic support and legal protection. However, effective functioning and development of PSFs require economic stimulus measures and legal support. The article analyzes existing legal mechanisms of support, such as credit, subsidies, and preferential taxation, identifying shortcomings in their implementation. Attention is focused on legislative imperfections and practical challenges. Additionally, issues of PSF insurance and providing agricultural equipment through leasing as economic stimulus measures are discussed. The subject of the study is the legal mechanism of economic support for private farming of citizens in Kazakhstan. The conclusions underscore the significance of a comprehensive approach to legal regulation and economic support for PSFs in Kazakhstan, including legislative improvements, enhancement of financial mechanisms, and infrastructure development. The author provides recommendations for improving legal norms and implementing effective support mechanisms, which can contribute to enhancing the economic well-being of rural residents and the overall development of the agricultural sector.

Key words: personal subsidiary farms, economic support, legal issues, credit, subsidies, preferential taxation, Republic of Kazakhstan.

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Қазақстан Республикасындағы азаматтардың жеке қосалқы шаруашылықтарын экономикалық қолдаудың құқықтық мәселелері

Бұл мақалада Қазақстан Республикасындағы жеке қосалқы шаруашылықтарды (бұдан әрі – ЖҚШ) экономикалық қолдаудың құқықтық мәселелері қарастырыл дыжеке қосалқы шаруашылықтар аграрлық сектордың маңызды элементі болып табылады, бұл ауылдық жерлердің азық-түлік қауіпсіздігі мен экономикалық тұрақтылығына ықпал етеді. Маңыздылығына қарамастан, жеке капитал қорлары көбінесе көптеген қиындықтарға тап болады, әсіресе экономикалық қолдау мен құқықтық қорғауға қол жеткізу тұрғысынан. Алайда, жеке қосалқы шаруашылықтар тиімді жұмыс істеуі мен дамуы үшін экономикалық ынталандыру шаралары мен құқықтық қолдау қажет. Мақалада несиелеу, субсидиялау және жеңілдетілген салық салу сияқты қолданыстағы құқықтық қолдау тетіктері талданады және оларды жүзеге асырудағы кемшіліктер анықталады. Заңнамалық базаның жетілмегендігі және оны іс жүзінде қолданудағы қиындықтар басты назарда. Сондай-ақ экономикалық ынталандыру шаралары ретінде жеке қосалқы шаруашылықтарды сақтандыру және ауылшаруашылық техникасын лизингке беру мәселелері талқыланады. Зерттеу пәні Қазақстандағы азаматтардың жеке шаруашылығын экономикалық қолдаудың құқықтық механизмі болып табылады. Мақаланың қорытындылары заңнаманы жетілдіруді, қаржы тетіктерін жақсартуды және инфрақұрылымды дамытуды қоса алғанда, Қазақстан Республикасында жеке қосалқы шаруашылықтарды құқықтық реттеу мен экономикалық қолдауға кешенді көзқарастың маңыздылығын көрсетеді. Автор құқықтық

экономикалық жағдайын жақсартуға және жалпы аграрлық секторды дамытуға ықпал ететін жеке қосалқы шаруашылықтарды қолдаудың тиімді тетіктерін енгізу бойынша ұсыныстар ұсынылды.

Түйін сөздер: Жеке қосалқы шаруашылықтар, экономикалық қолдау, құқықтық проблемалар, кредиттеу, субсидиялау, жеңілдікті салық салу, Қазақстан Республикасы.

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Правовые проблемы экономической поддержки личных подсобных хозяйств граждан в Республике Казахстан

В данной статье рассматриваются правовые проблемы экономической поддержки личных подсобных хозяйств (далее – ЛПХ) в Республике Казахстан. ЛПХ являются важным элементом аграрного сектора, способствуя продовольственной безопасности и экономической стабильности сельских районов. Несмотря на свою важность, частные инвестиционные фонды часто сталкиваются с многочисленными проблемами, особенно в плане доступа к экономической поддержке и правовой защите. Однако, для эффективного функционирования и развития ЛПХ необходимы меры экономического стимулирования и правовая поддержка. В статье анализируются существующие правовые механизмы поддержки, такие как кредитование, субсидирование и льготное налогообложение, и выявляются недостатки в их реализации. Основное внимание уделяется проблемам несовершенства законодательной базы и трудностям в её практическом применении. Также обсуждаются вопросы страхования ЛПХ и предоставления сельскохозяйственной техники в лизинг как меры экономического стимулирования. Предметом исследования выступает правовой механизм экономической поддержки личного подсобного хозяйства граждан в Казахстане. Выводы статьи подчеркивают значимость комплексного подхода к правовому регулированию и экономической поддержке ЛПХ в Республике Казахстан, включая совершенствование законодательства, улучшение финансовых механизмов и развитие инфраструктуры. Автор предлагает рекомендации по совершенствованию правовых норм и внедрению эффективных механизмов поддержки ЛПХ, что может способствовать улучшению экономического состояния сельских жителей и развитию аграрного сектора в целом.

Ключевые слова: личные подсобные хозяйства, экономическая поддержка, правовые проблемы, кредитование, субсидирование, льготное налогообложение, Республика Казахстан.

Introduction

The study of legal regulation of economic support for agricultural activities as a comprehensive scientific problem has not been undertaken in domestic legal science. Practitioners note that the proposed draft Law "On Personal Subsidiary Farms of Citizens" of 2021 was withdrawn because it did not meet the needs of society and did not contribute to the effective development of their activities, despite being supported by farmers. Personal subsidiary farming (hereinafter – PSF) in the Republic of Kazakhstan is one of the forms of agricultural activity, and its support is important for ensuring food security and improving the socio-economic status of rural citizens.

PSFs are not recognizing as entrepreneurship under Kazakh legislation but are considering a form of individual labor activity. PSFs do not develop appropriately because of the ambiguity surrounding their legal status, the property regime, and the dearth of efficient state support mechanisms for their operations. In this sense, there is an urgent need for government action in the form of explicit legislative regulation of their operations and financial assistance. The agricultural industry in the Republic of Kazakhstan heavily depends on personal subsidiary farms, which make a considerable contribution to the production of agricultural goods. Nonetheless, the advancement of these farms encounters numerous legal and financial hurdles, underscoring the need for a comprehensive strategy and scientific examination.

Many PSF owners are unaware of the available legal opportunities, support networks, and application processes. The efficacy of support interventions is diminished in the absence of adequate information and trained assistance.

The procedures in place for granting subsidies are overly bureaucratic and opaque. Numerous citizens are discouraged from seeking for economic help measures due to the excessive bureaucratization.

It is imperative that academics and legal professionals pay strict attention to the dearth of scientific research in the area of PSF legal regulation, particularly with regard to their financial backing. It demands an analysis of their legal aspects as well as the creation of theoretical frameworks, useful suggestions, and conclusions.

Materials and methods

The approach taken to analyze the legal issues surrounding economic assistance for PSFs in the RK involves a detailed examination of legislative and economic procedures. Through the use of different methods such as legal-economic analysis, comparative analysis, and legal analysis, a comprehensive understanding of the challenges and opportunities in providing financial support to PSFs is achieved.

To examine the legal issues surrounding financial aid for PSFs in Kazakhstan, a variety of techniques were employed. This included a Legal-Economic Analysis, which involved evaluating financial instruments like grants, loans, leases, tax incentives, and subsidies for PSFs in the current economic climate and their impact on PSF development. Additionally, a Comparative Analysis was conducted to compare Kazakhstan's PSF support laws and practices with those of other countries, particularly those with developed agricultural industries, in order to identify global best practices that could be adapted to Kazakhstan's specific situation. Analyzing the legal landscape governing PSF operations in the country to uncover any deficiencies or incongruities that could obstruct the efficient dispensation of financial assistance.

Throughout the development of this paper, we incorporated the findings and insights of scholars hailing from different origins, encompassing domestic, Russian, and international researchers: O.A. Zubrenkova, B.A. Voronin, N.A. Potehin, Ya.V. Voronina, C. Goland, A. Stratan, A. Ignat, E. Lucasenco, S. Tirigan, A. Poczta-Wajda, A. Tošović-Stevanović, D. Ćalović, G. Lalić, M. Žuža, A. Grzelak, P.K. Thornton, Michał Borychowski, Sebastian Stępień, Jan Polcyn, Aleksandra Tošović-Stevanović, Dragan Ćalović, Goran Lalić, Milena Žuža, A.A. Tagtow, T.I. Sharovatova, L.K. Yerkinbayeva, K.R. Kasenova, M.K. Karimova, D.S. Yusupova, A.I. Altukhova.

Results and discussion

One of the most important things to do when tackling issues with agriculture and food policy is to establish a system of public assistance for small-scale farming in rural areas. Currently, PSFs correspond to the small-scale farming industry. (https://cyberleninka.ru/article/n/formirovanie-sistemy-gosudarstvennoy-podderzhki-malyh-form-hozyaystvovaniya).

PSF is a non-entrepreneurial activity that a citizen and his family carry out to grow and process agricultural products on a plot of land in a populated area. This type of farming is geared towards personal consumption and selling to meet individual needs, without the involvement of hired workers (https://adilet.zan.kz/rus/docs/P2100000985)

In the Land Code of Kazakhstan, personal subsidiary farming is defined as a type of activity aimed at meeting personal needs on a land plot located in rural and suburban areas. (https://adilet.zan.kz/rus/docs/K030000442_)

Citizens engage in this type of economic activity with the goal of generating agricultural goods. It is predicated on their private ownership of the tools of production, the goods themselves, and the money earned from these endeavors (https://cyberleninka.ru/article/n/ekonomiko-pravovye-problemy-sozdaniya).

Items manufactured on private farms, including processed goods, are eligible for sale by citizens in the market. However, it is essential to highlight that the law specifies that vending products from private household plots is not considered a commercial operation.

Private subsistence farming is an entrepreneurial practice carried out by an individual or their family members on a plot of land in a rural area or on agricultural land outside settlements. This activity is done to bring income to the family or to satisfy personal needs.

The Tax Code of the RK acknowledges PSF as a legitimate source of income for individuals. In cases where the individual engaged in personal subsidiary farming has provided misleading information resulting in the non-withholding of income tax at the source, it becomes the responsibility of the individual to rectify their tax obligations. (https://adilet.zan.kz/rus/docs/K1700000120#z779).

The economic frameworks utilized to regulate agriculture are fundamentally centered around economic interests that cater to the stakeholders participating in agricultural endeavors, thereby serving as a fundamental catalyst for enhancing production relationships within the agricultural domain.

As is well known, the primary goal of any agricultural producer is to derive profit from their economic activities, and the state must create optimal conditions for this purpose. The efficacy of state regulation is not contingent upon the quantity of funds allocated and subsequently received by a specific industry. Rather, it is determined by whether state regulation aids in reducing costs for enterprises. State regulation should not supplant the business activities of firms, but rather establish robust institutional frameworks for enterprises and guarantee equitable competitive conditions within the global market (Yerkinbayeva, 2011: 120).

Therefore, it is necessary for the government to exercise control over the pricing of agricultural products and key material and technical resources. This involves setting maximum prices for energy sources and imposing upper limits on markups for trading, intermediary, and service enterprises and organizations operating within the agro-industrial complex (AIC) for essential industrial products and services. (Kasenov, 2007: 54).

- the process of creating governmental grants (free financial or technical support) to carry out production;
- the process of compensating labor under hazardous and challenging working circumstances;
- the process of creating privileges:
- the implementation of preferential funding;
- the introduction of preferential taxation;
- establishment of preferential loans;
- establishment of preferential bonuses based on the results of work.

A striking example of economic motivation at one time was the Law of the Republic of Kazakhstan "On the priority of the development of an aul (village) and agro-industrial complex in the Republic of Kazakhstan" dated February 13, 1991, which, unfortunately, was not supported by an effective implementation mechanism

As such methods, the following were indicated:

- establishment of a set of benefits for lending and insurance;
- establishment of subsidization at the expense of budgetary funds of the interest rate on leasing of agricultural machinery;
- setting the interest rate for leasing equipment for agricultural processing enterprises;
- setting the interest rate on loans issued to agricultural processing enterprises to replenish their working capital and measures to increase the yield and quality of agricultural crops;
- establishment of full resource provision for capital investments and sustainable supply of products for industrial and technical purposes using the capabilities of the state order in order to comprehensively meet production needs and develop social infrastructure (https://adilet.zan.kz/rus/docs/).

Due to its special qualities, agriculture is one of the most significant industrial sectors that is frequently negatively impacted by weather and climatic conditions (droughts, frosts, hail, etc.). These circumstances may result in high expenses. As a result, it is imperative to safeguard this industry's output and financial stability, which includes providing insurance to farmers and residents who engage in small-scale personal farming (https://cyberleninka.ru/article/n/nekotorye-voprosy-ekonomicheskogo-mehanizma-stimulirovaniya-lichnyh-podsobnyh-hozyaystv).

Agriculture now receives financial help from banking and credit organizations. Any firm that wants to grow needs credit resources, and the primary source of these resources is a commercial bank.

- the legal and legislative control of production is the basis of the economic mechanism.
- organizing and predicting how agriculture will progress.

State and economic forecasts, planning and programming, price control, government intervention, grants, compensations, subsidies, easy access to credits and investments, government loans, insurance, and favorable tax policies are some common techniques used to regulate agriculture. (Sharovatova 2018: 16).

Agriculture finance and planning are direct products of state regulation and government policy. For agricultural support systems to be effective, all of their components must be carefully considered, and certain legal and financial safeguards must be in place. The nation's total food security, economic stability, and sustainable agricultural development are the goals of these initiatives.

Personal subsidiary farms should be eligible for additional government financial aid if they are acknowledged as legitimate businesses. This includes low-interest loans, grants, subsidies, preferential taxes, insurance, and the construction of infrastructure, which includes the leasing of agricultural equipment and machinery. Since low-interest loans and subsidies for personal subsidiary farms are pop-

ular forms of economic stimulation that need sufficient legal backing, they are vital to the growth of the nation's agricultural industry.

Personal subsidiary farms frequently serve as the backbone of the rural economy, giving the locals in the area jobs and a secure supply of food. In this sense, their stability and development are aided by the supply of loans and subsidies on favorable conditions. Personal subsidiary farms (PSFs) can acquire premium seeds and fertilizers, upgrade infrastructure, and invest in new technology thanks to low-interest financing. Subsidies lessen financial risk and serve to offset production expenses. Credit availability and subsidization enable PSFs to create a wider range of superior food products.

Support for PSFs, both social and financial, contributes to the reduction of poverty in rural regions by generating additional revenue and job possibilities. Encouraging PSFs keeps society stable and discourages people from moving from rural to urban locations.

PSF enjoys favorable tax status in a many of nations, including Kazakhstan, in an effort to encourage and assist the growth of this industry. PSFs are often exempt from income taxes on proceeds from the sale of goods made on the personal subsidiary farm. The purpose of this exemption was to lower small producers' tax burdens and boost agricultural output.

For PSFs, simplified taxation may entail streamlined tax payment and reporting processes, which lowers administrative expenses and streamlines tax administration. Preferential tax rates may occasionally be imposed to land taxes, property taxes, and other taxes for PSFs. For PSF owners, this lowers the cost of owning and using agricultural land and property. In Kazakhstan, profits made from the sale of goods made on a personal subsidiary farm are typically exempt from taxes. As a result, PSF owners are free to sell extra product without worrying about paying taxes.

Owners of land parcels utilized for PSF operations may be eligible for reduced land tax rates, which would further lessen the financial strain on farmers.

Kazakhstan is among the several nations whose agricultural sectors heavily rely on personal subsidiary farming. These farms, which are frequently privately owned small businesses, make a substantial contribution to the production of food. Insurance for PSFs becomes an essential instrument to shield farms from possible losses in the face of risks related to climate change and other causes.

PSF insurance is crucial for a number of reasons. First and foremost, risk protection calls for it. Risks associated with agricultural activities include unfavorable weather, diseases of plants and animals, and changes in the market. Insurance reduces monetary losses in the case of incidents covered by the policy. Second, income stabilization is necessary. Farmers may preserve a steady income stream thanks to insurance, which encourages the long-term growth of their farms.

The improvement in creditworthiness is an additional consideration. Having an insurance coverage can help farmers become more creditworthy, which will make it easier for them to get bank loans and other financing.

Crop insurance guards against financial losses brought on by unfavorable weather, including hail, frost, and drought, among other natural occurrences. Losses from illnesses, mishaps, or livestock theft are covered by livestock insurance. Structures, machinery, and other PSF assets are covered by property insurance against loss or damage from fires, floods, and other natural calamities. By integrating several insurance products, comprehensive insurance offers protection against multiple hazards at once.

More specifically, insurance may become more affordable for farmers if the government pays a percentage of the premiums. When it comes to compensation and guarantees, the government can pay for damages that insurance firms do not cover or guarantee insurance payouts. The government funds educational initiatives and informational campaigns aimed at educating farmers about the value and advantages of insurance.

In the end, personal subsidiary farm insurance is a crucial instrument for shielding farmers against the different hazards connected to farming. It helps stabilize income, improves creditworthiness, and encourages the growth of sustainable agriculture. The government's provision of subsidies and guarantees is a crucial factor in the dissemination and maintenance of PSF insurance's accessibility.

Building and expanding infrastructure, setting up a lease program for agricultural machines and equipment for PSF: researching and evaluating the need in various areas for agricultural gear and equipment; constructing warehousing facilities, technical support, and transportation infrastructure to provide easy access to leased equipment; attracting capital to launch specialist leasing businesses that offer agricultural machines and equipment for rent.

Creating leasing programs that are accessible and flexible enough to meet the demands of agricultural

firms and the unique requirements of agriculture. Small agribusiness strengths and weaknesses are determined by a combination of internal and external factors that impact the growth and operations of these business entities. According to Altukhov (2016), among the advantages of small and medium-sized businesses are:

- The dynamism and adaptability of their growth;
- Small companies create more jobs;
- Entrepreneurs' activities involve creativity;
- A stronger sense of accountability for completed tasks fosters team and family cohesiveness.

The place of small-scale farming in the agricultural production system has changed dramatically in recent years, taking into account social constraints in rural areas as well as concerns about guaranteeing food security. Improving the organizational-economic framework and conditions necessary for the growth of medium-sized and small agricultural enterprises is becoming increasingly important.

This study undertakes a comparative analysis of economic support mechanisms in various foreign countries. In the United States, several programs and measures support small family farms. One of the primary programs is federal grants and subsidies provided through various agencies and organizations such as the U.S. Department of Agriculture (USDA) and the Federal Agency for Rural Development (FSA). Additionally, agricultural farm credit cooperatives also offer financial support in the form of low-interest loans tailored for small family farms (https://www.congress.gov/bill/118th-congress/senate-bill/1237/text).

Such programs may provide subsidies for the purchase of agricultural equipment and inventory, financing to improve agricultural operations, as well as training and advice on agriculture and business. In addition, family farms can be included in crop and livestock insurance programs offered by the government to protect against losses due to weather conditions, diseases and other risks. Some of them include: farm insurance, tax benefits. (https://www.elibrary.az/docs/jurnal/jrn2010_443.pdf).

Subsidy and Grant Programs: The government offers a number of subsidy and grant programs that farmers can use to finance different areas of their business, like buying supplies, training, equipment, and seeds (Tagtow, 2008)

Farmers in the United States have access to tax exemptions and credits through tax incentives, which lessen the financial strain of operating their companies.

A comprehensive legal framework is in existence. In particular, the Farm Bill and the Food Security Act are two examples of federal legislation that regulate agriculture and offer farmers support and protection (Goland, 2002: 14).

These and other policies and initiatives help small family farms grow in the United States by giving them the resources they need to run profitable and sustainable businesses.

The Common Agricultural Policy's (CAP) assistance network provides valuable benefits to Lithuania, Poland, and Romania as members of the European Union. Hence, it is advantageous to compare the impact of varying support levels on the stability of agricultural income. When considering the availability of state support from the budget and other mechanisms like direct payments and rural development programs, there is a significant disparity between Serbia and Moldova and the EU member states of Lithuania, Poland, and Romania.

The breakdown of support includes the total agricultural support provided over the span of 2007 to 2019, the support expressed as a percentage of the gross national income (GNI) for the average years of 2007-2019, and the total support per farm calculated based on the number of farms in 2017 or 2016. (https://ec.europa.eu/budget/graphs/revenue_expediture.html).

The main focus of Moldova's support strategy lies in strengthening the agricultural industry of the nation. This aim is realized through cooperation with international donors and governmental bodies. At present, the Agency for Payments and Interventions in Agriculture (AIPA) plays a key role in offering aid. Moreover, specialized initiatives are implemented to meet the specific needs of small farm families.

Requests for funding can be made to enhance the domestic capability for berry production, primarily through support from international donors. This funding opportunity also aims to increase opportunities for small and family-owned farms to improve their quality of life, while simultaneously strengthening the resilience of agricultural practices against drought. These projects focus on the implementation of advanced irrigation techniques and efficient water resource management strategies (Stratan et al. 2020: 139).

The government in Serbia extends considerable aid to the agricultural sector through a variety of measures, including the provision of loans, implementation of specialized programs, direct payments, utilization of rural development tools, and initiatives

to resolve outstanding debt issues (Tosovic-Stevanovic et al. 2020: 123).

To support small family farms, Europe has implemented various policies and initiatives. The Common Agricultural Policy (CAP) of the European Union plays a crucial role in this endeavor by offering agricultural subsidies to farmers. These subsidies can be provided as direct grants, compensation for small- and medium-sized enterprises, or programs aimed at promoting rural development. Small family farms in Europe have the chance to avail grants and financial assistance to enhance their operations, which includes the procurement of seeds, machinery, and training opportunities (Thornton, 2010: 2857).

The significance of laws and policies in European countries cannot be overstated when it comes to advancing sustainable agriculture and protecting the environment. These measures encompass comprehensive plans for conserving soil, incentivizing agroecological practices through payment schemes, and ensuring the welfare of animals through regulations. (https://www.mdpi.com/2071-1050/12/24/10362)

Through our comparative analysis, it has been demonstrated that the future of the agricultural sector, the well-being of the rural population, and the overall rural economy in the Republic of Kazakhstan are significantly influenced by the successful creation of personal subsidiary farms.

Conclusion

Following a thorough evaluation of the economic assistance provided to PSFs in Kazakhstan and on an international scale, it is clear that a comprehensive overhaul of their legal and economic support system is necessary to ensure the prosperous growth of these farms within the Republic of Kazakhstan.

To foster the successful development of private household plots in the Republic of Kazakhstan, it is essential to undertake a comprehensive reform of the existing system of measures that provide legal and economic support. This reform should encompass the simplification and clarification of tax legislation, the introduction of easily accessible and transparent lending and subsidy programs, the creation of specialized insurance products tailored to the unique requirements of private household plots, and the enhancement of agricultural infrastructure. Furthermore, the implementation of leasing programs for agricultural machinery is of utmost importance. The effective implementation of these measures hinges upon the close cooperation between government agencies, financial institutions, and owners of PSFs.

It is strongly advised to incorporate these legal norms into the proposed legislations of the Republic of Kazakhstan, specifically the "On Amendments and Additions to the Land Code of the Republic of Kazakhstan, Tax Code of the Republic of Kazakhstan, Entrepreneurial Code of the Republic of Kazakhstan". Moreover, the enactment of the Law of the Republic of Kazakhstan "On Personal Subsidiary Farms of Citizens" is imperative. We firmly believe that individuals actively participating in Personal Subsidiary Farms (PSF) should be recognized as independent entrepreneurs in accordance with the provisions delineated in the Tax Code. This will ensure the payment of relevant taxes and bring clarity to their legal status. Additionally, financial support for PSF in Kazakhstan is essential as it will propel agricultural growth, enhance the standards of living for rural residents, and augment tax receipts for the government.

Compliance with Article 30 of the Entrepreneurial Code is crucial for the successful implementation of individual entrepreneurship as a form of individual business activity. This adherence guarantees appropriate taxation practices and provides a clear definition of the legal status of individual enterprises, encompassing individuals involved in personal subsidiary farming.

The operations of PSF involve the efficient utilization of two distinct types of land parcels: the territories encompassing suburban and rural settlements, and the specifically designated agricultural land. To effectively address legal issues associated with financial PSFs in Kazakhstan, a high degree of legal regulation is imperative. This encompasses the establishment of transparent and equitable tax regulations, facilitating increased access to credit and subsidies, and creating a dependable agricultural infrastructure and insurance system. Close cooperation between government agencies, financial institutions, and the owners of personal subsidiary farms is a key factor for success in this direction.

Enhancing information and consultation support by organizing free advisory centers, information portals, and hotlines for owners of personal subsidiary farms will increase their awareness and legal literacy.

Simplifying subsidy application procedures, optimizing and streamlining bureaucratic processes for obtaining subsidies, reducing administrative bar-

riers, and increasing transparency in the process of providing government support are crucial steps.

A comprehensive legislative approach involves developing and implementing a unified strategy for supporting personal subsidiary farms at the legislative level, ensuring consistency of norms and their effective application in practice.

Gratitude, conflict of interest

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DISCIPLINARY LIABILITY IN CONNECTION WITH THE EMPLOYEE'S GUILTY ACTIONS

This research provides a detailed comparative analysis of the number of labor disputes and the evolution of Kazakhstan's labor discipline legislation. Key observations include the correlation between stringent disciplinary norms and reduced unemployment, the influence of judicial practices on labor discipline, and the necessity of balancing strict discipline with fair treatment to prevent legal disputes. The findings offer valuable insights for optimizing labor policies to support sustainable labor market development in Kazakhstan. These insights align with the goals of SDG 8, which promotes sustained, inclusive, and sustainable economic growth, full and productive employment, and decent work for all.

The purpose of this paper is not only to analyze the current state of the labor market in Kazakhstan but also to propose recommendations for optimizing labor policy, taking into account both current challenges and potential opportunities for sustainable development of the labor market in the country. Based on a wide range of data, including statistical indicators range of unemployment levels, legislative changes, and analysis of judicial practice, we aim to identify correlations and cause-and-effect relationships between labor discipline and market indicators.

Key words: employee, employer, labor, labor law, employment contract, termination of employment contract, labor relations, labor disputes, dismissal, at the initiative of the employer.

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Жұмыскердің кінәлі әрекеттеріне байланысты тәртіптік жауапкершілік

Бұл зерттеуде еңбек дауларының саны мен Қазақстандағы еңбек тәртібі туралы заңнаманың эволюциясына жан-жақты салыстырмалы талдау жасалды. Негізгі нәтижелер қатал тәртіптік нормалар мен жұмыссыздық деңгейінің төмендеуі арасындағы байланысқа, сот практикасының еңбек тәртібіне тигізетін әсеріне, сондай-ақ сот дауларының алдын алу үшін қатаң тәртіп пен әділ көзқарасты үйлестіру қажеттілігіне қатысты болды. Осы мәліметтер Қазақстанның еңбек нарығының тұрақты дамуын қолдау үшін еңбек саясатын оңтайландыруға қатысты құнды ақпарат ұсынады. Бұл тұжырымдар тұрақты, инклюзивті және тұрақты экономикалық өсуді, толық және өнімді жұмыспен қамтуды және барлық адамдар үшін лайықты жұмысқа қол жеткізуді қамтамасыз ететін SDG 8 мақсаттарына сәйкес келеді.

Зерттеудің мақсаты Қазақстандағы еңбек нарығының қазіргі жағдайын ғана емес, сонымен қатар ағымдағы мәселелер мен еңбек нарығының тұрақты дамуы үшін әлеуетті мүмкіндіктерді де ескере отырып, еңбек саясатын оңтайландыру жөнінде ұсыныстар жасау болып табылады. Жұмыссыздық статистикасын, заңнамалық өзгерістерді және сот тәжірибесін талдау арқылы біз еңбек тәртібі мен нарық көрсеткіштері арасындағы корреляция мен себеп-салдар байланыстарын анықтауға тырысамыз.

Түйін сөздер: жұмыскер, жұмыс беруші, еңбек, еңбек құқығы, еңбек шарты, еңбек шартын бұзу, еңбек қатынастары, еңбек даулары, жұмыстан босату, жұмыс берушінің бастамасы бойынша.

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Дисциплинарная ответственность в связи с виновными действиями работника

В этом исследовании представлен подробный сравнительный анализ количества трудовых споров и эволюции Казахстанского законодательства о трудовой дисциплине. Ключевые наблюдения включают взаимосвязь между строгими дисциплинарными нормами и снижением безработицы, влияние судебной практики на трудовую дисциплину и необходимость сочетания строгой дисциплины и справедливого отношения для предотвращения судебных споров. Полученные результаты дают ценную информацию для оптимизации трудовой политики в целях поддержки устойчивого развития рынка труда в Казахстане. Эти выводы согласуются с целями ЦУР 8, которые способствуют устойчивому, инклюзивному и устойчиво развивающемуся экономическому росту, полной и производительной занятости и достойной работе для всех.

Целью данной статьи является не только анализ текущего состояния рынка труда в Казахстане, но и предложение рекомендаций по оптимизации трудовой политики с учетом как текущих вызовов, так и потенциальных возможностей для устойчивого развития рынка труда в стране. Основываясь на широком спектре данных, включая статическое показатели уровня безработицы, изменения законодательства и анализ судебной практики, мы стремимся выявить корреляции и причинно-следственные связи между трудовой дисциплиной и рыночными показателями.

Ключевые слова: работник, работодатель, труд, трудовое право, трудовой договор, расторжение трудового договора, трудовые отношения, трудовые споры, увольнение, по инициативе работодателя.

Introduction

Kazakhstan, as a country with a transitional economy and actively developing socio-economic structures, presents a unique interest in the study of labor market mechanisms. In this manuscript, we examine how changes in labor legislation, particularly the strengthening of disciplinary measures and the threat of dismissal, affect the behavior of workers and employers, as well as the overall economic situation in the country.

This study investigates the role of unemployment as a mechanism of labor discipline in Kazakhstan. It analyzes the relationships between the official unemployment rate and the labor legislation reforms regulating labor discipline that have occurred since Kazakhstan gained independence. The manuscript outlines of developmental stages of labor legislation concerning labor discipline.

Labor discipline expresses the imperativeness in regulating labor relations. Imperativeness implies the establishment of subordination between the subjects to whom the legal norm is addressed. In labor law, these are norms about the disciplinary responsibility of employees to the employer. The application of types of disciplinary responsibility depends on the subjective discretion of the employer.

In labor legal relationships, all parties start with equal legal standing. However, conflicts inevitably arise, and when a violation occurs, the employee falls under the authority of the employer, who is empowered to enforce disciplinary measures. Historically, labor law developed to safeguard workers from severe exploitation by employers. Consequently, when enforcing disciplinary actions, it is crucial to maintain a fair balance between the employee's misconduct and the penalties imposed by the employer, while adhering to established procedures for accountability.

Employee discipline is intended to enhance labor and production discipline, thereby boosting the efficiency of the work process (Putra et al., 2021; Arif et al., 2019; Prayogi et al., 2019). Standard microeconomic theory of the labor market suggests that unemployment acts as a mechanism of labor discipline in developed countries (Lindbeck, 1993; Shapiro &Stiglitz, 1984). What does this mechanism look like in Kazakhstan? This paper attempts to answer this question by constructing a theoretical pattern that characterizes the level of unemployment and the state of legal regulation of production discipline at workplaces. The independent variables in this study are the level of regulation of production discipline at workplaces. The independent variables in this study are the level of regulation of disciplinary responsibility of employees and the country's unemployment rates. Changes in Kazakhstan's labor legislation have significantly influenced the

dynamics of the labor market and the level of unemployment in the period after the country gained independence. However, measures of disciplinary responsibility, including the risk of dismissal, while important, are just one of many factors affecting this market.

Labor discipline is regulated by several methods of legal regulation, i.e., techniques and ways of the state's influence on legal subjects and the nature of social relations. This set of techniques and methods combines persuasion and coercion, which are manifested in such ways of establishing the nature of legal relations as the equality of the subjects of the legal, relationship, or the relationship of authority-subordination, as well as methods of influence on legal subjects – in the form of permission and stimulation, prohibition and prescription. In the system of techniques, prohibition, prescription, permission, stimulation acts as full-fledged ways of regulating the behavior of employees. However, in the Labor Code of the Republic of Kazakhstan of November 23, 2015, №414-V (LC RK), prohibitions and prescriptions are given significantly more attention, including the procedure for bringing to disciplinary responsibility. In Kazakhstan's labor relations practice, coercive measures, bolstered by the threat of disciplinary action, are predominantly employed. Considering the essential elements of labor discipline, we explore various academic questions: the role of labor discipline in securing employment, the interdisciplinary issues related to employee disciplinary responsibility, and the interactions between labor discipline, employee terminations, and appeals to labor courts.

Materials and methods

The research is based on a comprehensive analysis of statistical data, legislative acts, and judicial practices in Kazakhstan. Data sources include official statistics on unemployment and labor disputes, an analysis of changes in the Labore Code of Kazakhstan, and a review of judicial decisions related to disciplinary sanctions and dismissals. To achieve the objectives set forth in this article, the research is grounded in a comprehensive analysis of statistical data, legislative acts, and judicial practices in Kazakhstan. This approach facilitates the identification of relationships between unemployment levels and changes in labor legislation that regulate disciplinary responsibility in the labor market. Data for the study were sourced from several channels: Official statistics, which include data on unemployment and labor disputes provided by the National Statistical Bureau and the Supreme Court of the Republic of Kazakhstan.

Literature review

Our analysis extends beyond merely assessing unemployment in the labor market and its relationship with labor discipline. We conducted an analysis of the content of labor discipline legislation, both more and less stringent, through its historical development and examined levels of unemployment. In particular, they investigated: Daekin (2010), (Pedaci, 2010), (Putra et al., 2021), (Lindbeck, 1993), (Ljungqvist, 2002), (Leigh, 1985; Askildsen et.al., 2005), (Cappelli & Chauvin, 1991), (Khamzin et al.,2019), (Shapiro, C., & Stiglitz, J.E. 1984), (Khamzina & Buribayev, 2020). The existing literature affirms that labor discipline and the threat of dismissal serve as critical mechanisms for regulating the labor market. In Kazakhstan, reforms aimed at tightening disciplinary measures have significantly influenced the reduction of unemployment levels and enhanced overall labor productivity. However, it is crucial to acknowledge that the impact of these measures does not occur in isolation but rather within the context of a comprehensive set of policies and economic conditions, necessitating a critical analysis of causal relationships in the development and implementation of labor legislation.

Result and discussion

Examining the role of unemployment as a tool for worker discipline is a novel approach for Kazakhstani social science, given in varying degree of employment guarantees offered by Kazakhstani legislation on the protection of workers' rights. Taking into account the level of unemployment and the content of Kazakhstani labor legislation on labor discipline (a liberal or strict approach to legal regulation during different periods of legislative development), we explore the relationship between changes in legislation on disciplinary offenses and the level of unemployment (at the national level).

Shapiro and Stiglitz (1984) demonstrate that unemployment can serve as a "mechanism for labor discipline" within the framework of moral hazard. The threat of unemployment diminishes the likelihood of employees shirking their responsibilities in regions with high employment levels, where finding a new job after dismissal would be challenging. Conversely, in tight labor markets, the risk of shirk-

ing behavior increases due to the ease of finding alternative employment.

Empirical evidence linking unemployment levels to various factors influencing employee behavior is limited due to the complexity of monitoring such behavior. Research by Cappelli and Chauvin (1991) revealed an inverse relationship between local unemployment rates and the frequency of disciplinary actions across different plants of a major American corporation. Other studies have explored the connection between regional unemployment rates and individual absenteeism, treating absenteeism as a breach of labor discipline. Workers in areas with high unemployment are likely to minimize absences to avoid increasing their risk of job loss (Leigh, 1985; Askildsen et al., 2005).

There are conclusions from the analysis of the general equilibrium of firing costs on employment outcomes. Firing costs borne by the employer tend to increase employment (Ljungqvist, 2002). Higher wage premiums are associated with lower levels of work shirking, as measured by disciplinary dismissals. Labor discipline in workplaces is better where labor market conditions increase the costs associated with job searching and make it difficult to find alternative employment (Cappelli & Chauvin, 1991).

Pacitti's (2011) results show that unemployment disciplines both the unemployed and current workers. The impact of unemployment on labor discipline and on the prohibition of counterproductive behavior of workers is assessed as positive.

Studies (Pedaci, 2010; Kimball, 1994, 1989) discuss that disciplinary responsibility is an important element in maintaining order and efficiency in workplaces. However, it cannot be considered the sole factor affecting the labor market, as other aspects, including economic policy, education, and technology, also play a significant role. The labor market functions as a result of the interaction of many factors, including legislation, economic conditions, the education level of the workface, and technological changes, where no single element, including disciplinary responsibility, acts in isolation.

Kazakhstani labor legislation has undergone several stages of reform in terms of changing approaches to labor discipline regulation. The first stage: the post-Soviet period of 1991-1999 is characterized by a liberal approach to the regulation of labor discipline. The second stage: 2000-2006 is characterized by an even further weakening of legal regulation of labor relations, with limited state involvement in the regulation of labor discipline. During the period of 2007-2015, the first Labor Code of the Republic of Kazakhstan was in effect, establishing clear rules for disciplinary responsibility, and increasing by two and a half times the number of disciplinary offenses for which employee dismissal is permissible. The period from 2016 to the present is characterized by an increasing level of legal regulation in this area.

The main socio-economic indicators of the Republic of Kazakhstan regarding the unemployment level have been available since 1994 (Bureau of National Statistics, 2023). In the period of 1994-1999, the average unemployment rate was 11.9 percent. In the period of 2000-2006, it averaged 9.4 percent with a significant variation by year, namely 12.8 percent in 2000 and 7.8 percent in 2006. In the period of 2007-2015, the average registered unemployment rate was 5.8 percent. In the period of 2016-2023, the average unemployment rate was 4.9 percent.

Thus, we find a correlation between the content of the liberal labor legislation regarding labor discipline in the period of 1991-2006 and the high level of registered unemployment. A strong connection has been established between the tightening of disciplinary responsibility, as provided for by labor legislation from 2007 to the present, and the reduction in the level of registered unemployment.

That is, the strengthening of disciplinary responsibility, increasing the employer's authority when bringing to responsibility, has positively influenced the level of unemployment in the country in the context of Kazakhstan's developing market, with its indicators decreasing.

Our data confirm the hypothesis about the influence of strict labor discipline legislation on increased productivity and the formation of a fear of dismissal. Strict discipline in the workplace and the threat of dismissal motivate employees to be more productive. This, in turn, can strengthen the company's financial position and reduce the need for layoffs, potentially lowering the unemployment rate. When employees fear losing their jobs, they may be less inclined to seek new opportunities or demand higher wages. This can lead to reduced employee turnover and, consequently, a lower unemployment rate.

However, it should be noted that on the other hand, excessively strict discipline and constant threat of dismissal can create a toxic work environment. This may increase employee turnover, intensify stress among workers, and worsen overall productivity, which in the long run could increase the unemployment rate. When the threat of dismissal is significant, employees may be less inclined to take risks by transitioning to new jobs, reducing work-

force mobility and potentially leading to an inefficient allocation of labor resources. In countries with strong legal protection against unfair dismissal, including Kazakhstan, the threat of job loss may be less significant, which could contribute to a higher unemployment rate, as it may be more difficult for companies to terminate in effective employees.

The influence of various aspects of legal regulation on unemployment rates and labor market dynamics is multifaceted. Previous studies have shown that there is no consistent link between overall labor legislation and unemployment levels in developed countries. However, specific elements of labor regulation might contribute to lower unemployment rates. For instance, regulations concerning working hours can lead to reduced unemployment through better work distribution and enhanced labor productivity. Similarly, laws related to workers' representation may improve employee motivation and morale, potentially leading to better labor market outcomes. Evidence suggests that labor laws can enhance firm-level efficiency and positively impact macroeconomic indicators (Daekin et al., 2014a; Daekin et al., 2014b).

Moreover, there is considerable evidence regarding the effects of stringent employment termination laws on economic performance. Research indicates that laws governing the ease of dismissing employees can affect firm-level innovation. For example, in the United States, more flexible dismissal laws—those that simplify contract termination procedures—are associated with increased innovation, as measured by patents and inventions (Acharya et al., 2013).Scientific studies (Levi et al., 2013; Davies & Collins, 2002; Mačernytė- Panomariovienė et al., 2022) typically find that the unification and strict regulation of labor relations provide greater protection for workers' rights and stability in labor relations. This can contribute to a reduction in unemployment levels and its stabilization.

Worldwide, there is growing recognition of the need for labor regulations to protect workers from unfair or arbitrary treatment and to enable effective negotiations between employers and employees. Labor legislation is not simply a matter of external mandates from governments or international agreements but is deeply connected to how labor markets operate and the developmental paths of countries. A major shift in recent decades has been the rise of non-standard employment forms, including part-time, temporary, and seasonal work. As we can observe, while the number of cases of these forms of employment has increased, countries are also enacting laws to protect workers in non-standard employment, particularly by introducing requirements for equal treatment of part-time workers with full-time workers, as well as for permanent employees and temporary agency workers. This is a global trend, although it is most pronounced in Europe (Adams et.al., 2015, July; Adams et.al., 2019).

During the financial and economic crisis of 2008-2010, numerous EU member states—especially those that had not revised their employment protection laws before the crisis, unlike Germany—eased or reduced regulations related to both individual and collective dismissals. These adjustments were frequently paired with changes in working time arrangements, alterations to laws concerning atypical employment, decentralization of collective bargaining systems, reforms in unemployment insurance, and restructuring of public services. Additionally, atypical employment rules were reformed in countries like Poland, Portugal, Romania, Slovakia, and Spain. Germany had initiated similar reforms earlier (the so-called Hartz reforms from 2003 to 2005) with significant consequences for increased employment instability and impoverishment of the working population (Dorre & Schmalz, 2013). Other negative changes in legislation included reforms of probationary periods (e.g., in Portugal and Romania). Furthermore, special rules were established for small enterprises (e.g., in England and Spain), which, in general, exempted them from the scope of employment protection laws. Additionally, public services underwent structural reforms as part of the European Commission's austerity program. Collectively, these reforms, along with changes in dismissal and collective dismissal rules, significantly eroded the protective role of labor legislation (Showmann, 2014).

Despite the aims of recent reforms, they have not succeeded in reducing labor market rigidities or promoting economic recovery. Instead, these reforms have led to adverse effects, such as increased instability and growing poverty among workers (Clauwaert & Schomann, 2012; Laulom, 2013; Cazes et al., 2012). Evidence indicates that relaxing regulations on individual and collective dismissals, along with changes to atypical employment, unemployment benefits, and public sector restructuring, has resulted in more layoffs, higher youth unemployment, worsening working conditions, lower wages, and reduced protections from collective bargaining. According to Ramaux (2012), this situation reflects an "intellectual delay," where continued neoliberal reforms exacerbate existing economic and labor

market issues. Barnard (2013) further contends that the deregulation drive, particularly by right-leaning governments, represents a significant issue with national labor law, as seen in the United Kingdom, Portugal, and Hungary. This pursuit of deregulation, often framed as a quest for freedom, frequently prioritizes employer interests over worker protections, thereby undermining the core principles of labor law (Schomann, 2014).

The above conclusions of scientific research were developed based on the assessment of the previous global economic crisis that occurred fifteen years ago. The findings reveal that factors such as adherence to a particular legal system of labor law, normative traditions of employment regulation, or established practices of worker social protection are not the primary determinants in handling adverse economic conditions. Instead, the effectiveness of legal regulatory measures is the key factor (Khamzina & Buribayev, 2020). At the same time, labor law liberalization during crises leads to negative social consequences in the labor market, such as an increase in unemployment.

Studies like "The Impact of Labor Legislation Liberalization on the Quality of Work Life (as exemplified by Russia and Kazakhstan) (Golovina,2021) and others (Ismoilov, 2020, 2021; Djankov & Ramalho, 2009) indicate that labor law liberalization often results in increased labor market flexibility. However, it can also contribute to employment instability and the growth of temporary or informal employment, potentially leading to increased unemployment.

Thus, it is evident that over the 32 years of Kazakhstan's independence, labor law liberalization has been linked to an increase in the unemployment rate. Conversely, efforts such as codification, standardization, and the enforcement of stringent labor regulations have been associated with a notable reduction in unemployment and its stabilization. Therefore, enhancing disciplinary measures should not be viewed as a standalone factor affecting the labor market; rather, its impact is mediated through various mechanisms. While labor discipline and the prevention of counterproductive workplace behavior are significant, they are not the only factors influencing the labor market.

A key aspect of our analysis involves examining the interplay between labor discipline, terminations, and the cases filed in labor courts. This study analyzes how these factors interact and highlights significant patterns and trends based on the data. Understanding the relationship between labor discipline, terminations, and legal actions related to labor issues is essential for the functioning of the labor market. Insights into these connections can be highly beneficial for employers, employees, and lawmakers.

According to the Labor Code of the Republic of Kazakhstan, when disputes arise between an employee and an employer regarding the application of disciplinary measures, the employee has the right to sequentially seek resolution through a specially established body for individual labor disputes – the conciliation commission, and the court.

The Constitution of Kazakhstan guarantees the right to judicial protection, including in the field of Social – labor relations. Challenging disciplinary measures is one of the common types of legal disputes, as well as demands considered by conciliation commissions.

The study was conducted based on the analysis of data collected from various sources, including statistical data, labor inspection reports, and judicial statistics. The analysis covers data from the 10 years and includes both quantitative analysis.

For this section of the study, we utilized data from the Committee on Legal Statistics and Special Records of the General Prosecutor's Office, covering a nine-year period from 2015 to 2023. This data pertains to the handling of claims related to social-labor disputes by first-instance courts. Nevertheless, the statistical report format (Form 2 Report on the Consideration of Civil Cases by First Instance Courts) does not provide a separate breakdown for details specifically pertaining to appeals against disciplinary actions. Consequently, we had to rely on the available data as our primary source. In this context, a labor dispute refers to any case brought before the appropriate judicial authority during the reporting period that involves disagreements between an employee and an employer, including former employees, concerning the application of labor laws in Kazakhstan, the execution or alteration of agreements, labor or collective agreements, and employer actions.

Using Form № 2, "Report on the Consideration of Civil Cases by First Instance Courts," we can effectively track the procedural progress of labor disputes within each reporting period. This form enables the classification and analysis of labor disputes reviewed by first-instance courts, including various types such as: reinstatement of dismissed employees, including wage payments; disputes related to wage and other payments; and challenges to orders imposing disciplinary measures for corruption of-

fenses. However, it is apparent that the classification in Form № 2 has limitations. Specifically, disputes regarding reinstatement at work are grouped under the broader category of reinstatement of dismissed employees, which also includes wage payments. Similarly, disputes over wage payments and other financial claims encompass those involving reinstatement of dismissed employees and associated wage payments. The criterion of Form № 2 "the number of disputes challenging orders imposing disciplinary measures for corruption offenses" is not very informative, as the corresponding number of applications is negligible relative to the total number of labor disputes and has little significance for conducting analytical reviews (except, perhaps, satisfying the specific interest in determining the number of challenged court orders imposing disciplinary measures for corruption offenses). Furthermore, the inclusion of this criterion in Form № 2, without separately specifying the criterion of disputes "challenging orders imposing disciplinary measures," i.e., in the absence of coverage by statistics of a significant group of labor disputes, obscures the analytical potential of judicial statistics.

Table 1 – Information on the consideration of labor disputes by first- instance courts (includes data from the "Labor Disputes"and "Disputes over compensation for injury or death of a citizen in connection with the performance of labor duties" columns of statistical Form №2 "Report on the Consideration of Civil Cases by First Instance Courts "; Khamzina et al., 2020; Khamzin et al., 2019).

Calendar period, year	Number of applications regarding labor disputes received during the reporting period	Including			On compensation for damage to the health or death of a citizen in connection with the performance of work duties	Total number of applications regarding labor disputes received by the courts during the reporting period (columns 2+6)
		About payment wages	On reinstatement of dismissed employees, including payment of wages	Other labor requiremen ts, including on challenging disciplinary sanctions		
1	2	3	4	5	2	3
2012	8822	3497	2450	2875	8822	3497
2013	9492	3712	2477	3303	9492	3712
2014	10033	4293	2322	3418	10033	4293
2015	10120	4429	2007	3684	10120	4429
2016	8498	4108	1131	3259	8498	4108
2017	8445	4683	1167	2595	8445	4683
2018	8047	4191	1048	2808	8047	4191
2019	7855	3344	1048	3463	7855	3344
2020	7388	3075	1072	3241	7388	3075
2021	7918	3503	1015	3400	7918	3503
2022	7370	3324	918	3128	7370	3324
2023	6407	2252	890	3265	6407	2252

The statistical Form №2 used by the courts of Kazakhstan is not very informative in terms

Of determining information about the consideration of various types of labor disputes. In our view, Form No. 2 needs to be supplemented with criteria for lawsuits related to job transfers, changes in working conditions, as well as information about lawsuits related to job transfers, changes in working conditions, as well as information about lawsuits related to the fulfillment of employment contracts. The statistical form should accurately reflect the distribution and frequency of various individual labor disputes in practice. To achieve this, the most effective categorization of the "Labor Disputes" criterion in Form №2 would include: reinstatement of terminated employees, disputes over disciplinary actions, job transfers and changes in working conditions, enforcement of employment contract terms, and issues related to employee liability.

However, the available data allowed us to conduct a comparative analysis of the number of disputes and the dynamics of the content of Kazakhstan's labor discipline legislation, which shows the following results.

Firstly, strengthening the legal regulation of labor discipline, introducing detailed regulation of disciplinary measures, did not lead to a reduction in court cases.

Secondly, in the long term, strict regulation of the application of disciplinary penalties leads to an increase in the number of cases related to unfair dismissal and appeals against diaciplinary penalties.

Thirdly, in the context of Kazakhstan's conditions and practices, there is no strict correlation between the severity of disciplinary measures and the frequency of appeals to the court.

Fourth. Most often, appeals to the court to challenge the application of disciplinary penalties and for reinstatement at work are related to the noncomplains with the procedures for applying disciplinary penalties, including termination initiated by the employer.

Firth. Our research has shown that court decisions on appeals against disciplinary penalties often influence subsequent personnel management practices in companies, affecting how employers address labor discipline issues. In other words, judicial practice and its corresponding reviews become benchmarks for the application of labor legislation in enterprises and institutions.

Our study highlights the importance of compliance with labor legislation and fair treatment of employees to prevent legal disputes. To reduce legal disputes, it is necessary to strike a balance between the severity of disciplinary measures and the protection of worker's rights. The research findings can be used to develop more effective human resource management strategies and improve labor legislation.

Kazakhstan's labor legislation governing disciplinary responsibility has undergone several stages of reform since the country gained independence. These legislative changes reflect significant shifts in the state's approach to disciplinary responsibility and mirror the country's socio-political and economic development.

The first stage, from 1991 to 1999, was marked by the dismantling of the planned socialist economy and the transition to a market economy. During this period, the country's economy experienced stagnation. One of the priorities of state policy was the necessity to establish the institution of private property as a fundamental element of market relations. The state adopted privatization of state property as a tool to achieve this goal, which was the only existing form of property involved in economic activities at that time. Consequently, there was a significant change in the structure of labor relations: instead of essentially having a single employer represented by the state, new property owners emerged who simultaneously became employers. Wage labor lost its mandatory characteristic of collective organization, professional unions began to rapidly lose their previously held positions, and the regime of legality in labor relations was not fully ensured. During this period, labor discipline was regulated by the Labor Code of the Kazakh SSR (established by the Law of the Kazakh SSR dated July 21, 1972. Repealed by the Law of the Republic of Kazakhstan dated December 10, 1999, №494), which was characterized by relative leniency towards labor discipline and disciplinary offenses by workers, as well as formalism in enforcing discipline rules. Paradoxically, this state of legislation contributed to the liberalization of wage labor and the involvement of a significant number of citizens in labor relations under new ownership.

The second stage, from 2000 to 2006, is characterized by macroeconomic and political stabilization and economic growth. During this period, the Law of the Republic of Kazakhstan of December 10, 1999, №493"On Labor " was in effect, which was the most liberal basic labor law in the entire legal history of Kazakhstan. The new conditions for the formation of new property owners and new labor relations required the creation of maximally comfortable conditions for employers, including in terms of freedom to terminate employment contracts and impose disciplinary responsibility on employees. The main purpose of the "On Labor" Law was to consolidate the transition from socialist labor legislation, adopted within the framework of strict state regulation of the economy and the presence of virtually one employer- the state, to new labor legislation that would adequately respond to the requests of actively forming market relations. In the era of the very first steps towards a market economy, capital accumulation, and the privatization process of state property, another law would have hindered the construction of a capitalist structure of the country's economy.

The third stage, covering the years 2007 to 2015, is defined by the introduction of the Republic of Kazakhstan's first Labor Code, enacted on May 15, 2007, №251-III, alongside a period of extensive economic and political stabilization. This stage in-

volved a significant challenge in crafting the Labor Code: it sought to create a legal structure that allowed for self-regulation of labor relations with limited state interference, while still preserving the robust legal protections and workers' rights that had been provided by the state.

The 2007 Labor Code of Kazakhstan marked a significant step forward in regulating labor relations within the country. It introduced several innovations, establishing a framework for social partnership institutions, outlining principles and procedures for collective bargaining, and introducing novel approaches to wage regulation and standardization. The Code also sought to provide robust guarantees and compensations for workers, aiming to achieve a balance of interests between employees, employers, and the state. This codified law, considered transitional at the time of its adoption, aimed to support the country's economic development during a period of significant transition. It was seen as a crucial instrument for ensuring social stability and providing workers with a high level of social protection.

As Kazakhstan advanced through its economic and social transformation, the shortcomings of the 2007 Code became more evident. Starting in 2016, the country entered its fourth phase of development, characterized by the introduction of broad social, political, and economic reforms designed to promote economic growth and modernization. This period demanded a more flexible and dynamic approach to labor relations, one that would encourage both large and small enterprises to thrive, create new jobs, and drive innovation. The 2007 Code, with its focus on large enterprises in traditional industries, was perceived as a barrier to these goals. The inflexibility of the 2007 Code was seen as hindering the development of a modern, agile labor market. The rise of new and diverse forms of labor, including gig work, freelance platforms, and online businesses, required a new framework that could accommodate this evolving landscape. To address these challenges, Kazakhstan adopted a new Labor Code in 2016. The revised legislation sought to establish a more flexible and responsive regulatory framework, highlighting the significance of collective bargaining while ensuring that the state continues to uphold workers' rights and social protections. The new Code sought to promote a more dynamic labor market, facilitating the creation of new jobs and fostering innovation, while ensuring that workers continued to enjoy a high level of social security. The new Labor Code introduces significant changes to employment practices. It places a strong emphasis on collective bargaining, enabling both employees and employers to engage more actively in negotiating employment terms, fostering a more collaborative and participatory environment. The Code also provides greater flexibility in employment arrangements, accommodating various types of contracts, such as part-time, temporary, and flexible work, in response to the evolving nature of work. Additionally, it enhances protections for workers, ensuring their rights to a safe and healthy work environment, fair wages, and non-discrimination. Moreover, the Code updates labor regulations to address contemporary employment realities, including remote work and digital platforms.

The new Labor Code represents a significant shift in Kazakhstan's approach to labor relations, moving towards a more dynamic and flexible model that better supports the country's economic development goals while upholding the fundamental rights and protections of workers. This transition is a key element of Kazakhstan's ongoing efforts to create a more modern and competitive economy. The institute of labor discipline became more regulated, the requirements for its compliance increased, and the power of the employer, which includes the dismissal of employees who have committed disciplinary offenses, got expanded. The new strict legislation on labor discipline and corresponding practice, reflecting a management style with high commitment, had a limited impact on the number of labor disputes over unfair dismissals and the application of disciplinary sanctions.

Conclusion

Our research shows that strengthening disciplinary responsibility and expanding the powers of employers in Kazakhstan have had a significant impact on reducing unemployment in the country. This is due to the fact that the strictest adherence to labor discipline and the real threat of dismissal significantly increase labor productivity. In conditions of strict discipline in the workplace, employees strive for higher efficiency, which contributes to strengthening the economic position of enterprises and reduces the need for staff cuts. Furthermore, the fear of losing a job makes workers less active in seeking new opportunities and demanding wage increases, leading to lower staff turnover and, consequently, a low level of unemployment. These findings confirm the hypothesis that strict discipline and pressure on workers can have a positive impact on the overall state of the labor market.

Our research, based on a 32-year examination of Kazakhstan's socio-economic and legal evolution, indicates that the liberalization of labor laws has been associated with a rise in unemployment. In contrast to this, processes of codification, unification, and strict regulation of labor relations were consistently associated with a noticeable decrease and stabilization of the unemployment rate. Thus, the strengthening of disciplinary responsibility influences the labor market not in isolation, but as part of a comprehensive set of measures. In this scenario, rigorous labor discipline and systems designed to deter unproductive behavior at work are essential, but they are merely one of numerous elements that influence the broader dynamics of the labor market.

Our study facilitated a thorough comparative analysis of labor disputes and the development of Kazakhstan's labor discipline legislation, leading to several notable findings. Despite stricter legal regulations and more detailed procedures for applying disciplinary measures, there was no reduction in the volume of legal claims. Over time, stringent disciplinary norms have resulted in an increase in legal cases challenging unfair dismissals and disciplinary actions.

In Kazakhstan, there is no direct link between the severity of disciplinary measures and the frequency of court appeals. Most court cases involve procedural violations related to the imposition of disciplinary sanctions, particularly dismissals initiated by employers. The review of judicial practices concerning disciplinary actions indicates that court rulings frequently shape how companies manage personnel and address labor discipline. Judicial decisions thus set a standard for legal application within organizations.

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ТАБИҒИ РЕСУРС ЖӘНЕ ЭКОЛОГИЯЛЫҚ ҚҰҚЫҚ

Section 4

NATURAL RESOURCE AND ENVIRONMENTAL LAW

Раздел 4

ПРИРОДОРЕСУРСОВОЕ И ЭКОЛОГИЧЕСКОЕ ПРАВО

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LEGAL REGULATION OF SUBSOIL USE IN THE FIELD NON-FERROUS METALS IN THE PEOPLE'S REPUBLIC OF CHINA AND THE REPUBLIC OF KAZAKHSTAN

The article is devoted to the issues of comparative legal research of the legislation of the Republic of Kazakhstan (RK) and the People's Republic of China (PRC) on subsoil use in the field of non-ferrous metals. The subsoil of the People's Republic of China and the Republic of Kazakhstan contains a large number of different minerals, including non-ferrous metals. Mineral resources are the property of the state and the people. Non-ferrous metals are used in various industries in the production of parts, alloys, structural materials and finished products. It is necessary to bear in mind the depletion and non-renewable nature of minerals and therefore adopt a more rational attitude towards the Earth's resources. Therefore, it is very important to study the practices, legislation and strategies of other countries in the field of underground resource management. Studying the issues of improving the legislation of Kazakhstan for the rational management of natural resources and the development of new industries of finished products from non-ferrous metals is very relevant.

This work examines the main provisions of the legislation of the RK and PRC on the right of ownership of subsoil, regimes of subsoil use rights, principles of legislation on subsoil use, the goals of state management of subsoil and their connection with the development of the national economies of the two countries.

Based on the study of public management issues in the field of mineral resources exploitation, the author puts forward some suggestions that will help to improve the legislation and management in the field of underground resources utilization, strengthen the protection of national interests, and introduce public management issues in the field of mineral resources exploitation. Take a more rational approach that takes into account the priorities of the country's economic needs. Kazakhstan should not only focus on mineral extraction and export, but also develop a long-term strategy. Legal regulation should include additional obligations for users of underground resources in the areas of industrial production development, environmental protection, natural resources and land restoration.

Key words: subsoil ownership, subsoil use right, subsoil study, subsoil exploration, extraction of non-ferrous metals.

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Қытай Халық Республикасында және Қазақстан Республикасында түсті металдар саласында жер қойнауын пайдалануды құқықтық реттеу

Мақала Қазақстан Республикасы мен Қытай Халық Республикасының түсті металдар саласындағы жер қойнауын пайдалану туралы заңнамасын салыстырмалы-құқықтық зерттеу мәселелеріне арналған. ҚХР мен ҚР жер қойнауында түрлі пайдалы қазбалардың, соның ішінде түсті металдардың көп мөлшері бар. Пайдалы қазбалар мемлекет пен халықтың меншігі болып табылады. Түсті металдар бөлшектерді, қорытпаларды, құрылымдық материалдарды және дайын өнімдерді өндіруде әртүрлі салаларда қолданылады. Пайдалы қазбалардың таусылуы, олардың ешқашан қалпына келмеуі, табиғи байлықты басқаруға жаңа көзқарас қажет етеді. Сондықтан басқа мемлекеттердің тәсілдерін, олардың жер қойнауын басқару саласындағы заңнамалары мен стратегияларын зерделеу мәселелері өзекті болып отыр. Жер қойнауын ұтымды басқару және пайдалы қазбалардан жасалған дайын өнімнің жаңа өндірістерін дамыту үшін Қазақстан заңнамасын жетілдіру мәселелерін зерделеу өте өзекті болып табылады.

Бұл жұмыста ҚР және ҚХР жер қойнауына меншік құқығы туралы заңнамасының негізгі ережелері, жер қойнауын пайдалану құқығының режимдері, жер қойнауын пайдалану туралы заңнаманың қағидаттары, жер қойнауын басқару мақсаттары зерттеледі. Минералды

өндіру саласындағы мемлекеттік басқару мәселелерін зерттеу нәтижесінде авторлар бірқатар ұсыныстар жасады. Бұл ұсыныстар жер қойнауын пайдалану саласындағы заңнаманы және басқаруды жетілдіруге, ұлттық мүдделерді қорғауды күшейтуге, ел экономикасы қажеттіліктерінің басымдығын ескере отырып, неғұрлым ұтымды тәсілді енгізуге ықпал етуі мүмкін. Қазақстанға түсті металдарды өндіруге және экспорттауға ғана емес, сонымен қатар жер қойнауын пайдаланушыларға өнеркәсіптік өндірісті дамыту жөніндегі қосымша міндеттемелерді заңнамалық тұрғыдан бекітуге, сондай-ақ жер қойнауын пайдалану саласындағы бақылауды күшейтуге көңіл бөлу өте маңызды.

Түйін сөздер: жер қойнауына меншік, жер қойнауын пайдалану құқығы, жер қойнауын зерттеу, жер қойнауын барлау, түсті металдарды өндіру.

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Правовое регулирование недропользования в сфере цветных металлов в Китайской Народной Республике и Республике Казахстан

Статья посвящена вопросам сравнительно-правового исследования законодательства Республики Казахстан и Китайской Народной Республики о недропользовании в области цветных металлов. Недра КНР и РК содержат большое количество разных полезных ископаемых, включая цветные металлы. Полезные ископаемые являются собственностью государства и народа. Цветные металлы используются в различных отраслях промышленности при производстве деталей, сплавов, конструкционных материалов и готовой продукции. Необходимо помнить об исчерпаемости и невозобновляемости полезных ископаемых, а, следовательно, и о более рациональном отношении к ресурсам нашей земли. Поэтому становятся актуальными вопросы изучения подходов других государств, их законодательства и стратегии в области управления недрами. Для рационального управления природными богатствами и развития новых производств готовой продукции из цветных металлов изучение вопросов совершенствования казахстанского законодательства является весьма актуальным.

В данной работе исследуются основные положения законодательства РК и КНР о праве собственности на недра, режимы права недропользования, принципы законодательства о недропользовании, цели государственного управления недрами и их связь с развитием национальных экономик двух стран. В результате исследования вопросов государственного управления в области добычи минеральных ресурсов авторами были сделаны ряд предложений, которые могут способствовать совершенствованию законодательства и управления в области недропользования, усилению защиты национальных интересов, внедрению более рационального подхода с учетом приоритета потребностей экономики страны. Казахстану важно обращать внимание не только на объемы добычи и экспорта полезных ископаемых, но и иметь долгосрочную стратегию. Правовое регулирование должно включать дополнительные обязательства недропользователей в области развития промышленного производства, охраны окружающей среды, восстановления природных ресурсов и земли.

Ключевые слова: собственность на недра, право недропользования, изучение недр, разведка недр, добыча цветных металлов.

Introduction

Humankind uses mineral resources for various purposes: as a source of energy, and raw materials for the production of any products, items, and materials.

The Republic of Kazakhstan and the People's Republic of China are among the largest countries in the world. Both countries are active in the use of underground resources. If Kazakhstan is mining on its territory, then China is developing deposits both on its territory and on the territory of other countries. In the subsoil of Kazakhstan and the People's Republic of China, there are many types of minerals, including non-ferrous metals. Non-ferrous metals include aluminum, copper, tin, zinc, nickel, lead and others. Non-ferrous metals are divided into heavy, light, noble, refractory, radioactive, disseminated and others. Non-ferrous metals are used in many areas: in industry, construction, etc.

Kazakhstan has thousands of mineral deposits of various kinds. Kazakhstan has a large number of non-ferrous metal reserves, including gold, silver, copper, zinc and other non-ferrous metals (https://www.akorda.kz/ru/republic_of_kazakhstan/kazakhstan). According to the Committee of Geology of

the Ministry of Industry and Construction of the Republic of Kazakhstan the state balance sheet accounts for solid minerals – 958 deposits. There are more than 130 minerals on the state balance sheet. On the average, their reserves are 40-50 years, in particular, copper, zinc, lead. If we talk about gold, its reserves amount to 2.3 thousand tons with annual production of 90 tons (Mamyshev 2024). The depths of the Republic of Kazakhstan hold trillions of dollars worth of minerals. It is important for the Republic of Kazakhstan to develop these natural resources, develop its industry and economy and improve the living standards of its people.

The People's Republic of China occupies the fourth largest area in the world and has very rich mineral reserves. China has a variety of mineral resources, including almost all known non-ferrous metals, in particular, the volume of deposits of rare earth metals is about 80% of the world total (http://ru.china-embassy.gov.cn/rus/zggk/201312/t20131220_2961531.htm). China exploits mineral resources for the production of goods, so the country has great needs in the development of mineral deposits, including non-ferrous metals. In addition, it is important for China in the long term to provide itself with the necessary volumes of minerals from deposits in the country and abroad. In planning the development of the country and its economy, China takes into account all geopolitical and economic risks and the requirements of international agreements on the transition to a green economy. All these affect the formation of legislation and the implementation of management in the field of mineral resources utilization.

Kazakhstan and China carry out study survey and commercial production of minerals. A number of PRC companies also explore, explore and produce minerals in foreign countries where they operate under the laws of those countries.

Features of national legislation, principles, goals, objectives and national interestsThe cooperation between the two countries in the field of underground resource utilization demonstrates the relevance of the topics studied. The diversity of the nature of the relationships related to the use of underground resources, the realization of a certain balance of interests among the participants in these relationships, and the combination of public and private interests in the field of underground resource use influence the expression of scientific interest in regulating the use of underground resources in our countries. Legislation and public management practices in the field of underground resource utilization are constantly evolving. Therefore, taking into account the long-term strategic interests of Kazakhstan, there is a growing interest in the scientific community on issues such as improving state management procedures for underground resources and improving rational attitudes towards natural resources.

Economic cooperation between China and Kazakhstan, including in the field of utilization of underground resources, is of great significance to enhancing the friendship between the two peoples. The economic and trade ties between the two peoples have a long history. For decades, our two countries have maintained relations in the field of underground development. In USSR Soviet scientists and specialists provided assistance to the PRC in the field of industry, development of fields.

Subsoil use issues have always been the subject of scientific interest of many scientists. In 2017, a new Code "On Subsoil and Subsoil Use" was adopted in the RK. In this regard, it is relevant to study its goals and objectives, peculiarities and practice of application. Kazakhstan, occupying a vast territory, is a country rich in natural resources. It is important for the state and society to rationally dispose of its subsoil resources. The legislation on subsoil use should be improved taking into account the experience of subsoil use and long-term goals of sustainable economic development. G.T. Kazieva writes that in the past the adoption of amendments to legislative acts on subsoil, often was due to private cases or departmental interests, resulting in various problems in the interpretation and application of the provisions of legislative acts. In her opinion, the current Subsoil Code has retained a number of such problematic provisions. In this regard, the author believes that the conceptualization of the issues of state participation in relations on subsoil use is one of the urgent tasks of legal science (Kazieva 2021: 64). Indeed, the adoption of legislative acts should be built in accordance with the national interests of the state. A number of contracts with foreign investors, concluded by the Republic in the 90s did not bring us the desired benefit. It is thought that the legislation of the RK on subsoil use should fully take into account the national interests, goals and objectives of sustainable long-term socio-economic development of the country. S. Idrysheva writes about the realization of the constitutional novelty about the right of ownership of the people of Kazakhstan to natural resources (Idrysheva 2023: 59-72). K.M. Ilyasova investigates topical issues of dispute resolution under contracts and licenses for subsoil use in the Republic of Kazakhstan and peculiarities of the regime

of subsoil use (Ilyasova 2022: 72-82). J. Tivey and D. Li examine China's drive to shift from mining and metallurgy to low-carbon production and implement green reforms (Tivey 2021). G. Wu and Y. Li examine the specifics of the PRC Mineral Resources Law and other PRC regulations on subsoil use (Wu 2024). V.K. Filatov analyzes the main legal regimes of subsoil use existing in China (Filatov 2011: 99-104). D. Liu et al. analyze the key positions held by the PRC in the sphere of subsoil use in the world (Liu 2024). Comparative legal study of the objectives and features of the legislation of the RK and PRC on subsoil use and the procedure for exercising subsoil use rights allow us to formulate proposals to improve the national legislation.

Materials and methods

The materials of this study are the regulations of Kazakhstan and China in the field of underground resource utilization, and the scientific works of scientists from both countries. Scientists of Kazakhstan and China have always attached great importance to the research of various problems and problems in the field of underground resources utilization. The research on the experience and the formation and application of the legal framework in the field of national management of underground resources in China can provide new guidance for the improvement of the legislation in this field.

The subject of the undergraduate studies is the legislation of Kazakhstan and China in the field of underground resources. By studying the legal regulation procedures of underground resources utilization and the aims and objectives of the two countries in the field of underground resources exploitation, we can clarify the trend, characteristics and problems of the legal support of public administration in this field. The major countries involved in the process of mining and trading the world's mineral resources have long been developing their own strategies and setting new goals and priorities.

The subject of the study is various issues of legal support for the State management of underground resources. Nowadays, there are many pressing problems in the national management of underground resources. The changes experienced by the international community, our countries and peoples have determined the nature and parameters necessary to improve legislation in this field.

The purpose of this study is to study the current situation, problems and prospects of public management of underground resources in Kazakhstan and China.

In the process of conducting the study By means such as: analysis, generalization, comparative-legal method, historical method, formal-legal method and others.

Results and discussion

It is important for any state to have sovereignty over its subsoil. In many countries, the constitutions emphasize the right of the state to its subsoil. The Constitution of the Republic of Kazakhstan also stipulates that underground resources belong to the people (https://adilet.zan.kz/rus/docs/K950001000_). This is thanks to the amendment to the Basic Law passed in 2022. (https://adilet.zan.kz/rus/docs/Z220000001K). According to S. Idrysheva, the right of ownership of natural resources by the people is a special type of property right. According to the author, the constitutional novelty on the right of ownership of the people to natural resources has not yet been realized in practice, as there are no clear mechanisms for its implementation, observance and protection of this right of the people (Idrysheva 2023: 67-68). It is believed that this amendment to the Constitution is a legal basis for the payment of natural rent to the people, for example, under the project "National Fund for Children".

The state's ownership of underground resources is embodied in Article 9 of the Constitution of the People's Republic of China. Ensure that rational attitudes towards China's underground and other natural resources are guaranteed by the state (https://chinalaw.center/constitutional_law/china_constitution_revised_2018_russian/). In China, the state plays a leading role in many issues related to the exploitation of underground resources.

In Kazakhstan, relations in the field of utilization of underground resources are regulated by the Code of the Republic of Kazakhstan "On underground resources and Utilization of underground Resources" of December 27, 2017. The Law regulates the system of public administration in the field of underground resources and the procedures for their use. The State determines the status of users of underground resources, the procedures for obtaining permits in the field of underground resource use, the implementation of operations in the field of underground resource use, the State control system and the responsibility of users of underground resources. The Code also regulates other social relations in the field of underground development. (https://adilet.

zan.kz/rus/docs/K1700000125). The social relations in the field of underground resources utilization are characterized by diversity. Therefore, this aspect of the relationship can be regulated by other national regulations. The Law on Mineral Resources of the People's Republic of China of 1986 includes the following chapters: "General Provisions", "Registration for Mineral Exploration and Expertise and Approval of Mineral Extraction", "Mineral Exploration", "Extraction of Mineral Resources", "Collectively Owned Mining Enterprises and Mining Private Persons", "Legal Liability", "Additional Provisions" (https://leap.unep.org/en/countries/cn/national-legislation/mineral-resources-law).

China is characterized by regulating social relations mainly through laws rather than codes. The scope of utilization of underground resources is governed by the 1986 Law of the People's Republic of China on Mineral Resources. It was revised several times in 1996 and 2009. G. Wu and Y. Li pointed out that the Mineral Resources Law regulates the major issues in the exploration and production of mineral resources in China. The law also regulates the procedure for registering the right to use underground resources. In addition to this law, the use of underground resources in China can also be regulated through the actions of The State Council, central and local authorities, and various administrative regulations. (Wu 2024). In China, local government authorities are given quite broad powers to regulate all kinds of public relations in the field of underground resource utilization. China also has the "Rules for the Implementation of the Mineral Resources Law" adopted by The State Council in 1994. (Chen 2020: 336). Each of the countries has many laws and other regulations governing various aspects of subsoil use, including environmental, safety, license and other issues. The legislation in the sphere of subsoil use is characterized by the connection with the branches of public and private law, international law. The legislation on subsoil use is connected with the norms of constitutional, administrative, civil, land, environmental, water and maritime law.

The Mineral Resources Law of the People's Republic of China specifically emphasizes the purpose for which the law was formulated. The main purpose of the law is to develop China's mineral resource mining industry. The purpose of the law is to ensure the legal conditions for the exploitation of underground resources, the utilization and protection of mineral resources. In view of the socialist characteristics of the country, the Mineral Resources Law of the People's Republic of China emphasizes the realization of the goal of socialist modernization(http://www.asianlii.org/cn/legis/cen/laws/mrl212/). As can be seen from the objectives of the PRC law "On Mineral Resources", the basis of legislative regulation of subsoil use is based on two groups of needs of the country's development: current and long-term needs. In Kazakhstan, the focus is mainly on the current state of mineral production. Kazakhstan's main focus is on mineral exploitation and mineral trade abroad. And after all, minerals are a strategic and non-renewable resource of any state. This also applies to non-ferrous metals, as the proven reserves of non-ferrous metals at current levels of extraction may run out in a few decades. In China, mined mineral resources are used mainly for the production of commodities in Chinese industry. Kazakhstan can also make extensive use of domestically mined natural resources as raw materials for Kazakh enterprises and provide new favorable conditions for manufacturing for users of underground resources.

The Code on Underground Resources and Utilization of Underground Resources of the Republic of Kazakhstan defines the aims, objectives and basic principles in the field of utilization of underground resources. National economic development and people's well-being are the goals of developing the country's subsoil. In China, the underground resources development and follow the principles of unified planning, rational layout, reasonable production (http://www.asianlii.org/cn/legis/cen/laws/mrl212/). In China, sustainable mining is highly valued. The rationality of multiple mineral extraction is driving the mining of minerals in the major countries of the world (mainly abroad). Large-scale mining in our country is often postponed to a future time. The multiple purposes of mineral utilization presupposes, first and foremost, the development of domestic industry and the production of finished products.Given the level of industrial development of the PRC, it can be said that minerals are used for manufacturing finished products, not only for export. Kazakh legislation may provide for appropriate legal norms as a measure to ensure the growth of its own production. Obtaining licenses in the field of mining and exporting minerals may be related to the obligation to open production facilities in Kazakhstan.

Of the republic of kazakhstan on the subsoil and subsoil use "the code of the goals and principles of legislation of subsoil (https://adilet.zan.kz/rus/docs/K1700000125). Here I want to discuss in detail the relationship between the purpose of the code

and some of its principles. It seems that the wording of the principle of rational subsoil management needs to be changed and supplemented. More than three decades of experience in the development of Kazakhstan's mining industry raises some pressing questions. Underground development should bring different and multi-faceted effects. Large mineral reserves should lead to economic growth, structural reform and production development. Perhaps legislation should already provide for the direct obligation of subsoil users to produce finished products on the territory of Kazakhstan from partially extracted minerals.

The purposes, objectives, principles and implementation practices of the Mineral Resources Law of the PRCalso deserve separate study. The extraction of minerals should go together with the unified planning of the national economy. State programs on resettlement of population from one area to another, creation of new jobs in such areas, development of technical education, industrial-innovative development should be linked to the granting of the right to subsoil use.

The rights and incentives provided by Kazakhstan to users of underground resources must be linked to additional obligations of users of underground resources. Without this, the country can only be a raw material base and cannot have many industrial branches of its own. The state must reasonably exercise property rights on behalf of the people. The subsoil of the state must be fully used for the development of Kazakhstan's industry, infrastructure, posterity funds and natural rents.

Subjects of the subsoil use right in the RK may be individuals and legal entities. In China, people who wish to carry out activities in the field of underground development have the right to apply to authorized agencies. If the requirements are met, the person may be granted the right to use the subsoil. This could be exploration rights or production rights. These rights are granted subject to appropriate fees as provided by law. In general, the procedure is simple, but personnel must meet certain qualification requirements (http://www.asianlii.org/cn/legis/cen/laws/mrl212/).

The legislation of the Republic of Kazakhstan defines the types of operations that can be carried out by entities with the right to use subsoil. Subsurface resource utilization entities can carry out a variety of operations, including geological research, exploration and production. The modern legislation of RK establishes two regimes of subsoil use: license regime of subsoil use and contract regime of subsoil use.G.T. Kazieva noted that nearly 19 years later, the Underground Code has restored the licensing system. Underground resource use license is the basis for the emergence of underground resource use right (Kazieva 202:63). The law specifies the procedure for obtaining a license, the type of license, and the business to be carried out under the license. Anyone who meets the legal requirements can get a license. K.M. Ilyasova noted that the Underground Resources Law of the Republic of Kazakhstan established the principle of "first come, first served" in the relationship of granting the right to use underground resources on the basis of a permit. (Ильясова 2022: 75). The licensing process for access to underground resources appears to be the most convenient and transparent.

V.K. Filatov writes that there are two main legal regimes of subsoil use in China: licensing of subsoil use, which applies to Chinese mining enterprises; contractual forms of subsoil use corresponding to production sharing agreements; they are applied when carrying out joint activities with foreign investors. The PRC Subsoil Law provides for two types of subsoil use – prospecting and exploration and mining. The right of prospecting, exploration and the right of extraction are summarized as "the right to use subsoil" (Filatov 2011: 102).

In China, the acquisition of mineral rights is mainly through public auction or tender. Chinese law stipulates that mineral rights can only be held by legal entities. A foreign company may hold mining rights in the country. Under the Special Administrative Measures on Foreign Investment Access dated 2021, foreign investors are prohibited from investing in the exploration or mining of certain important and rare earth minerals. Foreign legal entities and individuals may not enter rare earth mining areas, acquire geological information, ore samples or rare earth production technology without authorization (Wu 2024). This circumstance seems to be very important, as geological study, exploration and extraction of the most important types of minerals is a matter of national economic interests.

Kazakh legislation provides for the right to use underground resources under civil law transactions; Transfer of the right to use underground resources by inheritance during the reorganization of the legal entity, except for transformation or succession. In the People's Republic of China, the owner of the prospecting right may transfer the prospecting right to another person after achieving the prescribed minimum cost of prospecting and obtaining a license according to law. A mining enterprise that has

obtained the right to mine may, with permission according to law, transfer the right to mine to another person. At the same time, it is prohibited to obtain profits from the sale of mineral exploration and exploitation rights.

Legislation in both countries provides for civil transactions in the use of underground resources. In Kazakhstan, the right to use underground resources can be transferred to a new entity during the reorganization of a legal entity. Chinese legislation also allows for the transfer of subsoil use rights. A mining enterprise may transfer the mining right to another enterprise. Chinese law prohibits profiting from such transactions. (http://www.asianlii.org/cn/legis/cen/laws/mrl212/). This norm is very relevant, as some companies in Kazakhstan obtained subsoil use rights without the intention to actually carry out such operations, transferred their rights to other persons and made money on such operations. In such cases, the state may suffer serious damage. The States represented by the authorizing bodies should pay attention to the trading of underground land and underground use rights. In some cases, they may be acquired without any real intention of developing the subsurface soil.

In the Republic of Kazakhstan, in addition to the licensing system in the field of the use of underground resources, there is a contract system. The system is based on agreements between the state and users of underground resources. The necessary conditions, conclusion procedures and other terms of the contract shall be determined in accordance with the law. The contract applies to the field of uranium or hydrocarbon extraction.

Kazakhstan is interested in open and transparent relations in the field of underground resource utilization. Kazakhstan strives to attract investment, develop new oil fields and generate revenue through underground development. In 2023, 74 plots were sold at auction. In the first half of 2024, about 100 plots of land were put up for auction. Such auctions will be held on the basis of the determination of the reciprocal obligation of the investor to start production of the product on the territory of the Republic of Kazakhstan at a level not less than average. Subsoil users are responsible for the social development of the area (Mamyshev 2024). Under such circumstances, there are certain prospects for developing production and solving social problems. Kazakhstan should make greater use of opportunities to exercise the right to use underground resources.

Kazakhstan has always attached great importance to mining. The legislation on subsoil use is constantly being improved. In his message to the people of Kazakhstan on September 1, 2023, the President of Kazakhstan said that Kazakhstan has a well-developed extractive industry. This sector acts as a reliable source of growth of the national economy. The head of state stressed the need to open new large deposits, modernize the management system of the mining sector, attract large private investments, create flexible regulatory and fiscal conditions. The priority right to subsoil use should be provided to investors who carry out geological exploration at their own expense (Kasym-Jomart Tokayev 2023). At present about the underground resource utilization legislation introduced the best international practice, aimed at ensuring transparency in the field of underground resource utilization.We will improve the measures for comprehensive management of mineral resources. Clear and exhaustive requirements for obtaining licenses, terms of validity, procedure for subsoil use operations, reporting and obligations of the subsoil user have been established. (https://www.gov.kz/memleket/entities/comprom/activities/2163?lang=ru).

In China, Mining industry, sufficient supply of minerals and strategic materials are directly related to the national interest and geopolitical role of the country. Chinese scholars suggest that China is facing a serious problem of severe mineral shortage. 39 of the 45 major minerals produced domestically may not be sufficient to meet China's domestic demand. To meet the country's growing demand for copper, cobalt, gold, and rare earth elements, which are vital in the production of high-tech products, China Minmetals Corporation, the largest state-owned company, has also engaged in research and development in deep-sea mining (Chen 2020: 339). Mr. Xu and others point to China's growing interest in extracting minerals from the ocean floor. China is one of the most interested states in this endeavor. China has even passed corresponding laws (Xu, 2015, 183-201). At present, a number of countries in the world with the necessary technology have declared rights to certain underwater areas in international waters and want to mine minerals there. Perhaps, in a few decades, the world will have a shortage of certain minerals. Ill-considered development of existing deposits can lead to their rapid depletion. Those who can retain the most important mineral deposits on their territory or obtain production rights in other countries will play a leading role.

China meets its own mineral needs from deposits located in China and abroad. China's mining industry is expanding to other countries.China ac-

tively participated in the mineral trade with many countries in the world. D. Liu et al. China produces and consumes a lot of minerals at the same time. PRC occupies a key position in the global economic and environmental situation. China's mining, a vital component of the country's economic growth, is accompanied by serious environmental problems, especially in terms of pollution (Liu 2024). Zhang et al. note that the judicious utilization of minerals in mineral-intensive industries has made the PRC a powerful economic power. Its rich deposits of minerals, metals and energy have been a major factor in its amazing growth. The country now combines green reform policies with mineral policies (Zhang 2024).

China is one of the leading powers in the world, the largest geopolitical player, building a long-term policy in the field of extraction, utilization and supply of all minerals necessary for the country's economy. Yu Wang et al. write that mineral resources, in particular strategic minerals, play a crucial role in national economic development and have a direct impact on the development of new strategic industries in China. Economic security serves as the foundation of national security, mineral resources form an important material basis for social and economic development. The most important policy documents adopted by top state organs and the leadership of the Communist Party in recent years have pointed out the need to implement the energy and mineral security strategy, strengthen the guaranteed reserve, build up mineral production capacity, and ensure a steady and sufficient supply of all kinds of natural resources and resource-based products. In China, the issue of strategic minerals has become a national strategic priority. This has profound implications for China's national economy, civilization and national security. In this array of critical resources, strategic minerals play a key role in strengthening the national economy and defense. They are vital to protect China's national economic security and national interests (Wang 2024).

Законодательство Китая предусматривает меры по стимулированию исследований, внедрению новых технологий в области освоения недр. (http://www.asianlii.org/cn/legis/cen/laws/mrl212/). China invests tens of billions of dollars in exploration. China's foreign trade in minerals is highly profitable (https://nangs.org/news/upstream/kitaj-vlozhil-v-geologorazvedku-pochti-90-mlrd-dollarov-za-pyat-let). In Kazakhstan, the head of the Geology Committee of the Ministry of Industry and Construction, E. Akbarov, notes that the amount of funding for state geological exploration of subsurface resources is about 10 billion tenge per year – for five years the amount of funding amounted to about 52 billion tenge, or $8 per square kilometer. At the same time, investments in geological exploration from subsoil users amounted to KZT357bn, or $67 per square kilometer, over the same period (Mamyshev 2024).It is important for Kazakhstan to increase funding for underground geological exploration. This index plays a decisive role in the development of underground resources utilization. The discovery of new mineral deposits is conducive to meeting the needs of our economy, increasing the national fiscal revenue, and injecting new impetus into the development of single-industry towns. However, there are a number of problems in the industry. According to E. Akbarov, Chairman of the Geology Committee of the Ministry of Industry and Construction, the main problems of the industry are the use of outdated exploration technologies, strong dependence on foreign suppliers for equipment and software, underdeveloped infrastructure, and insufficient funding for subsoil exploration. Kazakhstan invests $8 per 1 square kilometer in exploration. For example, Canada and Australia have invested more in the field of underground research and geological exploration (Minikhanov 2023). Kazakhstan needs to increase investment in geological exploration. However, there are certain circumstances. Investment in geological research and underground exploration should be mainly private investment. If the state invests in deposit research, it should make a bigger profit from selling access to underground resources to private companies.

Taiwi and D. Li write about the active measures taken by China's mining sector to implement a low-carbon plan. China aims to achieve carbon neutrality by 2060. In April 2021, the China Nonferrous Metals Industry Association (CNMIA) proposed a plan to peak carbon emissions in the non-ferrous metals industry. The plan aims to peak the industry's carbon emissions by 2025. "Green metals" including copper, nickel, lithium, cobalt and rare earth metals will be in high demand in China's quest to achieve rapid development in new economic sectors. According to the authors, China's demand for rare earth metals and other critical metals will remain high and will be met mainly by production in countries where Chinese mining companies are investing as part of the One Belt and One Road strategy (Tivey 2021).

As can be seen from the legislation, publications of PRC scientists and specialists, China pays special attention to the creation of a global system for ex-

ploration and production of minerals, reliable supply of the Chinese economy with all necessary types of minerals. The PRC practice shows a multi-vector approach in the development of the mining industry. The PRC utilizes a variety of mineral resources both within the PRC and in other countries and on the seabed. China's experience in terms of a reasonable and rational approach to the extractive industry deserves closer scrutiny.

Conclusion

By studying the legislation of China and Kazakhstan in the field of underground resource utilization, the following points can be found. Our legislation also has some similar characteristics and features. Both China and Kazakhstan have national laws governing relations in the field of underground resource utilization. In China, social relations are mainly regulated by laws rather than regulations. In Kazakhstan, relations in the field of utilization of underground resources are regulated by the Code. As noted by Zh.U. Tlembaeva "codified normative acts are more effective than a separate set of laws and bylaws" (Tlembaeva 2015). In addition to regulations and laws, by-laws can also be used to regulate relations in the field of underground resource utilization. Kazakhstan and China have adopted the same system in the field of underground resource use: permits and contracts are applied in the transfer of underground resource plots; Kazakhstan pays more attention to mineral exploitation and mineral trade. In the case of China, the first priority is to ensure domestic mineral production. China is trying to maximize the supply of strategic materials, non-ferrous metals and rare metals to its economy and industry through legal regulation.

The stated goals about the level and speed of economic development have forced China to address mining problems abroad. China is taking steps to enact legislation and conclude international agreements aimed at mining in different parts of the globe. It is very important for China to provide all the necessary materials for its economy. The main goal of all this is to provide Chinese companies with mineral resources and ensure stable economic growth. As a major country on the path of socialist modernization, China has a long-term development plan. These plans attach great importance to the field of underground resource utilization as the basis for achieving national economic goals. In addition, the issue of providing mineral resources for the Chinese economy is considered an important factor in ensuring national security.

It is beneficial for Kazakhstan to learn from the experience of major countries in mineral resource base management. In the long run, perhaps more attention should be paid to preserving the existing natural resource base. Attention should be paid to the relationship between the production of mineral resources and the level of industrial utilization in Kazakhstan. A significant portion of the minerals mined in a country must be used in the country's commodity production. It cannot continue to be a major source of raw materials for advanced industrial countries. Kazakhstan needs to take a more thorough approach to the production and export of mineral resources.

After all, they are exhaustible. China, the USA and some other countries try to create significant reserves of natural resources on their territory. This is done to ensure sustainable development of the country and to prevent the country's future dependence on minerals.

It is thought that the legislation of the RK on subsoil use, exploration and production of various types of minerals should provide for norms on increasing the share of Kazakhstani goods, works and services purchased by subsoil users on a mandatory basis. Exploration and extraction of minerals should be legally linked with increased obligations of subsoil users to invest in new production of high-end manufacturing industry. Exploration and extraction of non-ferrous metals as widely used in various industries could become the basis for new clusters. Tax and investment preferences could be applied to such investors.

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RELATIONSHIP AND LEGISLATIVE REGULATION OF THE CONCEPTS «ORGANIC PRODUCTS» AND «ENVIRMENTALLY FRIENDLY PRODUCT»

The article was prepared within the framework of the grant project of the Ministry of Science and Higher Education of the Republic of Kazakhstan No. AP14870596 «Problems of legal regulation of rational use and protection of pasture ecosystems».

In the National Security Strategy of the Republic of Kazakhstan for 2021-2025, signed by Head of State Tokayev Kassym-Jomart Kemelevich, priority is given to the sustainable development of the country's economy, including the agricultural sector, ensuring environmental, technological information, water and food security.

«Food security» is an integral part of «national security». In accordance with Article 22 of the Law of the Republic of Kazakhstan «On the National Security of the Republic of Kazakhstan» «food security is a part of economic security and provides for the protection of the economy, including the agro-industrial complex, in which the state is able to provide physical and economic accessibility to the population of high-quality and safe food products, sufficient to meet the physiological norms of consumption and demographic growth». As noted in the definition, «quality» and «safe food» has already become one of the main issues in the country at this stage.

Increasing the range and diversity of food production causes consumers to demand high quality and safety of food production. Recently, the concepts of product quality, safety, product certification are often heard inside the country, taking into account the requirements of consumers, a food culture has developed in society, and demand for environmentally friendly products is growing. Increasing competition in the country is directly related to improving the quality of products.

The production of environmentally friendly products is regulated by the Law of the Republic of Kazakhstan dated November 27, 2015 «On the production of organic products» and the Law of the Republic of Kazakhstan dated November 27, 2015 «On amendments and additions to certain legislative acts of the Republic of Kazakhstan on the production of organic products and the development of the agro-industrial complex».

Unfortunately, due to the lack of state standards for environmentally friendly products in the Law and the lack of a clear definition of the concept of «environmentally friendly products», there will be no consumer confidence in the quality of products manufactured on marketable goods of the brands «organic», «bio», «halal» and etc. The country needs to develop a market for standardization and certification of environmentally friendly products that meet international standards. The system of improving product quality, certification, standardization and control of products also requires attention from the state.

In the article, the authors define the concepts of «environmentally friendly product» and «organic products», provide for their legislative regulation. Analyzing the specifics of ecological products from organic, they reveal the importance and possibilities of producing high-quality food products. Proposals will also be presented to improve legislation and standards governing relations in the food market, taking into account the quality and safety of agricultural products.

Key words: organic products, environmentally friendly products, safety, market, certificate, brand, products, product quality.

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«Органикалық өнім» және «экологиялық таза өнім» ұғымының ара-қатынасы және заңнамалық реттелуі

Мақала ҚР Ғылым және жоғары білім министрлігінің № AP14870596 «Жайылымдық экожүйелерді ұтымды пайдалану мен қорғауды құқықтық реттеу мәселелері» гранттық жобасы аясында дайындалды.

Мемлекет басшысы Қасым-Жомарт Кемелұлы Тоқаев қол қойған Қазақстан Республикасының 2021-2025 жылдарға арналған Ұлттық қауіпсіздік стратегиясында ел экономикасының, оның ішінде ауыл шаруашылығы секторын тұрақты дамытуға, экологиялық, технологиялық ақпараттық, су және азық-түлік қауіпсіздігін қамтамасыз етуге басымдық беріледі.

«Азық-түлік қауіпсіздігі» «ұлттық қауіпсіздікпен» пара-пар ұғым. «Қазақстан Республикасының ұлттық қауіпсіздігі туралы» Заңының 22-бабына сәйкес «азық-түлік қауіпсіздігі экономикалық қауіпсіздігінің бір бөлігі болып табылады және мемлекет тұтынудың және демографиялық өсудің физиологиялық нормаларын қанағаттандыру үшін жеткілікті болатын сапалы және қауіпсіз азық-түлік тауарларына халықтың нақты және экономикалық қолжетімділігін қамтамасыз ете алатын экономиканың, оның ішінде агроөнеркәсіптік кешеннің қорғалу жай-күйін көздейді» делінеді. Анықтамада көрсетілгендей, «сапалы» және «қауіпсіз азық-түлік» өнімдері қазіргі кезеңде еліміздің басқарматылығында басты мәселелердің біріне айналып үлгерді.

Тамақ өнімдерінің ассортименті мен өндірісінің түрлілігінің артуы тұтынутыларға азық-түлік өнімдері өндірісінің жоғарғы сапасы мен қауіпсіздігінің қажеттілігін туындатады. Соңғы кезде ел ішінде өнімнің сапасы, қауіпсіздігі, өнімнің сертификациясы деген түсінік жиі айтылып, тұтынушылардың талаптары ескеріліп, қоғамда тамақтану мәдениеті қалыптасты, экологиялық таза өнімге сұраныс артып келеді. Елімізде бәсекелестіктің артуы өнім сапасының артуына тікелей байланысты.

Экологиялық таза өнім өндірісі елімізде «Органикалық өнім өндіру туралы» 2015 жылғы 27 қарашадағы Қазақстан Республикасының Заңымен және «Қазақстан Республикасының кейбір заңнамалық актілеріне органикалық өнім өндіру және агроөнеркәсіптік кешенді дамыту мәселелері бойынша өзгерістер мен толықтырулар енгізу туралы» 2015 жылғы 27 қарашадағы Қазақстан Республикасының Заңымен реттеледі.

Өкінішке орай, Заңда экологиялық таза өнімдерге мемлекеттік стандарттардың болмауының салдарынан және «Экологиялық таза өнім» ұғымына нақты анықтама берілмегендіктен, нарық тауарларындағы «organic», «bio», «halal» және т.б. маркада шығарылатын өнімдердің сапасына тұтынушылардың сенімі болмайды. Елімізде халықаралық стандарттарға сай, экологиялық таза өнімдерді стандарттау және сәйкестік белгісімен сертификаттау нарығын дамыту қажет. Сондай-ақ, өнімдердің сапасын арттыру, өнімді аттестациялау, стандарттау және бақылау жүйесі де мемлекет тарапынан көңіл бөлуді талап етеді.

Мақалада авторлар «экологиялық таза өнім» және «органикалық өнім» ұғымдарына анықтама беріп, олардың заңнамалық тұрғыда реттелуін қарастырады. Экологиялық өнімдердің органикалық өнімдерден ерекшелігін талдай отырып, сапалы тамақ өнімдерін өндірудің маңыздылығы мен мүмкіндіктерін ашып көрсетеді. Сондай-ақ, агроөнрекәсіптік кешен өнімдерінің сапасы мен қауіпсіздігін қарастырып, азық-түлік нарығы қатынастарын реттейтін заңнамалар мен стандарттарды жетілдіру бойынша ұсыныстар беріледі.

Түйін сөздер: органикалық өнім, экологиялық таза өнім, қауіпсіздік, нарық, сертификат, марка, өнім, өнімнің сапасы.

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Соотношение и законодательное регулирование понятий «Органическая продукция» и «Экологически чистый продукт»

Статья подготовлена в рамках грантового проекта Министерства науки и высшего образования РК № AP14870596 «Проблемы правового регулирования рационального использования и охраны пастбищных экосистем».

В Стратегии национальной безопасности Республики Казахстан на 2021-2025 годы, подписанной главой государства Токаевым Касым-Жомартом Кемелевичем, приоритет отдается

устойчивому развитию экономики страны, в том числе сельскохозяйственного сектора, обеспечению экологической, технологической информационной, водной и продовольственной безопасности.

«Продовольственная безопасность» является неотъемлемой частью «национальной безопасности». В соответствии со статьей 22 Закона Республики Казахстан «О национальной безопасности Республики Казахстан» «продовольственная безопасность является частью экономической безопасности и предусматривает защищенности экономики, в том числе агропромышленного комплекса, при котором государство способно обеспечить физическую и экономическую доступность населению качественных и безопасных продовольственных товаров, достаточных для удовлетворения физиологических норм потребления и демографического роста». Как отмечается в определении, что «качественные» и «безопасные продукты питания» уже на данном этапе стали одним из главных вопросов в стране.

Повышение ассортимента и разнообразия производства пищевой продукции вызывает потребность потребителей в высоком качестве и безопасности производства продуктов питания. В последнее время внутри страны часто звучат понятия качества продукции, безопасности, сертификации продукции, с учетом требований потребителей, в обществе сложилась культура питания, растет спрос на экологически чистую продукцию. Повышение конкуренции в стране напрямую связано с повышением качества продукции.

Производство экологически чистой продукции регулируется Законом Республики Казахстан от 27 ноября 2015 года «О производстве органической продукции» и Законом Республики Казахстан от 27 ноября 2015 года «О внесении изменений и дополнений в некоторые законодательные акты Республики Казахстан по вопросам производства органической продукции и развития агропромышленного комплекса».

К сожалению, из-за отсутствия в Законе государственных стандартов на экологически чистую продукцию и отсутствия четкого определения понятия «экологически чистая продукция» не будет доверия потребителей к качеству продукции, выпускаемой на рыночных товарах марок «organic», «bio», «halal» и др. В стране необходимо развивать рынок стандартизации и сертификации экологически чистых продуктов, соответствующих международным стандартам. Также требует внимания со стороны государства система повышения качества продукции, аттестация, стандартизация и контроль продукции.

В статье авторы определяют понятия «экологически чистый продукт» и «органическая продукция», предусматривают их законодательное регулирование. Анализируя специфику экологической продукции от органической, раскрывают важность и возможности производства качественной пищевой продукции. Также будут представлены предложения по совершенствованию законодательства и стандартов, регулирующих отношения продовольственного рынка с учетом качества и безопасности продукции агропромышленного комплекса.

Ключевые слова: органическая продукция, экологически чистая продукция, безопасность, рынок, сертификат, марка, продукция, качество продукции.

Introduction

Food security is one of the priority areas for ensuring the national security of the Republic of Kazakhstan. In modern time the huge role in maintenance of stable and normal functioning of activity of the person is played by control of conditions of production of the products intended for direct consumption and also raw materials of which these products are manufactured. It is caused by the fact that achievements of science not only have the progressive party, but also can bear negative consequences which affect first of all human health. Creation of new types of chemical fertilizers, additives, application of achievements of genetic engineering not always aim at improvement of quality of products and level of its safety, and are one of effective from the point of view of the person which is carrying out business activity, means for increase in the received commercial benefit.

Also, the fact of the integrity of the environment and the interdependence of the processes occurring in it cannot be ignored. The production of products using chemicals and genetic engineering achievements can not only increase the profitability of its commercial sale, but also have a negative impact on the environmental situation.

Another problem is providing consumers with a real choice among a diverse range of products of a product that does not contain harmful chemicals. This is difficult due to the lack of the average consumer of the necessary knowledge in this area. Manufacturers often take advantage of this fact and mislead consumers about the consumer properties of products.

The state, through legal regulation, protects the rights and legitimate interests of a person in the most important areas of life. According to article 29 of the Constitution of the Republic of Kazakhstan, citizens of the Republic of Kazakhstan have the right to health protection (https://adilet.zan.kz/eng/docs/K950001000_), enshrines for the state the obligation to protect people's health, which also consists in regulating the circulation of food products. In this regard, the Constitution of the Republic of Kazakhstan establishes that activities that contribute to the strengthening of human health, the development of environmental and sanitary-epidemiological well-being are encouraged on the territory of the Republic of Kazakhstan.

One of the main conditions for improving the quality of life of citizens is the provision of high-quality food in the required quantity. At the same time, improving the quality of agricultural products is a set of measures aimed at growing agricultural producers and increasing the competitiveness of agricultural products in a market economy.

In the context of the socio-economic development of the country, one of the main prerequisites for regulating food security issues is the development of the domestic agro-industrial complex and the preservation of villages with a delay in development. In this regard, on behalf of the President, on October 12, 2021, a government decree was adopted «On approval of the National Project for the Development of the Agro-Industrial Complex of the Republic of Kazakhstan for 2021 – 2025» (hereinafter referred to as the project) (https://adilet.zan.kz/kaz/docs/P2100000732).

During the implementation of this project, the Head of State set a number of tasks for the Government, such as increasing labor productivity, increasing the incomes of the rural population in a sustainable form, improving the standard of living and well-being of the rural population. If there are 6293 rural settlements in the country, then 4, 429 villages are provided with centralized drinking water supply (Yerkebayeva 2022). Currently, the project is being implemented on a systematic basis.

The Law of the Republic of Kazakhstan «On state regulation of the development of the agro-industrial complex and rural areas» (hereinafter referred to as the Law) was adopted on July 8, 2005 (https://online.zakon.kz/Document/?doc_id=30016403). The law includes state regulation of agricultural products, the production market, agricultural activities, industrial safety, the formation of an entrepreneurship system, and is also aimed at ensuring animal husbandry, fisheries, the food industry, veterinary and phytosanitary, infrastructure security (Yerkinbayeva 2011: 25).

The Republic of Kazakhstan is one of 25 countries with high potential for agricultural production. Nevertheless, despite the fact that agricultural products are developed, socio-economic issues have not been settled in the agricultural sector of the country. 60% of food is imported from abroad, while the remaining 40% is produced in their home country. In addition, insufficient technology for processing agricultural products into raw materials prevents the preservation of food security (Muratkyzy 2011: 12). The country is littered with low-quality food. This problem is caused by the lack of control over the quality of food, low level of certification and standardization of raw materials. This situation requires quality management of agricultural products and the requirements for the production, transportation, storage, sale of products for agricultural producers are increasing.

To process agricultural products in a country where domestic products play an important role in food security, that is, 80%, it is necessary to establish large-scale projects on the part of the state and work on special programs. According to world experience, the agricultural sector in developed countries – the United States of America, Germany, France – is always one of the priority sectors of the economy, in which, first of all, the rights of farmers are protected and a special law is adopted to protect their interests.

Production, storage, processing of agricultural products is not only a certain sector of the economy, but also a guarantee of food security. In this regard, based on the strategic plans of developed countries in regulating agricultural business, we consider it necessary to adopt the Law «On Ensuring Food Security», which is in practice in 95% of the countries of the world. The country has a law» On food safety," which was adopted in 2007 (https://adilet.zan.kz/eng/docs/Z070000301_). Within the framework of this law, more than 20 government decrees, instructions and orders of ministries have been adopted. However, these regulations indirectly regulate the relationship between agricultural products and food security. For this reason, agricultural products do not meet the requirements of the Law «On Food Safety» and the Environmental Code of the Republic of Kazakhstan (https://online.zakon.kz/Document/?doc_id=34476424#activate_doc=2).

Materials and methods

When writing the article, the scientific works of the domestic scientist L.K. Yerkinbayeva, who studies the agricultural industry, as well as the works of A. Yerkebaeva and K. Muratkyzy were used. In the course of scientific research, comparative legal, historical, dialectical methods of analysis were carried out. An analysis of the norms of the Environmental Code of the Republic of Kazakhstan, the Law of the Republic of Kazakhstan «On Food Safety» was carried out, a legal comparative analysis of the norms of the Law of the Republic of Kazakhstan dated November 27, 2015 «On the Production of Organic Products» and the Law of the Republic of Kazakhstan dated July 21, 2007 No. 301 «On Food Safety» was carried out.

The main part

In industrialized countries, organic agriculture is given special importance in the agricultural sector. In the countries of the European Union, the number of agricultural producers has now increased significantly, and it should be noted that the demand for agricultural production, that is, for organic products, is growing day by day all over the world.

Factors contributing to the demand for organic products:

The first factor is the abundance of reliable information on human health and nutrition;

The second factor is the indifference of food consumers to food safety, that is, an increase in market literacy of consumers;

The third factor is pollution of nature and nonobservance of ecological balance;

The fourth factor is the ambiguity of the idea of GMOs (genetically modified organisms), that is, the abundance of discussions (https://www.belge.com/kk/). It is these factors that have increased the demand for organic food.

In general, organic products are produced with the production of pesticides, synthetic fertilizers and pure raw materials without the use of GMOs. In plain language, organic products are a pure product that does not contain artificial food additives, does not cause any harm to the environment and human health. Organic foods differ from other foods in being high in vitamins and minerals.

On November 27, 2015, the Republic of Kazakhstan adopted the Law «On the Production of Organic Products». In accordance with article 14 of the said law, when labeling organic products and advertising them, it is allowed to use separately or in a phrase the designations or abbreviated forms given in the rules for the production and circulation of organic products arising from them, such as «bio» and «eco» (https://adilet.zan.kz/eng/docs/Z1500000423). Organic products produced in accordance with the requirements of the law are subject to certification and are marked with their mark. So, in the countries of the UN and the European Union, the concepts of «biological» and «environmental» are used in the description of the organic production system.

By definition, IFOAM is recognized as environmentally friendly products – products that have not undergone genetic changes, without the use of pesticides, herbicides, pesticides.

The concept of «environmentally friendly product» was first theoretically formulated in 1924 by R. Steiner. In the 1930s and 1940s, scientists such as G. Muller, E. Balfer and A. Howor, Fukuokoi studied and developed this idea in their work.

Environmentally friendly products are labeled in the world under different terms. In Western Europe, «biological products», in Northern Europe «environmental products», in the USA and Great Britain «organic products», in Finland «natural products». These names and markings began to be recognized on the market of our country in recent years by many names and markings, such as «economically clean products», «farm products», «bio», «eco», «organic», «natural products». Now let's talk about the interpretation and differences in the application of these terms.

One of the most popular signs in green products is the «BIO» sign. The term «BIO» means «life» in ancient Greek. That is, a bioproduct is a product in which there are living organisms. Product «BIO» natural product – a set of vitamins and nutrients. Among bioproducts, for example, «Bio kefir» and «Bio ygurt», «Food master».

Marking of products with the ECO sign is approved by special rules. The labeling of eco-products means the environmental advantage of the product, that is, it does not cause any harm to the environment during the production, storage, transportation and use of products.

Under the «Organical» label, we can say that the products are recommended to consumers who adhere to the principle of «nothing superfluous» in the product. According to the Rules for the Use of the «Organic Product» Label (SanPiN) (https://kk.healthy-food-near-me.com/eco-bio-and-organic-what-does-the-label-mean/), «Organic Product» is

associated with livestock and poultry products. Organic beef is not filled with hormones or antibiotics, and fruits and vegetables labeled «Organic» are not treated with chemicals.

In Kazakhstan, as in other post-Soviet republics, consumers often associate organic products with «environmentally friendly». For example, this approach is directly enshrined in the legislation of the Russian Federation and Tajikistan, where organic products are defined as «environmentally friendly products» (https://online.zakon.kz/Document/?doc_id=38038402&pos=155;-31#pos=155;-31).

Until recently, Kazakh legislation also contained the concept of «environmentally friendly food products» (Environmental Code as amended in 2007 and the Law «On Food Safety» as amended in 2007). This allowed some food industry enterprises to label products with the Eco sign and receive added value, but there were no clear rules for the production and control of such products. After active discussions by stakeholders, the concept of "environmentally friendly food products" was excluded in 2019 from the Environmental Code and the Law «On Food Safety» in order to bring it into line with the Law «On the Production of Organic Products».

The Law «On the Production of Organic Products» (clause 3 of article 14) allows the use of the designations «bio» and «eco», separately or together, only in the labeling and advertising of organic products that meet the requirements of organic legislation. The Law prohibits the use of any designations, signs, symbols, etc., that may mislead the consumer that the product or its ingredients comply with organic legislation. These requirements of the Kazakhstani legislation comply with the rules of the Alimentarius Code Manual (paragraph 1.2 of section 2. Guidelines)

Thus, according to Kazakhstani legislation, products labeled «bio» and «eco» are identical to «organic» products and the procedure for their production, labeling and certification should be regulated by the legislation on organic production.

It should be noted that in international trade there are many products labeled «natural», «origin green», «antibiotic free», «grassfed», etc., which in a broad sense can be attributed to «environmentally friendly» products. The popular term «natural» is usually applied to those products that are produced using natural ingredients in their composition. However, the use of such designations does not mean that these products do not contain chemicals or synthetic ingredients to which organic production is intolerable with a few exceptions.

According to Article 1 of the Law on Organic Production, organic products are agricultural products, aquaculture and fishing products, products from wild plants and products of their processing, including food products produced in accordance with the requirements of this Law (adilet.zan.kz/eng/docs/Z1500000423).

Both in the Law «On Food Safety» and in the Law «On state regulation of the development of the agro-industrial complex and rural areas» the definition of organic products is not issued, the concept «food safety» is given the following definition, that is, «food safety is the development of food products related to harm to human life and health and violation of the legitimate interests of consumers, taking into account the conjugation of the probability of the implementation of a dangerous factor and the severity of its consequences; The absence of unacceptable risk in all processes (stages) of production (manufacture), turnover, disposal and destruction» (adilet.zan.kz/eng/docs/Z070000301_).

In world practice, the manufacturing country cannot label «Organic» and «ECO» in the absence of documents and certificates confirming its products. Each country has its own standards for organic products. So, in the USA, the sign «USDA Organic Seal» is applied to organic products, in Japan – the sign «JAS», in Switzerland – the sign «Bio Suisse». Documents and certificates confirming the quality of products are issued for 1 year. In accordance with the Law of the Republic of Kazakhstan «On Trademarks, Service Marks, Geographical Indications and Names of Places of Origin of Goods», designations denoting a trademark, expression, letters, numbers, overall marks and other designations or their combined samples that allow distinguishing goods and services of one person from homogeneous goods or services of others can be registered (https://adilet.zan.kz/eng/docs/Z990000456_).

High productivity in market conditions increases the level of competitiveness and economic growth in the market, helps to save material resources.

Currently, the production of organic products in Kazakhstan is exported. The domestic market is still weak, but there is great potential for its development, especially in large cities (Grigoruk, Klimov, 2016 : 92). The concept of organic production is new and the population is not sufficiently informed about the production criteria, the advantages of organic products and the rules for their labeling (https://ecfs.msu.ru/images/publications/Organic_in_Eurasia.pdf). In this regard, there is a risk of selling products labeled as «environmentally

friendly» or similar designations without proper justification, the risk of the so-called «greenwashing», that is, «green laundering» (https://online.zakon.kz/Document/?doc_id=38038402).

The objective interpretation of the concept of «product quality» is to increase product efficiency, product quality compliance with international standards. High-quality products are produced only from high-quality raw materials. As already noted, only 40% of agricultural products in the country are produced in the form of raw materials, and the remaining 60% – from abroad. Food producers are more focused on raising incomes rather than the quality of raw materials. Today, imports of non-critical products are growing and the quality of products entering Kazakhstan lags behind world standards. We must therefore raise the culture of nutrition for our health and future.

That is, the production of high-quality food products, including domestic ones, is one of the urgent issues of the market economy. Unfortunately, the country has not developed enough domestic entrepreneurial structure in the production of natural clean nutrition, the main reason for which is the lack of funds and productive forces and there is no state support. For this reason, dependence on socially significant imported consumer goods still prevails.

The safety of agricultural products is part of the national security of the country. For any state, the safety of the country's agricultural products is a priority, since without observing the safety of agricultural products, it is impossible to ensure the economic, political, and national security of the country.

In this regard, given the current global food deficit and the global economic crisis, our state should formulate a policy to ensure the safety of agricultural products. For this, firstly, it is necessary to improve the legislation on providing the population with high-quality and safe food; secondly, the priority of sanitary and epidemiological, environmental cleanliness of imported food products; thirdly, bringing the approved domestic standards for food products in line with international standards; fourthly, inexpensive supplies of domestic food products; fifth, full provision of food to low-income segments of the population; sixth, summer cottages, horticultural and personal subsidiary plots.

Also, at present, it is necessary to adopt the Law «On Ensuring Industrial Safety of the Republic of Kazakhstan».

Conclusions

The production of high-quality food products is one of the most important factors for increasing competitiveness in the world market, allowing the Republic of Kazakhstan to join the World Trade Organization.

In the concept of the transition of the Republic of Kazakhstan to sustainable development for 2007-2024, priority is given to achieving certain successes in the country's economy, increasing the efficiency of the rational use of natural resources, and strict control of the quality of food in the domestic market.

In our opinion, an environmentally friendly product is a product that does not contain toxic substances, agrochemicals and radionuclides, which does not harm human health and its future.

The production of environmentally friendly products is formed by the level of technological processes, the quality of natural resources and substances used in production, their impact on the environment.

For the economic growth of environmentally friendly products, highly specialized knowledge and an extensive database are needed, quality assurance and control services must function in high quality.

According to the authors, the concepts for the development of environmentally friendly products are as follows:

- ecological arrangement of production forces;
- safe environmental development of industry, energy, transport and utilities;
- environmentally safe development of agriculture;
- efficient use of renewable natural resources as inexhaustible;
- complex use of return resources, disposal and neutralization of recycling waste;
- improvement of management in the field of environmental protection and environmental management, prevention of emergency situations;
- expanding the range of products according to specifics and improving environmentally friendly technology.

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Some legal issues regulating the rational use of agricultural land in the Republic of Kazakhstan

The article was prepared within the framework of the grant project of the Ministry of Science and Higher Education of the Republic of Kazakhstan № AP14870596 «Problems of legal regulation of the rational use and protection of pasture ecosystems».

Kazakhstan ranks sixth in the world in terms of pasture resources. As you know, more than 40 percent of the population lives in rural areas. Many of them would have nothing to spare if their own animals were neither their main income nor their living wage. However, the shortage of pastures has become a big problem for rural residents in recent years. In the 2021 Head of State Address, special attention was paid to this issue. At that time, Kassym-Zhomart Kemelovich paid special attention to the issues of providing pasture lands for personal subsidiary plots.

The Address stipulates that, according to the Land Code, agricultural land will not be provided to foreigners, as well as priority provision of pasture for livestock in household plots of the population and an increase in the volume of land required for the procurement of feed, and is also instructed to ensure openness in the land sector and access to the land cadastral information and create a unified national database on the land fund and real estate.

The Tax Code of the Republic of Kazakhstan does not provide benefits for enterprises processing agricultural products and agriculture. Processors purchase 90% of raw materials from peasant farms, and they are exempt from value added tax. At the same time, 50% of the price of finished products is the cost of raw materials. As a result, processing enterprises cannot credit value added tax that is subject to offset. All this today does not stimulate the competitiveness of enterprises processing agricultural products.

One of the main problems of enterprises processing agricultural raw materials is the low competitiveness of domestic products. As you know, the basis of competition for any product is its quality and price. The high level of prices for the products of Kazakhstani processing enterprises is due to an increase in interest rates on bank loans, prices for transport services, as well as the current taxation system, especially the value added tax.

The level of tax revenue from agriculture is low and it is focused only on agricultural processing. Compared to other industries, taxes from agriculture are minimal.

Taxes are the main source of financing the political and economic activities of the state, since 90 percent of state budget revenues come from tax revenues. Today, in order for taxation and tax structure to help the whole world become competitive, it is necessary to stimulate efficiency and stability, and for this it is necessary to have a tax policy, to effectively, expediently implement tax regulation.

Key words: pastures, taxes, agricultural products, land cadastre, undeveloped lands, value added tax, peasant farming.

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Қазақстан Республикасында ауыл шаруашылығы мақсатындағы жерлерді ұтымды пайдалануды реттеудің кейбір құқықтық мәселелері

Мақала ҚР Ғылым және жоғары білім министрлігінің № AP14870596 «Жайылымдық экожүйелерді ұтымды пайдалану мен қорғауды құқықтық реттеу мәселелері» гранттық жобасы аясында дайындалды.

Қазақстан жайылым жер ресурстарының көлемі бойынша әлемде алтыншы орын алады. Халқымыздың 40 пайыздан астамы ауылды жерде тұратыны белгілі. Оның көбінің негізгі табысы да, күнкөріс көзі де қолындағы жеке малы десек, артық айтқандық емес. Алайда, соңғы жылдардағы жайылымның тапшылығы ауыл тұрғындары үшін үлкен мәселеге айналып отыр.

лекет басшысы 2021 жылғы Жолдауында осы мәселеге арнайы тоқталған болатын. Сол кезде Қасым-Жомарт Кемелұлы жайылымдық жерлерді тиімді пайдалануға баса мән беріп, жеке қосалқы шаруашылықтардың малын жайылымдық жермен қамтамасыз ету мәселесіне айрықша назар аударуда.

Жолдауда жер кодексі бойынша шетелдік тұлғаларға ауыл шаруашылығы жерлерінің берілмейтіндігі, сондай-ақ, тұрғындардың қосалқы шаруашылығындағы мал басын жайылыммен қамтамасыз ету және жем-шөп дайындауға керекті жерлер көлемін ұлғайтуға басымдық беру қарастырылған және жер саласындағы ашықтық пен жер кадастрлық ақпараттарға қолжетімділікті қамтамасыз ету мен жер қоры және жылжымайтын мүлік нысандары туралы деректердің бірыңғай ұлттық базасын құру тапсырылды.

Қазақстан Республикасының Салық кодексінде ауыл шаруашылық өнімдерін өндеуші кәсіпорындарға, ауыл шаруашылығына қарастырылған жеңілдіктер қарастырылмаған. Өңдеушілер шикізаттың 90% -ын ауылшаруашылығынан шаруа (фермерлік) қожалықтардан сатып алады, ал олар қосылған құн салығынан босатылған. Ал дайын өнімнің бағасының 50% -ын шикізат құны құрайды. Осының салдарынан өңдеуші кәсіпорындар есепке жатқызылуға тиісті қосылған құн салығын есепке жатқыза алмайды. Осының барлығы бүгінгі күні ауылшаруашылық өнімдерін қайта өндеуші кәсіпорындардың бәсекеге қабілеттілігін ынталандырмайды.

Ауыл шаруашылық шикізатын өндейтін кәсіпорындардың басты мәселелерінің бірі бұл отандық өнімдердің бәсекеге қабілеттілігінің төмендігі. Кез-келген тауардың бәсекелестігінің негізін оның сапасы мен бағасының құрайтыны белгілі. Қазақстандық өңдеуші кәсіпорындардың өнімдерінің баға деңгейінің жоғары болуына банк несиелерінің пайыздық ставкаларының, транспорттық қызметтің бағасының жоғарлылығы, сонымен қатар әрекет ететін салық салу жүйесі, ерекше атап айтатын қосылған құн салығына байланысты.

Ауылшаруашылығынан түсетін салықтық түсімдер деңгейі төмен және де ол тек ауылшаруашылығындағы қайта өңдеуге шоғырланған. Басқа салалармен салыстырғанда ауылшаруашылығынан түскен салық соммалары минималды болып табылады.

Салықтар мемлекеттің саяси және экономикалық қызметтерін қаржыландырудың негізгі көзі болып табылады, өйткені мемлекеттік бюджеттің түсімдерінің 90 пайызың салықтық түсімдер құрайды. Бүгінгі күні салық салу және салықтардың құрылымы бүкіл әлемге бәсекеге қабілетті болуға ұмтылуға көмек көрсету үшін, тиімділік пен тұрақтылықты ынталандыруы қажет және ол үшін салықтық реттеуді тиімді, орынды жүзеге асыратын салық саясаты болған жөн.

Түйін сөздер: жайылым жерлері, салық, ауылшаруашылық өнімдері, жер кадастры, игерілмеген жерлер, қосылған құн салығы, шаруа фермер қожалығы.

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Некоторые правовые вопросы регулирования рационального использования земель сельскохозяйственного назначения в Республике Казахстан

Статья подготовлена в рамках грантового проекта Министерства науки и высшего образования РК № AP14870596 «Проблемы правового регулирования рационального использования и охраны пастбищных экосистем».

Казахстан занимает шестое место в мире по объему пастбищных ресурсов. Как известно, более 40 процентов населения проживает в сельской местности. У многих из них не было бы лишнего, если бы ни основной доход, ни прожиточный минимум были собственными животными. Однако дефицит пастбищ в последние годы становится большой проблемой для сельских жителей. В Послании Главы государства 2021 года особое внимание было уделено этому вопросу. В то время Касым-Жомарт Кемелович уделял особое внимание вопросам обеспечения пастбищными угодьями личных подсобных хозяйств.

В Послании предусмотрено, что по земельному кодексу не будут предоставляться сельскохозяйственные земли иностранным лицам, а также приоритетное обеспечение пастбищем поголовья скота в подсобном хозяйстве населения и увеличение объемов земель, необходимых для заготовки кормов, а также поручено обеспечить открытость в земельной сфере и доступ к земельной кадастровой информации и создать единую национальную базу данных о земельном фонде и объектах недвижимости.

Налоговый кодекс Республики Казахстан не предусматривает льгот для предприятий по переработке сельскохозяйственной продукции, сельского хозяйства. Переработчики закупают 90% сырья у крестьянских (фермерских) хозяйств, а они освобождены от налога на добавленную стоимость. При этом 50% цены на готовую продукцию составляет стоимость сырья. Вследствие этого обрабатывающие предприятия не могут зачислять налог на добавленную стоимость, подлежащий зачету. Все это сегодня не стимулирует конкурентоспособность предприятий, перерабатывающих сельскохозяйственную продукцию.

Одной из главных проблем предприятий, перерабатывающих сельскохозяйственное сырье, является низкая конкурентоспособность отечественной продукции. Как известно, основу конкуренции любого товара составляют его качество и цена. Высокий уровень цен на продукцию казахстанских перерабатывающих предприятий обусловлен повышением процентных ставок по банковским кредитам, цен на транспортные услуги, а также действующей системой налогообложения, особо подчеркиваемым налогом на добавленную стоимость.

Уровень налоговых поступлений от сельского хозяйства низкий, и он сосредоточен только на переработке в сельском хозяйстве. По сравнению с другими отраслями суммы налогов от сельского хозяйства являются минимальными.

Налоги являются основным источником финансирования политической и экономической деятельности государства, так как 90 процентов поступлений государственного бюджета составляют налоговые поступления. На сегодняшний день для того, чтобы налоговое налогообложение и структура налогов помогли всему миру стать конкурентоспособными, необходимо стимулировать эффективность и стабильность, и для этого необходимо иметь налоговую политику, эффективно, целесообразно осуществлять налоговое регулирование.

Ключевые слова: пастбища, налоги, сельскохозяйственная продукция, земельный кадастр, неосвоенные земли, налог на добавленную стоимость, крестьянское фермерское хозяйство.

Introduction

State regulation in market conditions is carried out by economic methods. In this direction, the state supports the formation of the market and its normal functioning.

The agro-industrial complex of our republic is a very important sector of the economy and plays a decisive role in eliminating the economic crisis, developing food and light industries, and ensuring political and social stability.

In his 2021 address to the people of Kazakhstan entitled "People's unity and systematic reforms – a solid basis for the country's prosperity", the head of state said, "Development of agriculture is one of the main problems. The situation in this field directly affects the food security of our country (https://www.akorda.kz/en/state-of-the-nation-addressby-president-of-the-republic-of-kazakhstan-kassym-jomart-tokayev-38126). A deep crisis has formed in the agrarian sector due to the private use of incentives for productive labor for many years. Undoubtedly, the only way out of it would be comprehensive and systematic economic reform in this area. And if we analyze how it is implemented, first of all, it is necessary to note the mistakes made in the tactics of transition to market relations. This is the modernization of agriculture. The opportunities in the agricultural sector of Kazakhstan are very large, it is necessary to actively work to export products and meet the needs of the country, introducing innovative technologies. It is also necessary to effectively use the pasture lands of our vast steppe, to develop various branches of animal husbandry, to improve sheep breeding, and to expand the range of pasture cattle breeding.

The President of our country «Economic development in the new reality Building a diversified, technological economy is simple for us not a necessity, there is no alternative to this path. Agriculture without development, it is impossible to create a competitive economy» (https://www.akorda.kz/en/addresses/addresses_of_president/president-of-kazakhstan-kassym-jomart-tokayevs-state-of-the-nation-address-september-1-2020). One of the publishing houses that marked the development of our country's economy is is diversification. Diversification – first, the country which paves the way for closer integration of the economy into the world market; secondly, as a way to strengthen economic independence; thirdly, rational use of limited resources without waste in production increasing the efficiency of production by using technology, the main factor of increasing the level of competition. Diversification development, improving the social condition of the population, additional work its role in the formation of jobs, increasing labor productivity is important.

Today, in the country, which occupies a large territory, despite the fact that work is being done on the effective use of pasture lands and improvement of animal husbandry, it is still necessary to work in this direction.

Currently, the agricultural sector of Kazakhstan faces the following tasks:

- to increase the cultivated area. Such an opportunity is not the same as in Kazakhstan in many countries of the world;
- it is necessary to significantly increase the yield of field crops, first of all, due to the introduction of new technologies;
- bringing the fodder base necessary for livestock farming in the country to the level of leading countries in this field.

Materials and methods

Since the purpose of the presented scientific article is a comprehensive analysis of legal issues of

rational use of agricultural land, more precisely, pasture land, the main methods of legal research were used in the article. In particular, methods of general legal research, historical-legal, comparative-legal methods, analogy, synthesis, dialectical development, methods of scientific analysis, and methods of transition from general to particular, induction, deduction and conclusion are used for individual legal logical methods.

Discussions and results

Agricultural products of the country in the current state of development Producers are constantly increasing the costs of agricultural production will face problems. This, in turn, increases food prices brings. To reduce costs and sell products at reasonable prices heads of agricultural enterprises to look for new opportunities forced Therefore, life in the current situation for an agricultural enterprise constant search for a rational model of existence and further development relatively high costs of agricultural production use of diversification of production as a limiting factor is found.

When the word diversification (diversification) is translated from Latin «diversus» means different and «facio» means to do. Diversification is the expansion of the range, company, enterprise change of the type of manufactured product, new in order to increase production efficiency mastering the type of production, obtaining economic benefits and preventing bankruptcy (Anasoff 1989: 358).

Under the influence of diversification, the structure of enterprises has changed, to special specialized enterprises or multi-industry complexes turns around. As a result of diversification, many large, mixed enterprises is created, due to changes in customer demand physical, functional, aesthetic and many other aspects of the enterprise's product properties change.

Diversification of production in agriculture is a resource potential industrial-innovation for full use, production in an urgent manner transfer to technology and among enterprises in this field opens the way for the formation of common interest in relations.

Diversification of agriculture is land, capital, livestock each of the resources such as farm, equipment and other assets agricultural operations for the use of various types process related to structuring.

Based on the diversification of agricultural production, innovative, use of resource-saving technologies, land resources, production possibility of integrated use of capacities and potential of enterprises will be reviewed. Diversification directions of agricultural production determining the characteristics of land resources, soil fertility, natural and climatic conditions, consumers activity, price categories of food products should be taken into account.

Today, the agro-industrial complex of Kazakhstan is at an insufficient pace in development. Also, the share of agriculture in the gross domestic product in the last 10 years No more than 8-10 percent, and in 2020, agriculture in the gross domestic product share was only 8.9 percent. Village by the state Several programs have been adopted to support agriculture, namely namely, the Agrobusiness Program, the program for the development of the agrarian industrial complex, now in 2021 The program is working until the end of the year. Certain funds are poured in, but the results of investments are insignificant.

To briefly describe the main goals of production diversification can: reduce production risks, develop a new type of product, distribution of assets between different industries, access to new markets, potential looking for investors. All goals are subordinate to the main task – get maximum profit. There are two main types of production diversification: connected and unconnected (Kasymbayeva 2021: 171).

Natural pasture is the national wealth of Kazakhstan. The traditional agriculture of our people is pasture cattle breeding. More than 50 percent of animal feed can be obtained from these pastures for public and private animal husbandry. It can be said that the pasture land also forms the ecological condition of the region, because 67.4 percent of the territory of the republic's pasture lands is cattle pasture. Desert and desert pasture lands in the republic make up 122.6 million hectares. At the same time, the feed capacity of pastures used for livestock fields is deteriorating year by year. About 21 million hectares of pastures have been completely destroyed, and millions of hectares are no longer in use, and poisonous and weedy plants are covering them (Zulpyharov 2013: 85). In addition, the deterioration of productivity and quality of pasture lands in the country is also a big problem. Exceeding the threshold level of grazing livestock has its consequences. Excessive use of fields and non-maintenance of grazing load disrupts the ecological balance. This leads not only to a decrease in the amount of fodder, but also to soil wear and erosion.

Until September last year, 2.9 million hectares of land for agricultural purposes were returned to the state. The President strictly instructed to increase its size to 5 million hectares by the end of the year. This command was given not in vain, so there are not a few people who are using the pasture land without purpose when the field of the country is narrow.

The amount of undeveloped and illegally allocated land in the country is about 10 million hect-

ares. The government and akimats should make a clear decision regarding these areas by the end of the year. Now, the moratorium on the investigation of the land issue has also been canceled. there is no obstacle to combating them. In general, the purposeful use of any land has its own procedure. What are the conditions of non-use of a given land plot for agricultural production according to Clause 4 of Article 92 of the Land Code of the Republic of Kazakhstan (https://adilet.zan.kz/eng/docs/K030000442_). In the field, the work of processing the plot of land for planting agricultural crops should be continuous. And in meadows, it is necessary to remove grass from weeds, bushes, and weeds. Only then you will not be able to swallow the grass. The absence of agricultural animals for grazing in pastures or their number being less than 20 percent of the maximum permissible norm of the load on the total area of pastures established by the authorized body in the field of agro-industrial complex development, and not cutting grass for the purpose of preparing fodder are also against the law.

In general, there are 220 million hectares of agricultural land in the country. 187 million hectares of it are pastures. Experts say that only 43 percent of it is in use. And 27 million hectares of pasture land is degraded. 40 percent of pasture lands in our country are in poor condition. Such data were known as a result of space monitoring. "Last spring, 26.2 percent of pasture lands in 60 regions of Kazakhstan were found to be in very poor condition, and 33.4 percent were in poor condition. This year, with the results of the monitoring carried out in the spring, the condition of pasture lands was differentiated. It became known that 40 percent of pasture lands are in very bad condition, 4 million hectares of pasture lands are severely degraded. It was also found that there is no food at all on 12 million hectares of land.

This has become an actual issue in our country. Especially the common people in rural areas are suffering from it. Therefore, when distributing the land returned to the state, it is better not to neglect the expansion of the pasture land of settlements. Let's not take it for granted that an entrepreneur can solve his problem through an auction, but his brother in the village does not have such an opportunity.

Land is one of the basic needs of people. In this regard, the work of returning unused lands in the country is going on intensively. The lack of pasture is an urgent problem for the agricultural industry. In this regard, the Head of State Kassym-Jomart Tokayev gave an order to return unused pasture lands to the state property.

In order to economically force the voluntary abandonment of unused agricultural land, in December 2020, amendments to the Tax Code were introduced and adopted, which would increase the tax rate of unused agricultural land by 10 to 20 times (https://adilet.zan.kz/eng/docs/K1700000120).

According to the changes made to the Tax Code in 2018, the user of the land located on the territory of the settlement pays tax not per hectare, but per square meter, as before. As a result, taxes paid by such farms to the state have increased a hundredfold.

Another problem in the field of agriculture is the non-target use of the allocated land plots. There are various reasons for not using plots of land. When citizens start their business, it may be because they could not correctly calculate their financial capabilities when creating business plans, water shortage, family reasons.

Modern requirements for the interpretation of the concept of "land use efficiency" demand to consider it as the total efficiency of all land use processes, taking into account the impact of these processes on the environment, in particular, on land resources, and on the other hand, the impact of environmental factors on land use. These effects should be reflected in the system of indicators of the efficiency of the use of land resources.

Legal state regulation in the implementation of agrarian policy is state agriculture influence on the production, processing and attraction of agricultural products, industrial and technical support and material and technical support of agro-industrial production, organization of economic activity of enterprises through the issuance of normative acts, implementation of organized activities of state authorities, and the total number of agricultural bodies that carry out regulation through economic methods competence management (Nessipbayeva 2023: 71).

On November 2, 2015, changes and additions were made to the Land Code of the Republic of Kazakhstan. Specifically, according to Article 24 of the Land Code, the term of leasing agricultural land to foreigners has been extended from 10 to 25 years (https://adilet.zan.kz/kaz/docs/K030000442_). Taking into account that more than 90 million hectares of agricultural land are not being used properly, the state recognized that the only way to effectively use the land is to transfer it to private ownership.

In order to strengthen state control over the effective use of agricultural land, changes were made to the land code in 2019 in the section on the use of remote sensing data. New mechanisms of state control were introduced through cosmomonitoring. The tax rate on unused agricultural land has doubled. Thus, in addition to the results of systematic monitoring, ground surveys, surveys and inventories, the results of space monitoring will now be used as a

source of information for agricultural land monitoring. Also, according to the order of the President of the Republic of Kazakhstan, a special draft law on the issue of digitalization of public services and land relations within the framework of the Unified State Real Estate Cadastre has been developed by the Government, and it is planned to reduce the periods of inspection and seizure of unused agricultural land from 3 years to 1 year (https://jana-kezen.kz/kk/archives/12292).

A detailed regulation of the procedure for the transfer of agricultural land through tenders has been developed. In order to ensure the transparency of the work of tender commissions, representatives of public councils and associations (at least 50% of the total number of Commission members) are legally included in their composition.

By the order of the Minister of Agriculture of the Republic of Kazakhstan dated January 17, 2020, the regulation of rational use of land for agricultural purposes was approved.

Rational use of land for agricultural purposes includes:

- maintaining and increasing soil fertility (certain level of total humus composition, easily hydrolyzable nitrogen, mobile phosphorus and mobile potassium in the plowed layer of the field). The norm will be implemented from January 1, 2021, with the exception of Akmola, Kostanay, East Kazakhstan and Mangystau regions, which will be implemented in a pilot mode.
- creation of field history/pasture book;
- maintaining and increasing a certain level of productivity of the main agricultural crops;
- conservation of crop rotations/use of pastures taking into account pasture rotations and sources of water use;
- preservation and improvement of soil fertility and meliorative condition;
- ensuring the optimal load on the pasture during the production of livestock products;
- to prevent agricultural fields from being left out of economic circulation, to prevent the growth of weeds and shrubs, as well as littering with household and industrial waste;
- includes the prevention of burning residues and by-products from agricultural crops on cultivated plots of agricultural land (https://adilet.zan.kz/eng/docs/V2000019893.).

As we can see, the agricultural producer, when using agricultural land (meadows, perennial crops and non-productive areas: excluding roads, forest plantations, rivers, lakes), forms a field history book on the web portal, as well as the recommendations of scientific organizations issued for general use. maintains crop rotations according to the rotation plan approved on the basis.

In addition, it will create a pasture history book on the web portal, and also ensure the presence of farm animals at least twenty percent of the load norm and not more.

Conclusion

85% of the agricultural land stock of the republic is pasture, most of it is located in the desert and desert zones. Most of the pastures (50.4%) belong to the State Land Fund.

Sufficient productivity of natural fodder fields in all seasons of the year is an important indicator that affects the possibility of rational management of pasture management and its economy. Livestock, on the one hand, directly and indirectly affects the productivity and quality of pasture food, on the other hand, the productivity of those animals and the quality of livestock products depends on the material and technical basis of both feed stock and pasture management, as well as livestock farming as a whole. Agricultural lands in the vicinity of settlements are classified as state needs.

Also, the Law of the Republic of Kazakhstan «On Pastures» was adopted to meet the needs of the local population and to solve the issue of providing pasture land (https://adilet.zan.kz/eng/docs/Z1700000047). In its framework, it is planned to develop and approve the plan for the management of pastures in 2 years. The purpose of the document is to redistribute pastures not used by organized farms to ensure people's ability to graze livestock.

Therefore, the participation of local self-government bodies in the development of a plan for the management and use of pastures to ensure publicity when carrying out activities related to the transfer and use of pastures is considered by law.

The main directions of regulation of the agricultural sector:

- to prevent situations in which the market prices of the agricultural industry fall to the level where it is impossible to continue normal economic activities;
- to act on the development of market infrastructure in the field of agriculture;
- conducting a protectionist policy in relation to domestic producers and supporting their export directions.

In the period of formation of the market economy, the main direction of the tax policy or the main goal of the tax policy is to create a tax system and implement a tax mechanism that allows it to function effectively.

The connection between the tax policy and the tax mechanism should be simple and clear, easy for the taxpayer to understand. For this, the following measures should be taken:

- types of taxes should not be too many, but should be specific and justified;
- it is necessary to establish a single tax rate for a specific type of tax;
- the method of determining the object of taxation, taxable income or turnover should preferably be easy, simple, easy to use and understandable;
- why the tax benefits are granted, what are the grounds for it should be proven. Tax benefits should be reduced as much as possible;
- when paying tax, it is possible that the tax was paid from the source of income, that is, from the source from which the payment was made.

For the efficient and rational use of agricultural lands, the tasks of the lands have been clarified and strengthened. Hereby, the model contract for the lease of plots was established by law. Also, the procedure for effective monitoring of agricultural lands was determined. During the first 5 years of land lease, monitoring should be done annually. During the periods, monitoring should be done every 3 years in irrigated fields, and every 5 years in non-irrigated areas (https://ile-tany.kz/2021/03/25/zher-pajdalanu-salasynda-at-aryl-an-zh-mystar-turaly-tezister/).

On January 3, 2022, the Head of State signed a law shortening the period of compulsory acquisition of unused agricultural land from 2 years to 1 year (https://www.gov.kz/memleket/entities/vko-zher/press/news/details/624889?lang=kk). Since the beginning of the year, the Ministry has identified empty lands and returned 1.8 million hectares of pastures to the state by monitoring from space. From this year, it is planned to double the fine for those who own land but do not benefit from it.

Today, the special website of the Ministry of Agriculture "Qoldau.kz" contains a fund of information about the size of land and the number of livestock of each farm. There, information about the name of the farm that does not use pastures and the preservation of pasture load is submitted to the local administration and the authorized body. Warnings are given to households that do not use the land as intended, and in case of failure, the plot is taken back. In addition, it will be required to pay 10 times the tax rate for the unused plot. In the coming days, the amount of tax on undeveloped land in the country is likely to increase up to 20 times.

Әдебиеттер

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5-бөлім

ҚЫЛМЫСТЫҚ ҚҰҚЫҚ ЖӘНЕ ПРОЦЕСС

Section 5

CRIMINAL LAW AND PROCESS

Раздел 5

УГОЛОВНОЕ ПРАВО И ПРОЦЕСС

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THE PROBLEMS OF REGULATING THE POWERS OF THE PROSECUTOR TO SUPERVISE THE PROCEDURAL ACTIVITIES OF THE BODIES OF INQUIRY AND PRELIMINARY INVESTIGATION

The article examines the current state of law enforcement practice; theoretical, legal and organizational foundations of the prosecutor's supervision of the criminal procedural activities of the bodies conducting pre-trial investigation; issues of the organization of the prosecutor's supervision of the criminal procedural activities of the bodies conducting pre-trial investigation. The ways of increasing the effectiveness of prosecutorial supervision over the execution of laws by bodies carrying out pre-trial investigation are indicated. The author actualizes: the essence, the significance of the prosecutor's supervision over the legality of pre-trial investigation and its role as a separate object; the significance and role of the principle of legality as the main and leading beginning of the entire criminal process of the Republic of Kazakhstan; the definition of the boundaries of the prosecutor's supervision over the legality of pre-trial investigation.

In the study of the questions posed, a logical, formal – legal, analytical, as well as functional method is used, revealing the qualitative characteristics of the subject of research, allowing to determine the essence of the institution under study, the possibility of regulatory impact of constitutional and sectoral legislation on the state of law and order in the Republic of Kazakhstan. In the scientific analysis undertaken by the authors, the principles of complexity and consistency are consistently implemented and productively combined, which made it possible to more fully, scientifically actualize the issues of improving criminal procedural capabilities for the realization of individual rights and freedoms.

As a result of the study, it was determined that the supreme supervision should be directed primarily to the application of laws by the apparatus of departmental and non-departmental control, but not to replace these bodies, therefore, interaction with regulatory authorities should be carried out only as their supervision.

Key words: criminal process, prosecutor's supervision, the principle of legality, pre-trial investigation.

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Анықтау және алдын ала тергеу органдарының іс жүргізу қызметін қадағалауды жүзеге асыру жөніндегі прокурордың өкілеттіктерін регламенттеу мәселелері

Мақалада құқық қолдану практикасының қазіргі жағдайы; сотқа дейінгі тергеп-тексеруді жүзеге асыратын органдардың қылмыстық-процестік қызметіне прокурорлық қадағалаудың теориялық, құқықтық және ұйымдастырушылық негіздері; сотқа дейінгі тергеп-тексеруді жүзеге асыратын органдардың қылмыстық-процестік қызметіне прокурорлық қадағалауды ұйымдастыру мәселелері зерттелді. Сотқа дейінгі тергеп-тексеруді жүзеге асыратын органдардың заңдардың орындалуын прокурорлық қадағалаудың тиімділігін арттыру жолдары көрсетілген. Автор: сотқа дейінгі тергеп-тексерудің заңдылығын прокурорлық қадағалаудың мәнін, маңыздылығын және оның жеке объект ретіндегі рөлін; Қазақстан Республикасының бүкіл қылмыстық процесінің негізгі және жетекші бастауы ретіндегі заңдылық қағидатының мәні мен рөлін; сотқа дейінгі тергеп-тексерудің заңдылығын прокурорлық қадағалаудың шекараларын айқындауды өзектендіреді.

Қойылған мәселелерді зерттеу кезінде зерттеу нысанасының сапалық сипаттамаларын анықтайтын, зерттелетін институттың мәнін айқындауға мүмкіндік беретін логикалық, формальды-құқықтық, Талдамалық, сондай-ақ функционалдық әдіс, Қазақстан Республикасындағы заңдылық пен құқық тәртібінің жай-күйіне конституциялық және салалық заңнаманың реттеушілік әсер

пен құқық тәртібінің жай-күйіне конституциялық және салалық заңнаманың реттеушілік әсер ету мүмкіндігі пайдаланылады. Авторлар қабылдаған ғылыми талдауда күрделілік пен жүйелілік принциптері дәйекті түрде жүзеге асырылады және нәтижелі біріктіріледі, бұл жеке адамның құқықтары мен бостандықтарын іске асыру үшін қылмыстық іс жүргізу мүмкіндіктерін жетілдіру мәселелерін неғұрлым толық, ғылыми тұрғыдан жандандыруға мүмкіндік берді.

Зерттеу нәтижесінде жоғары қадағалау ең алдымен ведомстволық және ведомстводан тыс бақылау аппаратымен заңдарды қолдануға бағытталуы керек, бірақ бұл органдарды алмастыруға бағытталмауы керек, сондықтан бақылаушы органдармен өзара іс-қимыл тек олардың қадағалауы ретінде жүзеге асырылуы керек.

Түйін сөздер: қылмыстық процесс, прокурорлық қадағалау, заңдылық қағидаты, сотқа дейінгі тергеп-тексеру.

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Проблемы регламентации полномочий прокурора по осуществлению надзора за процессуальной деятельностью органов дознания и предварительного следствия

В статье исследовано современное состояние правоприменительной практики; теоретические, правовые и организационные основы прокурорского надзора за уголовно-процессуальной деятельностью органов, осуществляющих досудебное расследование; вопросы организации прокурорского надзора за уголовно-процессуальной деятельностью органов, осуществляющих досудебное расследование в свете изменений законодательства, регулирующего процессуальную деятельность прокурора. Указаны пути повышения эффективности прокурорского надзора за исполнением законов органами, осуществляющими досудебное расследование. Автор актуализирует: сущность, значение прокурорского надзора за законностью досудебного расследования и его роль как отдельного объекта; значение и роль принципа законности как основного и ведущего начала всего уголовного процесса Республики Казахстан; определение границ прокурорского надзора за законностью досудебного расследования.

При изучении поставленных вопросов используется логический, формально – правовой, аналитический, а также функциональный метод, определяющий качественные характеристики предмета исследования, позволяющий определить сущность исследуемого института, возможность регулирующего воздействия Конституционного и отраслевого законодательства на состояние законности и правопорядка в Республике Казахстан. В принятом авторами научном анализе последовательно реализуются и продуктивно объединяются принципы комплексности и системности, что позволило более полно, научно активизировать вопросы совершенствования уголовно-процессуальных возможностей для реализации прав и свобод личности.

В результате исследования определено, что высший надзор должен быть направлен в первую очередь на применение законов аппаратом ведомственного и вневедомственного контроля, но не на замещение этих органов, поэтому взаимодействие с контролирующими органами должно осуществляться только как их надзор.

Ключевые слова: уголовный процесс, прокурорский надзор, принцип законности, досудебное расследование.

Introduction

Unquestioning observance and implementation of the provisions of the Constitution, laws and relevant other normative acts by all State and non-state organizations, institutions, officials and citizens means legality. This is a general legal constitutional principle.

In accordance with Article 78 of the Constitution of the Republic of Kazakhstan, «The courts have no right to apply laws and other normative legal acts that infringe on the rights and freedoms of man and citizen enshrined in the Constitution. If the court finds that a law or other normative legal act to be applied infringes on the rights and freedoms of a person and citizen enshrined in the Constitution, it is obliged to suspend the proceedings and apply to the Constitutional Court with a submission to declare this act unconstitutional» (https://adilet.zan.kz/rus/docs/K950001000_).

The Code of Criminal Procedure of the Republic of Kazakhstan enshrines the norms of the Constitution in Articles 9, 10, indicating that «The court, prosecutor, investigator, body of inquiry and in-

quirer in criminal proceedings are obliged to strictly comply with the requirements of the Constitution of the Republic of Kazakhstan, this Code, other normative legal acts specified in this Code», reveals the meaning of the principle of legality in the criminal process. Violation of the law by a court or criminal prosecution authorities in criminal proceedings is unacceptable and entails liability established by law, invalidation of illegal acts and their cancellation (https://adilet.zan.kz/rus/docs/K1400000231).

If you look at the meanings of the principles of criminal justice, you can conclude that they form a special group of guarantees for the rights and legitimate interests of citizens. The principle of legality, in fact, covers all other principles and forms the initial basis of all criminal procedural relationships. Thus, the observance of the principle of personal inviolability is impossible without legality. In this case, taking into account the sectoral «specific» inviolability of the individual, we are talking about constitutional legality, which is the prerogative of Kazakh legislation. Violation of the rule of law, of course, leads to violation of the principle of personal inviolability. The subjects of the violation of the rule of law in the criminal process are the bodies conducting the criminal process and their officials. Their violation of the rights and legitimate interests of citizens, including the right to personal inviolability in criminal proceedings, constitute a violation of the rule of law. In fact, if the principle of personal inviolability is violated, then we are talking about a violation of the principle of legality. These two principles are closely related to each other. In any case, if the violation of the principle of legality in criminal proceedings affects the rights and freedoms of citizens, then the inviolability of the individual is the primary guarantee of their protection. According to the Law of the Republic of Kazakhstan dated July 5, 2008 «On amendments and additions to certain legislative acts of the Republic of Kazakhstan on the application of preventive measures in the form of arrest, house arrest», the court authorizes detention as a measure of criminal procedural restraint (https://adilet.zan.kz/rus/docs/Z080000065_). This change can be described as a step towards the goal of preventing the facts of illegality. Thus, the authorization of detention by the courts, in turn, contributes to the implementation of the principle of personal inviolability in criminal proceedings.

The principle of comprehensive, complete and objective investigation of the circumstances of the case is also closely related to the principle of legality (Article 24 of the CPC of the Republic of Kazakhstan). The violation of legality is mainly due to an incomplete study of the circumstances of the criminal case, due to the fact that the rights of the suspect, the accused, the defendant and the convicted are not taken into account, as a result of which personal freedom is violated. Criminal procedure practice proves this. Due to the unsatisfactory indicators of law enforcement practice, first of all, the question of personal integrity arises. Statistical data indicate that during the application of measures of criminal procedural coercion, violations of the law took place, during which many citizens were illegally detained and placed in temporary detention facilities, violent actions, including mental violence, were used by the authorities conducting the preliminary investigation. Thus, the Coalition of NGOs of Kazakhstan against torture registered 624 cruel, inhuman, degrading treatment and facts of torture (Report of the NGO Coalition of Kazakhstan against Torture 2017-2019 https://www.notorture.kz /). According to the data of the Committee on Legal Statistics and Special Accounts of the General Prosecutor's Office of the Republic of Kazakhstan, 86 criminal offenses were registered in the Unified Register of Pre-Trial Investigations in 2019 under Article 146 of the Criminal Code of the Republic of Kazakhstan for crimes of torture. In 5 months of 2020, 131 criminal offenses were registered in Kazakhstan under this article. In 3 months of 2020, 16 people were convicted of torture. In 3 months of 2020, 1 police officer was convicted of torture, 10 employees of the CUIS, 5 previously convicted persons (https://www.gov.kz/memleket/entities/pravstat/documents/1?lang=ru).

The facts of illegality committed by law enforcement officers of the Republic of Kazakhstan cause enormous damage to the reputation of the state power, of which they are representatives, and the prestige of the state. Thus, a single way of forming intolerance to such manifestations of law enforcement agencies has been deduced. As a result, there is an immediate strict demand from the heads of bodies that admit facts of illegal detention, detention and torture.

Methods

In the study of the issues raised, logical, formal – legal, analytical, as well as functional methods are used to identify the qualitative characteristics of the subject of research, allowing to determine the essence of the institution under study, the possibility of regulatory impact of constitutional and sectoral legislation on the state of law and order in

the Republic of Kazakhstan. The scientific analysis undertaken by the authors consistently implements and effectively combines the principles of complexity and consistency, which made it possible to more fully, scientifically update the issues of improving criminal procedural capabilities for the implementation of prosecutorial supervision of the execution of laws as a guarantor of the implementation of the principle of legality in criminal proceedings.

Discussion

In Kazakhstan, work continues to improve the activities of the law enforcement and judicial systems. Thus, in 2014, the Criminal Procedure Code of the Republic of Kazakhstan was adopted, aimed at modernizing the criminal justice system and bringing it into line with international standards. This contributed to strengthening the legal framework and improving the quality of justice. Until the end of 2016, many amendments and additions were made to the Law «On the Prosecutor's Office» of December 21, 1995 (https://adilet.zan.kz/rus/docs/Z950002709_) at different times.

At the initiative of the head of state, the constitutional reform of 2017 marked the beginning of a new stage in the activities of the prosecutor's office, which is a law enforcement agency. If, in accordance with the old version of Article 83 of the Constitution of the Republic of Kazakhstan, the Prosecutor's office exercised supreme supervision on behalf of the state over the accurate and uniform application of laws and decrees of the President of the Republic, now the Prosecutor's office is called upon to exercise supreme supervision over the observance of legality on the territory of the Republic of Kazakhstan within the limits and forms established by law, to represent the interests of the state in court on behalf of the state and to carry out criminal prosecution. Thus, on June 30, 2017, a new Law of the Republic of Kazakhstan «On the Prosecutor's Office» was adopted (https://adilet.zan.kz/rus/docs/Z1700000081), which is a logical continuation of the implementation of the constitutional reform announced by the Head of State, and the implementation of the policy of forming a competitive national economy, as well as the introduction of the best practices of the OECD in public administration. During its development, many issues arising in the practice and theory of the application of the new Criminal Procedure Legislation were resolved. This law defines the purpose of the activity, the legal basis, the principles of organization and activity, the areas of prosecutorial supervision (main directions, subject, forms, limits and types of supervision), representation of the interests of the state in court, criminal prosecution, legal acts and the system of prosecutor's offices, as well as other issues.

By Resolution No. 608 of the Government of the Republic of Kazakhstan dated August 25, 2022, the draft Constitutional Law of the Republic of Kazakhstan «On the Prosecutor's Office» was submitted to the Majilis of the Parliament of the Republic of Kazakhstan (https://adilet.zan.kz/rus/docs/P2200000608). On September 28, 2022, the Mazhilis of the Parliament of the Republic of Kazakhstan approved in the second reading the draft Constitutional Law of the Republic of Kazakhstan «On the Prosecutor's Office», developed in pursuance of the Address of the Head of State to the People of Kazakhstan dated March 16, 2022 «New Kazakhstan: the path of renewal and modernization» (https://adilet.zan.kz/rus/docs/K22002022_1), where the Head of State noted that to increase the rule of law and systematic strengthening Law enforcement activities require the adoption of a separate Constitutional Law «On the Prosecutor's Office». Thus, on November 5, 2022, the Constitutional Law of the Republic of Kazakhstan «On the Prosecutor's Office» was adopted, defining the competence, organization and procedure of the Prosecutor's Office of the Republic of Kazakhstan (https://adilet.zan.kz/rus/docs/Z2200000155).

Article 1, Article 6 of the Law «On the Prosecutor's Office»: «Prosecutor's supervision over the observance of legality on the territory of the Republic of Kazakhstan, over the legality of the activities of state, local representative and executive bodies, local self-government bodies, institutions, their officials, other organizations, regardless of their forms of ownership, as well as acts and decisions taken by them, proceedings on administrative offenses, pretrial investigation, criminal prosecution, promptly-investigative and counterintelligence activities, enforcement proceedings, judicial acts that have entered into force, the execution of criminal penalties and the use of other measures of state coercion, state legal statistics and special accounting, compliance with international obligations of the Republic of Kazakhstan is the main guarantee of compliance with the provisions of the law, i.e. a guarantee of legality».

First Deputy Prosecutor General T.G.Tashimbayev noted the main novelties of the law: 1) The Prosecutor General of the Republic has been granted the right to apply to the Constitutional

Court before the ratification of international treaties to review their compliance with the Constitution of normative legal acts of the Republic of Kazakhstan, as well as official comments on the basic norms of the law. «This provision, along with the powers of the Prosecutor's office to challenge illegal legal acts and their cancellation in court in courts of general jurisdiction, strengthens the protection of citizens' rights. 2) When a signal is received, the main requirement for the prosecutor will be to promptly solve the problems of the population. According to previous practice, many complaints were sent to the authorized State bodies for consideration on the merits. These restrictions have justifiably attracted criticism from citizens. Now the law has expanded the list of appeals that will be considered by the prosecutor's office», T.G.Tashimbayev explained (Tashimbayev 2022).

In 2023, in order to increase the effectiveness of prosecutorial supervision over the application of legality by the bodies of preliminary investigation and inquiry, the list of normative legal acts regulating the powers of prosecutors related to the supervision of pre-trial investigation was supplemented with Instructions on the organization of supervision over the legality of criminal prosecution (https://online.zakon.kz). The main tasks of supervision are:

1) Protection and restoration of violated human and civil rights and freedoms, legally protected interests of legal entities, society and the state;

2) Identification and elimination of violations of the rule of law, the causes and conditions contributing to them, as well as their consequences;

3) Coordination of the activities of law enforcement and other government agencies in the field of combating crime.

The Instruction defines the legality of criminal prosecution as the priority areas of activity of the prosecutor's office exercising supervision:

1) Observance of constitutional human and civil rights and freedoms in criminal proceedings, prevention and prevention of torture;

2) high-quality and timely consideration of appeals from participants in the criminal process;

3) Ensuring the rights of participants in criminal proceedings to compensation for damage caused by criminal offenses;

4) Implementation of special supervision in criminal cases of violent crimes of a sexual nature against minors.

The Instruction established the procedure for supervising the legality of criminal prosecution in order to avoid duplication of activities of the prosecutor's office, in which the powers of prosecutors in the area under consideration are limited.

In the instruction, the provision is fundamental, according to which supervision should be organized from the point of view that the legality of decisions taken by investigative and inquiry bodies, as well as actions of officials conducting criminal prosecution, should be ensured. Supervision should be carried out at all stages of pre–trial proceedings – from the moment the criminal prosecution authorities are informed about the crime committed or about to be committed until the criminal case is sent to court. Verification of the legality of the start of a pre-trial investigation and taking measures to eliminate violations are carried out by the prosecutor within 24 hours from the moment of registration in the Unified Register of Pre-Trial Investigations of a statement, message or report on a criminal offense. If the fact of incorrect qualification of a criminal offense is revealed, the prosecutor immediately issues a resolution in accordance with part 1 of Article 207 of the CPC on changing its qualification, with consideration of the issue of bringing the perpetrators to disciplinary responsibility.

In accordance with the Instruction «On the organization of pre-trial investigation in the Prosecutor's office», approved by the order of the Prosecutor General of the Republic of Kazakhstan dated 2023, supervision of the legality of pre-trial investigation in criminal cases under prosecutor's proceedings is carried out in accordance with the Criminal Procedure Code of the Republic of Kazakhstan and in accordance with the procedure determined by the Prosecutor General of the Republic of Kazakhstan. This instruction regulates the procedure for the prosecutor to conduct a pre-trial investigation in accordance with the Criminal Procedure Code of the Republic of Kazakhstan and other legislation (https://online.zakon.kz/Document/?doc_id=39398226&pos=13;-40#pos=13;-40).

When a prosecutor carries out a pre-trial investigation, he is entrusted with the powers, rights and duties of an investigator provided for by the CPC. The powers and rights of the head of the investigative department provided for in article 59 of the CPC are assigned to prosecutors authorized to exercise departmental control over the pre-trial investigation in accordance with this Instruction.

According to the Instructions, the pre-trial investigation of cases of torture in accordance with part 1-1 of Article 193 of the CPC is carried out by the prosecutor. To regulate their work, the «Instruc-

tion on the organization of pre-trial investigation of cases of torture in the Prosecutor's office» was approved. The Prosecutor General's Office analyzed the main causes and conditions of torture, on their basis, on January 16, 2023, a joint order was adopted, approved by the first heads of law enforcement agencies «On approval of Instructions on ensuring respect for the constitutional rights and freedoms of citizens in criminal proceedings and in the execution of punishment» (https://ratel.kz/kaz/kak_borjutsja_s_pytkami_v_kazahstane). Prosecutors note that cases of this category are investigated only by prosecutors, that is, this is an exceptional investigative procedure, and also argue that this requires prosecutors to ensure a professional independent investigation of cases of this category (Dembaev 2022).

Also, by Order of the Prosecutor General of the Republic of Kazakhstan dated January 9, 2023 No. 15, the Instruction on the organization of supervision over the observance of constitutional human and civil Rights and Freedoms in criminal proceedings was approved, where chapter 4 «Countering torture and other forms of ill-treatment of citizens» states that the heads of territorial prosecutor's offices ensure control over the investigation of criminal cases criminal cases of torture are heard at least once a month, as well as, upon receipt of information about the use of torture, the prosecutor immediately carries out an immediate report to the head of the prosecutor's office and registration in the unified register of pre-trial investigations of the relevant report or statement under article 146 of the Criminal Code (/https://online.zakon.kz/Document/?doc_id=32819787&pos=20;-48#pos=20;-48).

The use of physical methods of violence is formally prohibited in all democratic countries of the world, however, in law enforcement practice this condition is almost universally violated. For example, Section 136-a of the German Criminal Procedure Code established: "The freedom of will and volitional actions of the accused must not be violated as a result of ill-treatment, fatigue, physical intervention, the use of means, torture, deception or hypnosis. Coercion may be used only to the extent permitted by the criminal procedure legislation. The threat of using measures unacceptable by its rules and the promise of benefits not provided for by law are prohibited" (Strafprozeßordnung // https://www.gesetze-im-internet.de/stpo/__136a.html).

However, in reality, illegal interrogation methods of the accused in Germany were and remain a great evil, often leading to judicial errors (Peters 1972: 5-48).

According to the United States Crime Control Act of 1968, a confession should be considered valid if no more than six hours have passed from the moment of detention to the moment of arraignment. An accused seeking to exclude a confession from the evidence system "must convincingly prove to the jury that he was forced to make this confession" (Ginger E.F.,, 1981. – 392 p.). According to American law, the accused has the burden of proving the illegality of the techniques by which the confession was extracted.

The use of violence against interrogated persons in the Republic of Kazakhstan is no exception. In the case where physical violence takes place, according to this Instruction, it is necessary to require a medical examination and inform the prosecutor about these facts of violation of the law.

Senior Assistant to the Prosecutor General of the Service for Supervision of the Legality of Pre-Trial Investigation and Criminal Prosecution A.B. Burbayev reports that as a result of the measures taken, this year the registration of torture decreased by 60% (from 687 to 277), 8 criminal cases were sent to court with an indictment, 531 citizens were released by prosecutors this year, illegally detained and delivered by the investigation authorities (Burbaev 2023).

The prosecutor has the right to carry out pre-trial investigation in cases of criminal offenses provided for in Chapter 17 of the Criminal Code of the Republic of Kazakhstan, in accordance with paragraph 12) of part 1 of Article 193 of the CPC. Conducting a pre-trial investigation in cases of criminal offenses provided for in other articles of the Criminal Code may be entrusted to the prosecutor, regardless of the jurisdiction established in the CPC. Also, in accordance with subparagraph 12 of part 1 of Article 193 of the CPC, the prosecutor withdraws the case from the body conducting the pre-trial investigation and transfers it to another body of pre-trial investigation in accordance with the jurisdiction established by the Code; in exceptional cases, related to the need to ensure the objectivity and sufficiency of the investigation, at the written request of the criminal prosecution body or a participant in the criminal process, transfers the case from one body to another or accepts it for its own production and investigates them regardless of the jurisdiction established by the Code.

In addition, in this area of prosecutorial supervision, we can mention the «Instructions for consider-

ing appeals to the Prosecutor's Office of the Republic of Kazakhstan», approved by Order No. 29 of the Prosecutor General of the Republic of Kazakhstan dated January 17, 2023 (https://adilet.zan.kz/rus/docs/V2300031715). This instruction has been developed in accordance with the Constitution of the Republic of Kazakhstan, the Constitutional Law of the Republic of Kazakhstan «On the Prosecutor's Office», the Criminal Procedure Code of the Republic of Kazakhstan, the Criminal Executive Code of the Republic of Kazakhstan, the Civil Procedure Code of the Republic of Kazakhstan, the Code of Administrative Offences of the Republic of Kazakhstan, the Administrative Procedural Code of the Republic of Kazakhstan, other legislative acts and clarifies the issues consideration of appeals, messages, proposals, responses and requests in bodies, departments, institutions and educational institutions of the Prosecutor's Office of the Republic of Kazakhstan. In the part not regulated by the criminal procedure legislation, it is indicated that the provisions of this Instruction apply.

As we can see, the powers of the prosecutor to supervise the execution of laws in the process of pre-trial investigation are of an authoritative and administrative nature. The new status of the Prosecutor's Office is associated with one of the main mechanisms for strengthening the rule of law – supreme supervision. All decisions were made by the investigator himself earlier, the prosecutor checked the legality of these decisions. Currently, the five main decisions in the criminal process come into force only after approval by the prosecutor. They are next. The first is the recognition of a person as a suspect; the second is the qualification of the suspect's actions; the third is the qualification of a criminal offense; the fourth is the interruption of the investigation; the fifth is the termination of a criminal case or criminal prosecution. These changes came into force at the end of 2020 and became the first stage of the implementation of the three-tier model.

From the analysis of the above-mentioned powers of the prosecutor, the following can be seen:

1. Chapter 8 of the CPC «State bodies and officials performing the functions of criminal prosecution» specifies the powers of each of them. According to the general principle, each participant in the criminal process must perform his function.

The head of the investigative department is the head of the investigative unit of the body conducting the pre–trial investigation and his deputies acting within their competence. The Head of the Investigation Department is authorized:

1) to entrust the investigation or accelerated pre-trial investigation to the investigator;

2) to monitor the timeliness of the execution of investigative actions by the investigator on the cases under his production, the observance by the investigator of the terms of investigation and detention, the execution of the instructions of the prosecutor, the instructions of other investigators;

3) to entrust the investigation to several investigators;

4) to remove the investigator from the proceedings in the case;

5) to study criminal cases and give instructions on them;

6) within the limits of its competence, to withdraw a criminal case from one investigative unit of a subordinate body carrying out a preliminary investigation and transfer it to another investigative unit of this or another subordinate body carrying out a preliminary investigation;

7) to send criminal cases to the prosecutor with a report on the completion of the pre-trial investigation, the protocol of the accelerated pre-trial investigation, as well as criminal cases completed in the order of writ proceedings;

8) to apply to the prosecutor with a petition for the cancellation of an unjustified procedural decision of the investigator;

8-1) to apply to the prosecutor for a petition against the decision of the investigating judge;

9) within the limits of their competence, to give binding instructions and instructions to the bodies of inquiry;

10) to consider complaints about actions (inaction) and decisions of the investigator.

In this regard, in order to avoid confusion of functions in the domestic criminal process, pre-trial investigation should be carried out from the very beginning by prosecutors (special prosecutor, procedural prosecutor) or investigators (interrogators).

It is also clear from the powers of the prosecutor that he carries out not only supervision, but also procedural control, that is, the prosecutor performs some of the powers of the head of the investigative department, enshrined in part 2 of Article 59 of the CPC. For example: in subparagraph 6 of part 1 of Article 193 of the CPC, in cases provided for by the CPC, the prosecutor coordinates, approves the actions and (or) decisions of the person conducting the pre-trial investigation; in case of violation of the legality, removes the investigator, the inquirer from conducting a pre-trial investigation in a criminal case. Hence, the issues of planning and organiz-

ing the pre-trial investigation process, determining the direction of the preliminary investigation and inquiry, presenting options, choosing tactics and methods of investigation, removing the investigator from conducting a pre-trial investigation in a criminal case, etc. should remain within the competence of the head of the investigative department.

2. From the analysis of this area of prosecutorial supervision, it can be noted that supervision of pre-trial investigation, criminal prosecution, operational investigative and counterintelligence activities is the main function of the prosecutor's office – an independent area of prosecutorial supervision. Therefore, prosecutorial supervision of the execution of laws by bodies conducting pre-trial investigations should be differentiated and considered as independent areas of supervisory activity, differing in criteria such as the legal basis, subjects, objects of supervision, subject matter, means of prosecutorial supervision and features of their implementation.

Conclusion

In any country, the authorities are interested in creating such a state body, which, by its structure and powers, meets the task of introducing a single order and uniform legality in all spheres of life. State and public life obliges the country to have a reliable mechanism for ensuring accurate and uniform enforcement of laws, as well as law and order. Therefore, the main integral attribute of the political system of almost every state is such a structure as the prosecutor's office. The creation of such a body as the Prosecutor's Office is an objective necessity due to the social role of law and legality in the development of society and the state. In this regard, it should be noted that the role and place of the prosecutor's office in the system of State bodies and management do not yet fully correspond to its functions of exercising supreme supervision over the current legislation. The role of the prosecutor's office is often reduced to subtle guardianship over the verification of departmental acts, instructions, and not supervision of the legality of these instructions. In accordance with Article 83 of the Constitution of the Republic of Kazakhstan, supreme supervision should be aimed primarily at the application of laws by the apparatus of departmental and non-departmental control, but not at replacing these bodies. Therefore, interaction with regulatory authorities should be carried out only as their supervision.

Thus, the institution of prosecutorial supervision in criminal proceedings in the Republic of Kazakhstan needs further development and complete improvement. The directions of subsequent research should be based on strengthening the rule of law and the rule of law; the introduction of democratic approaches and actions in all spheres of public life of the people of Kazakhstan, including state and legal institutions of power.

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LEGAL INSTRUMENTS OF COMBATING LEGALIZATION (LAUNDERING) OF PROCEEDS OF CRIME IN CONDITIONS OF DIGITAL EVOLUTION OF THE REPUBLIC OF KAZAKHSTAN

The article investigates domestic legal instruments used in combating legalization (laundering) of proceeds of crime in the conditions of digital criminal development. The purpose of this article is to introduce the results of the authors' research area to the scientific community. Legalization (laundering) of proceeds of crime poses a serious threat to the financial stability and economic security of the state as a whole. One of the factors having a negative impact on the traditional financial system has become the spread of digital assets, including cryptocurrencies, NFT – tokens, the volume of transactions has an annual exponential growth. The main principle of legalization of criminal proceeds assumes complete disclosure of criminal activities from law enforcement and controlling authorities and their further involvement in legitimate economic activities, as blockchain technologies allow to perform these activities anonymously. Measures taken by state authorities to prevent criminal legalization (laundering) of money and proceeds, such as regulations, financial transaction monitoring systems, international cooperation and measures to strengthen financial transparency are analyzed. The development, adoption and implementation of a comprehensive system of measures aimed at protecting the rights and legitimate interests of citizens and society, the state and the organization of the legal mechanism in combating money laundering requires the adoption and consistent implementation of effective measures.

The significance of the performed research resides in the possibility of application of the obtained results in the field of combating criminal legalization (laundering) of proceeds. In the course of the research, the article highlights the issues of efficiency and possible upgrading of legal instruments in the context of combating criminal legalization (laundering) of proceeds in Kazakhstan. Emphasis is placed on the efficiency of these instruments and possible implementation difficulties.

Key words: legalization, laundering of the criminal income, combatting, digital assets, cryptocurrencies.

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Қазақстан Республикасының цифрлық дамуы жағдайында қылмыстық жолмен алынған кірістерді заңдастыруға (жылыстатуға) қарсы күрестің құқықтық құралдары

Мақалада қылмыстық жолмен алынған кірістерді заңдастыруға (жылыстатуға) қарсы күресте қолданылатын отандық құқықтық құралдар қылмыстың цифрлық дамуы жағдайында қарастырылады. Қылмыстық жолмен алынған кірістерді заңдастыру (жылыстату) жалпы мемлекеттің қаржылық тұрақтылығына және экономикалық қауіпсіздігіне елеулі қатер төндіреді. Дәстүрлі қаржы жүйесіне теріс әсер ететін факторлардың бірі сандық активтердің таралуы, соның ішінде. криптовалюталар, NFT – транзакциялар көлемі жыл сайынғы экспоненциалды өсімге ие таңбалауыштар. Ақшаны жылыстатудың негізгі қағидасы қылмыстық әрекеттерді құқық қорғау және бақылаушы органдардан толығымен жасыруды және оларды заңды экономикалық қызметке одан әрі тартуды қамтиды, өйткені блокчейн технологиялары бұл әрекетті жасырын түрде жүзеге асыруға мүмкіндік береді. Қылмыстық жолмен алынған ақшаны және кірістерді заңдастыруды (жылыстатуды) болдырмау бойынша мемлекеттік органдардың атқаратын шаралары, мысалы, нормативтік құқықтық актілер, қаржылық операцияларды бақылау жүйелері, халықаралық ынтымақтастық және қаржылық ашықтықты күшейту шаралары талданады. Азаматтар мен қоғамның, мемлекеттің құқықтары мен заңды мүдделерін қорғауға және қылмыстық кірістерді заңдастыруға (жылыстатуға) қарсы іс-қимылдың құқықтық тетігін ұйымдастыруға бағытталған шаралардың кешенді жүйесін әзірлеу, қабылдау және іске асыру мақсатында тиімді тетіктері қажет.

Зерттеу барысында мақалада Қазақстандағы қылмыстық заңдастыруға (жылыстатуға) қарсы іс-қимыл контекстіндегі құқықтық құралдардың тиімділігі мен ықтимал жақсарту мәселелері көтерілді. Бұл құралдардың тиімділігіне және оларды пайдаланудағы мүмкін проблемаларға ерекше назар аударылады.

Түйін сөздер: заңдастыру, қылмыстық кірістерді жылыстату, қарсы іс-қимыл, цифрлық активтер, криптовалюта.

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Правовые инструменты противодействия криминальной легализации (отмыванию) в условиях цифрового развития Республики Казахстан

Статья исследует отечественные правовые инструменты, используемые в противодействии легализации (отмыванию) доходов от преступной деятельности в условиях цифрового развития преступности. Цель настоящей статьи является ознакомление научного сообщества с результатами области исследования авторов. Легализация (отмывание) доходов от преступной деятельности представляет серьезную угрозу для финансовой стабильности и экономической безопасности государства в целом. Одним из факторов, оказывающих негативное влияние на традиционную финансовую систему, стало распространение цифровых активов, в т.ч. криптовалют, NFT – токенов, объем сделок, с которыми имеет ежегодный экспоненциальный рост. Основным принципом легализации преступных доходов предполагает полное сокрытие преступной деятельности от правоохранительных и контролирующих органов и дальнейшее их вовлечение в законную экономическую деятельность, поскольку технологии блокчейн позволяют осуществлять эту деятельность анонимно. Анализируются меры, принимаемые государственными органами для предотвращения криминальной легализации (отмывания) денег и доходов, такие как нормативно – правовые акты, системы мониторинга финансовых транзакций, международное сотрудничество и меры по укреплению финансовой прозрачности. Для выработки, принятия и осуществления комплексной системы мероприятий, направленных на защиту прав и законных интересов граждан и общества, государства и организации правового механизма в противодействии легализации (отмывания) преступных доходов, требуется принятие и последовательное осуществление эффективных механизмов.

Ценность проведенного исследования заключается в возможности применения полученных результатов в области противодействия преступной легализации (отмывания) доходов. В ходе исследования в статье подняты вопросы результативности и возможные улучшения правовых инструментов в контексте противодействия преступной легализации (отмыванию) доходов в Казахстане. Особое внимание уделяется эффективности этих инструментов и возможным проблемам в их применении.

Ключевые слова: легализация, отмывание преступных доходов, противодействие, цифровые активы, криптовалюта.

Introduction

The industry of digital assets is growing rapidly around the world. Today, a number of countries allow digital assets to be used as settlement tools, to attract investment, and for other purposes.

The application of digital assets has obvious advantages from the consumer's point of view. In particular, they include high speed of transactions; the absence of a single centralized intermediary issuing virtual assets, which significantly reduces the associated costs, and, accordingly, the cost of transactions; the privacy; a simplified procedure for raising funding during ICO (Initial coin offering – a form of investment attraction) for the implementation of commercial and charitable projects (Razdorozhny 2019: 147).

Meanwhile, the development of Internet capabilities and the increasing digitalization of payment processes have revolutionized the ways in which the proceeds of crime are laundered. New technological advances, including in social media, online platforms, online gambling, mobile payments, transfers, digital and cryptocurrencies, and anonymization software, have reduced the risks and costs for professional "launderers" associated with their criminal activities (http://www.fatf-gafi.org/publications/methodandtrends/documents/professional-money-laundering.html).

In this regard, the development of blockchain technologies, using digital assets (cryptocurrencies, NFT – tokens) created on their basis, which are not tied to the financial system of any state, carry high

risks and threats associated with criminal legalization (laundering) of proceeds, remaining in the shadow of state financial monitoring.

Among the risks arising from the use of digital assets is the anonymity of blockchain users. Although the full version of the distributed ledger is stored locally with each user, each user is anonymous, as the only tool to identify the user in the distributed ledger is a unique cryptographic key, which is a set of symbols and by itself does not in any way lead to its holder. In case the user uses such means as VPN-connection, TOR and similar technologies, multiple transfers of digital assets from one wallet to another, use of special services of cryptocurrency mixers, such as Coinmixer.se, detection of the user is practically impossible. This circumstance creates significant risks associated with combating money and income legalization (laundering) (Kumukov 2018: 144).

Back in 2015, in their Guidance on the Risk-Based Approach for Convertible Virtual Currencies, FATF experts noted that in the near term, only convertible virtual currencies that can be used to transfer value to/from fiat currencies and the regulated financial system are likely to pose money laundering/terrorist financing (ML/TF) risks. Therefore, countries should focus their AML/CFT efforts, within a risk-based approach, on convertible virtual currencies that pose a higher ML/TFrisk (https://eurasiangroup.org/files/uploads/files/FATF_documents/FATF_Guidances/ROP_Virtualnye_valyuty.pdf).

It is notable that also UN Security Council Resolution No. 2462 (UN, 2019), urged all states to improve the traceability and transparency of financial transactions, including by fully utilizing new and emerging financial and regulatory technologies to enhance the availability of financial services and facilitate effective implementation of anti-ML/TF measures (https://www.un.org/securitycouncil/ru/content/sres24622019).

Materials and methods

The present study was carried out by applying a set of methods traditionally used in legal science, i.e.: general scientific, historical-legal, comparative-legal, formal-logical, system-structural. Along with the above methods, private methods that meet the goals and objectives of the subject of the study are applied: analysis and evaluation of narrative sources, international legal acts ratified by the Republic of Kazakhstan, relevant to the issues under consideration.

Review of the literature

A number of domestic scientists such as Smagulov A.A., Sandrachuk M.V., Syzdykov E., Temirbulatov S.G., Temiraliev T.S., Ukanov G.K. and others have studied the issues of criminal legalization (laundering). At the same time, a number of candidate dissertations (Beisenov A.M., Beskempirov I.S., Bosholov A.S., Davydov V.S., Denega O.P., Nigmatulin A.Y.) are devoted to certain aspects in the studied sphere.

Among the scientists of the near abroad countries it is necessary to note the scientific works of Ananikyan D.S., Arefiev A.Y., Baranov R.A., Bagautdinova S.K., Bershtam B.E., Busarova O.A., Volzhenkin B.V., Gaukhman I.M., Garifullin R.F., Dikanova T.L., Zhesterov P.V., Zimin P.V., Zhalinsky A.E., Zhurbin R.E., Zhesterov P.V., Zhesterov P.V, Karabash A.O., Karleba V.A., Klepitsky I.A., Kobets P.N., Krayushkin A.A., Lyaskalo A.N., Makarevich A.A., Mikhailov V.I., Movesyan A.G., Osipov N.R., Pogosyan G.O., Pakhomchik S.D., Proshunin M.M., Rodikova E.M., Rudaya T.Y., Stakh A.A., Hakimova E.R., Khomich O.V., Cherney V.V., Shakhmatov A.V., Shapiro L.G.

The research of issues in this area has been the subject of studies of scientists from foreign countries such as Grant V., Gray L., Greenberg T., Dah E., Kerner H.H., Robinson D., Samuel D., Stieranka J., and others.

Despite the significant contribution made by the authors of these research to the study of individual issues of combating legalization (laundering) of proceeds of crime, today, taking into account the digital revolution in the ways of legalization (laundering) of proceeds of crime, the issue of a comprehensive approach to solving institutional problems affecting the effectiveness of combating this phenomenon has remained practically outside the scope of scientific research. In particular, the works of the mentioned scientists are mainly devoted to the issues of theoretical aspects of the etymology of the concept of legalization (laundering) of criminal proceeds, its place in the structure of the "shadow" economy, criminological reasons contributing to its commission, criminal law, criminal procedure and criminalistic directions of counteraction to crimes of this nature. In this regard, given the relevance of the digital transformation of crime, including the use of digital assets, the issues of detection and disclosure of these crimes in this way practically no attention has been paid, as indicated, in particular, by the current lack of effective, scientifically based methods in this area.

In this regard, in our opinion, the necessity has arisen to revise qualitatively the approaches in combating criminal legalization (laundering) affecting the efficiency of detection and disclosure of the above-mentioned type of crime committed in the conditions of digital transformation and to develop recommendations that may affect the situation in general.

Results and discussion

At this stage, the Republic of Kazakhstan has taken a number of organizational and legal measures to implement international standards to regulate the activities of digital asset turnover.

Since Kazakhstan joined the Eurasian Group on Combating Money Laundering and Financing of Terrorism (hereinafter – EAG) in 2011, which is a regional body similar to the Financial Action Task Force (hereinafter – FATF), the country has been implementing international institutions and recommendations on combating money laundering and terrorism financing, which resulted in the successful completion of the mutual evaluation procedure on combating money laundering and financing of terrorism. (https://eurasiangroup.org/ru/mutual-evaluation-report-of-the-republic-of-kazakhstan-has-been-published-on-the-eag-website).

Thus, the term "digital asset" was first enshrined in domestic legislation in June 2020 (https://adilet.zan.kz/rus/docs/K940001000_), and already in February 2023 the Law "On Digital Assets in the Republic of Kazakhstan" was officially published (https://adilet.zan.kz/rus/docs/Z2300000193).

It is necessary to note that according to the Law of the Republic of Kazakhstan "On Informatization" (p. 55-1 art. 1), "digital asset" is defined as property created in electronic digital form with the use of cryptography and computer calculations, which is not a financial instrument, as well as an electronic digital form of certification of property rights. Also, in this law (Art. 31-1) it is established that a digital asset is not a means of payment. One of the types of digital asset is a "digital token", defined as a digital means of recording, exchange and certification of property rights (https://adilet.zan.kz/rus/docs/Z2200000141/info).

The main legal act regulating the sphere of combating ML/TF in Kazakhstan is the Law of the Republic of Kazakhstan "On Combating Legalization (Laundering) of Proceeds of Crime and Financing of Terrorism" dated July 1, 2016 (https://adilet.zan.kz/rus/docs/Z090000191). The regulatory act establishes a set of measures to be implemented to prevent ML/TF, including:

- identification and assessment of ML/TF risks.
- customer due diligence.
- monitoring of financial transactions.
- reporting of transactions subject to financial monitoring.
- cooperation with law enforcement and other government agencies.
- international cooperation.

It is to be noted that the AML/CFT Law also includes persons engaged in the issuance of digital assets, organization of trading of such assets, as well as provision of services on exchange of digital assets for money, valuables and other property as subjects of financial monitoring.

Within the established legal framework in Kazakhstan, various legal instruments are used for combating ML/TF:

- identification and assessment of ML/TF risks: financial monitoring entities are obliged to carry out identification and assessment of ML/TF risks in relation to their clients and transactions.
- customer due diligence: financial monitoring subjects are obliged to conduct customer due diligence, including the examination of the origin of their funds.
- monitoring of financial transactions: financial monitoring subjects are obliged to monitor financial transactions of their clients in order to identify suspicious transactions.
- reporting on transactions subject to financial monitoring: financial monitoring subjects are obliged to submit to the Financial Monitoring Agency (FMA) reports on transactions falling under the definition of transactions subject to financial monitoring.
- Cooperation with law enforcement and other state bodies: subjects of financial monitoring are obliged to cooperate with law enforcement and other state bodies within the framework of investigations related to ML/FT.
- international cooperation: Kazakhstan interacts with other countries in the sphere of combating ML/TF within the framework of international organizations and bilateral agreements.

Briefly about the institutional mechanism of combating money laundering.

Thus, for the purposes of implementing measures to combat money laundering and terrorist financing, Kazakhstan has established a system of state bodies and organizations with appropriate powers. It includes:

- Financial Intelligence Unit of the Financial Monitoring Agency of the RK.

- Economic Investigation Service of the Agency for Financial Monitoring of the Republic of Kazakhstan.

- National Bank of the Republic of Kazakhstan.

- Prosecutor's Office of the Republic of Kazakhstan.

- National Security Committee of the Republic of Kazakhstan.

- Anti-Corruption Agency of the Republic of Kazakhstan.

- Ministry of Internal Affairs of the Republic of Kazakhstan.

Meanwhile, law enforcement agencies, on the basis of the Joint Agreement (No. 1009-dsp of 14.10.2020) submit to the Financial Intelligence Unit of the Financial Monitoring Agency (hereinafter – FMSA FIU) requests authorized by prosecutors to obtain financial information, including from foreign partners, when conducting parallel financial investigations, investigations of predicate offences and ML/TF. The information obtained from the FMSA is used to collect evidence both at the stage of criminal investigations and in criminal cases (https://eurasiangroup.org/ru/mutual-evaluation-report-of-the-republic-of-kazakhstan-has-been-published-on-the-eag-website).

There are still issues that need to be resolved despite all the adopted normative-legal norms and memorandums on interagency cooperation regulating the ML/TF sphere.

As of today, at the legislative level, there is still no full-fledged regulation of unsecured digital assets in the territory of the Republic of Kazakhstan, including purchase, sale and exchange. The Law of the Republic of Kazakhstan "On Digitalization" only states that the issuance and circulation of unsecured digital assets (cryptocurrencies) is allowed only within the framework of the International Financial Center "Astana".

In turn, the use of unsecured digital assets poses high risks of money laundering and terrorist financing.

The lack of a mechanism for tracking the flow of digital assets and information about their holders prevents law enforcement agencies from detecting financial and economic offenses committed using this financial instrument.

This omission contributes to an increase in the share of the shadow economy, the growth of corruption and destabilization of the economy in general. (https://adilet.zan.kz/rus/docs/U2200001038#z182).

This raises the relevant question of what legal means are available to control unsecured digital assets.

According to a number of Kazakhstani scientists, there are a lot of issues in the legislation of the Republic of Kazakhstan, which are currently not regulated: there are no definitions of the terms "cryptocurrency wallet", "cryptocurrency hot wallet", "cryptocurrency cold wallet", "virtual account", "crypto exchange" or "organization of trading in digital assets"; there are no provisions ensuring legal regulation of interaction between crypto exchanges and second-tier banks, as well as their clients (individuals and legal entities); there are no requirements for crypto exchanges and their cyber security Also of particular importance is the legalization of digital assets held by certain citizens. These provisions are important because they will be the basis for the formation of legal mechanisms in the field of digital assets (https://doi.org/10.52026/2788-5291_2023_72_1_98).

In the context of digital development, traditional approaches to combating ML/TF require adjustments. Digital technologies create new opportunities for committing crimes and money laundering, which requires the introduction of new legal instruments.

Considering the specifics of cryptocurrencies and recommendations of specialized international organizations, according to Safarli A.H., it is possible to outline the following measures to address the current issues of using unsecured cryptocurrencies for money laundering by involving cryptocurrency exchanges in the implementation of international anti-money laundering and combating the financing of terrorism (AML/CFT) programs, as follows:

- restricting access to users from countries under international sanctions.

- removal of anonymous cryptocurrencies from the platforms.

- organizing cooperation with analytical services that facilitate the fulfillment of requirements for monitoring clients and transactions.

- participation in the regulation of the industry through cooperation with national financial regulators and creation of their own associations aimed at forming common standards of international level.

- strengthening cooperation with law enforcement, tax authorities, as well as international organizations such as Europol, etc. (mgimo.ru/science/diss/safarli-a-h.php?utm_source=google.com&utm_medium=organic&utm_campaign=google.com&utm_referrer=google.com).

Positive experience of European countries in combating money laundering through the use of cryptocurrencies and other digital assets should also be noted. Thus, the Finance Ministers of the EU member states approved at a meeting in Brussels a comprehensive set of rules for the regulation of cryptocurrency assets – the European Parliament adopted this document in April 2023. The rules will be implemented in 2024. According to the document, from January 2026, cryptocurrency service providers are obliged to record the names of senders and recipients of crypto assets during transactions, regardless of the number of transfers (www.consilium.europa.eu/en/press/press-releases/2024/01/18/anti-money-laundering-council-and-parliament-strike-deal-on-stricter-rules).

In our opinion, the introduction of a procedure for identifying both originators and beneficiaries of cryptocurrency transactions offers promising opportunities in combating the illegal phenomenon under study. This will increase the transparency of transactions of digital assets, reduce the anonymity of users, and facilitate cooperation with law enforcement agencies of other countries in the field of AML/CFT.

There is no less interesting suggestion of L.V. Sannikov, paying attention to the recommendations noted already in the close cooperation of countries with each other in the field of regulation of digital asset turnover:

- increase the implementation of tools to enhance the ability to research virtual assets (VAS). All countries or FATF member states should continue capacity building initiatives on distributed ledger technologies and their role in preserving or preventing money laundering or terrorist financing. Guidance and training initiatives, exchange programs and international conferences, and the development of public-private partnerships (PPPs) are needed. These activities can provide an up-to-date view of this growing threat.

- applying rules to regulate virtual asset service providers (VASP) to prevent money laundering.

- all countries or FATF member states are encouraged to establish clear regulatory frameworks and processes to support the registration of AML/CFT rules necessary to supervise VASPs, such as cryptocurrency exchanges, custodial wallet providers, and other entities that issue or transfer VAS, as recommended. VASPs should be regulated in the same manner as other financial intermediaries and should contribute to the global development of AML/CFT through compliance programs, risk-based due diligence, reporting, etc. VASPs should be required by AML/CFT regulations to report suspicious transactions and conduct enhanced due diligence on customers and their transactions.

- strengthening elements of international cooperation. Cooperation and information sharing are essential to dismantling criminal organizations. In this regard, all countries/states are encouraged to utilize available global platforms for international investigations, such as those provided by Interpol, Europol, Egmont Group and FIU.net, in addition to judicial channels of cooperation and assistance. Public-private partnerships and cooperation initiatives between law enforcement agencies and private companies, universities, non-governmental organizations, etc. should be actively encouraged to support the flow/sharing of information and the development of new technologies and investigative techniques. It can strengthen the ability of officers to trace illicit financial flows and/or obtain additional information in a timely manner from a VASP based overseas.

- improving the application of a multidisciplinary approach. VAS-related investigations require a combination of traditional and specific investigative techniques to gather evidence of the underlying criminal activity. Therefore, a multidisciplinary approach in this area is needed, incorporating expertise in cybercrime and financial investigations that can be utilized not only in the investigative field itself, but also to improve training and regulation. Synergy between financial and cyber investigators is essential; joint teams composed of investigative experts from both fields are strongly recommended.

- promoting new technologies applied to financial investigations involving digital assets. New technologies in financial investigations are critical to improving the confiscation and efficiency of financial investigations, as well as mitigating the associated risks. Research and innovation of tools that can assist in the investigation and prevention of money laundering and terrorist financing committed through virtual assets is strongly encouraged.

- adapting an investigative strategy. Each criminal scheme utilizing digital assets is different. Therefore, prosecuting authorities should adapt their anti-money laundering strategies to the identified typology of such crimes. In addition, the tracking of transactions involving digital assets should become an ongoing task (https://cyberleninka.ru/article/n/legalizatsiya-kriptovalyuty-v-rossii-problemy-i-perspektivy).

At the same time, we believe that artificial intelligence (AI) technologies should be considered as

one of the most promising tools to enhance the effectiveness of combating ML/TF.

Such a tool can be used for various tasks in the field of combating ML/TF, including:

- big data analytics: AI algorithms can analyze large amounts of financial data to identify suspicious transactions and patterns.

- detecting irregularities: AI can detect deviations from normal financial behavior that may indicate ML/TF.

- transaction classification: AI models can categorize transactions by ML/TF risk.

- risk prediction: AI can predict ML/TF risk based on historical data and current customer behavior.

- reporting automation: AI can automate the process of reporting transactions subject to financial monitoring.

Further training of AI professionals is also needed. This issue requires a comprehensive approach that combines education and training, practical experience, certification and accreditation, cooperation and knowledge sharing.

The opinion of A.M. Saitbekov can be accepted here, according to whom it is difficult to foresee some of the risks arising in the sphere of public administration and related to digitalization. For example, regardless of the level of technology development, there is always the possibility of technical failures that can lead to temporary inaccessibility to services or data loss. The state is required to control the quality of digital infrastructure through auditing and certification policies. At the same time, it should be taken into account that digital infrastructure requires regular updates and qualified support, which can be a problem, especially for budgetary organizations. Digitalization requires new skills and knowledge among employees of public bodies. Institutions are not always ready to quickly adapt and retrain their staff. Lack of professional staff can also be considered one of the risks of digitalization of public administration (kostacademy.edu.kz/akademija/ooniirid/zhurnal/gilim4_79_2023.pdf).

A number of other countries are also considering the need to regulate new technologies. In late April 2023, Japanese publication Kyodo reported that the G7 countries – the US, UK, Germany, Japan, Canada, Italy, France – are working on international standards for the use of AI (https://english.kyodonews.net/news/2023/04/17d71e422eb9-g-7-agree-to-pursue-responsible-ai-amid-rapid-spread-of-chatgpt-use.html).

As of today, Kazakhstan has developed the Concept of Artificial Intelligence Development, prioritizing the following sectors of the economy for the introduction of artificial intelligence: – public administration; – healthcare; – education; – finance; – logistics; – agriculture; – industry (legalacts.egov.kz/npa/view?id=): – public administration; – healthcare; – education; – finance; – logistics; – agriculture; – industry (legalacts.egov.kz/npa/view?id=14945497).

Yet, the Concept fails to mention issues related to law enforcement, in which its use can play a significant role not only in combating ML/TF, but also cybercrime in general.

Conclusion

In the context of digital development, Kazakhstan faces new challenges in combating ML/TF. Existing legal instruments must be adapted to new technologies and adapted to changing threats. New legal instruments, such as the use of AI, blockchain-based transaction analysis, access to beneficial ownership data, and enhanced international cooperation, are required to improve the effectiveness of the ML/TF response. By taking these measures, Kazakhstan can strengthen its system of combating ML/TF and reduce the risks associated with this phenomenon.

Attention should be paid to the capabilities of AI, increasingly playing an important role in combating cybercrime. The advantages of AI, such as speed, accuracy, objectivity and automation, make it possible to combat this phenomenon more effectively. However, there is a need to consider the challenges and limitations associated with the use of AI and to develop a clear regulatory framework for its responsible use. As AI develops and integrates with other technologies, it is expected to continue to play a crucial role in anti-criminal money laundering and national security.

For these purposes, recommendations should be made to supplement the Concept for the Development of Artificial Intelligence for 2024-2029 with the inclusion of law enforcement agencies on the use of AI technologies in combating not only ML/TF, but cybercrime in general.

The author has identified potential AML/CFT risks due to the development of digital assets and proposed recommendations for their minimization.

As a result of the study, the following conclusions were made:

Firstly, digital asset is a high-tech segment of monetary circulation, which represents an objective new stage in the development of the settlement system, which contains many risks and threats to the national anti-criminal legalization (laundering) system.

Secondly, the following risks of using digital assets for money laundering have been identified: simplicity of cross-border transfers, anonymity and speed of transactions, lack of proper control and regulatory framework for unsecured cryptocurrencies and minimization of the risk of money laundering through cryptocurrencies.

Thirdly, the main drawback in combating these risks is the weak legal regulation of unsecured cryptocurrencies in Kazakhstan. We consider it necessary to improve domestic legislation in the field of regulation of digital assets based on the experience of European countries with the identification of senders and receivers of digital assets.

Promising tools that can increase the effectiveness of combating ML/TF in Kazakhstan include:

- The use of artificial intelligence (AI): AI can be used to analyze large volumes of financial data and identify suspicious transactions.

- analyzing blockchain transactions: blockchain technology creates opportunities to track and analyze financial transactions carried out through cryptocurrencies.

- use of beneficial ownership data: access to information on the beneficial owners of legal entities and individuals allows identifying the ultimate recipients of funds and preventing their use for criminal money legalization (laundering).

- strengthening international cooperation: it is necessary to expand cooperation with other countries in the field of combating ML/TF, including within the framework of bilateral agreements and international organizations, such as the Financial Action Task Force (FATF), Europol.

By taking these comprehensive measures, Kazakhstan can strengthen its system of combating ML/TF and reduce the risks associated with this illegal phenomenon.

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THE PLACE OF NORMATIVE RESOLUTIONS OF THE SUPREME COURT IN THE FIELD OF CRIMINAL LAW

This study seeks to investigate the impact and relevance of Supreme Court normative decrees in criminal law practice in Kazakhstan. Our objective is to explore their influence on law enforcement practices as well as harmonization between national laws and international standards. Among the primary directions of inquiry lies theoretical analysis of legal nature decrees as well as historical development studies and comparative legal research.

Scientific and practical significance of this work lies in its comprehensive examination of how normative decrees affect uniform judicial practice and law enforcement stability. Research methodology included content analysis, comparative legal method interpretation legal interpretation as well as statistical analysis.

The primary findings of this research indicated that normative decrees of the Supreme Court play an essential role in shaping law enforcement practices and guaranteeing uniform and stable interpretations of criminal law. These findings underscore the necessity of further aligning Kazakhstani legislation with international standards to enhance law enforcement efficiency and promote human rights protection.

Research's value lies in filling gaps in existing literature and offering recommendations to enhance law enforcement practices in Kazakhstan. Practical applications of research results include their potential use by judges, lawyers, and others practicing criminal law.

Key words: normative resolutions of the Supreme Court, normative legal act, sphere of criminal law, legal institute, concept of normative resolution.

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Жоғары соттың нормативтік қаулыларының қылмыстық құқық саласындағы орны

Бұл зерттеу Жоғарғы Соттың нормативтік қаулыларының Қазақстандағы қылмыстық-құқықтық практикаға әсері мен маңыздылығын зерттеуге бағытталған. Біздің мақсатымыз-олардың құқық қолдану практикасына әсерін, сондай-ақ ұлттық заңнаманы халықаралық стандарттармен үйлестіруді зерттеу. Зерттеудің негізгі бағыттарының қатарына қаулылардың құқықтық табиғатын теориялық талдау, сондай-ақ тарихи дамуды зерттеу және салыстырмалы құқықтық зерттеулер жатады.

Жұмыстың ғылыми және практикалық маңыздылығы нормативтік қаулылардың сот практикасының біркелкілігіне және құқық қолдану тұрақтылығына қалай әсер ететінін жан-жақты қарастыру болып табылады. Зерттеу әдістемесі мазмұнды талдауды, құқықтық нормаларды түсіндірудің салыстырмалы-құқықтық әдісін, сондай-ақ статистикалық талдауды қамтыды.

Зерттеудің негізгі нәтижелері Жоғарғы Соттың нормативтік қаулылары құқық қолдану практикасын қалыптастыруда және қылмыстық заңның біркелкі және тұрақты түсіндірілуін қамтамасыз етуде маңызды рөл атқаратынын көрсетті. Бұл тұжырымдар құқық қолдану

арттыру және адам құқықтарын қорғауға жәрдемдесу үшін қазақстандық заңнаманы одан әрі халықаралық стандарттарға сәйкес келтіру қажеттігін көрсетеді.

Зерттеудің құндылығы қазіргі әдебиеттегі олқылықтардың орнын толтыру және Қазақстанда құқық қолдану практикасын жетілдіру бойынша ұсыныстар беру болып табылады. Зерттеу нәтижелерін практикалық қолдану-бұл судьялардың, адвокаттардың және қылмыстық құқық саласындағы басқа адамдардың оларды пайдалану мүмкіндігі.

Түйін сөздер: Жоғарғы Соттың нормативтік қаулылары, нормативтік құқықтық акт, қылмыстық құқық саласы, құқық институты, нормативтік қаулы түсінігі.

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Место нормативных постановлений Верховного Суда в области уголовного права

Данное исследование направлено на изучение влияния и значимости нормативных постановлений Верховного суда на уголовно-правовую практику в Казахстане. Наша цель – изучить их влияние на правоприменительную практику, а также гармонизацию национального законодательства с международными стандартами. Среди основных направлений исследования – теоретический анализ правовой природы постановлений, а также изучение исторического развития и сравнительно-правовые исследования.

Научная и практическая значимость работы заключается в комплексном рассмотрении того, как нормативные постановления влияют на единообразие судебной практики и стабильность правоприменения. Методология исследования включала контент-анализ, сравнительно-правовой метод толкования правовых норм, а также статистический анализ.

Основные результаты исследования показали, что нормативные постановления Верховного суда играют важную роль в формировании правоприменительной практики и обеспечении единообразного и стабильного толкования уголовного закона. Эти выводы подчеркивают необходимость дальнейшего приведения казахстанского законодательства в соответствие с международными стандартами для повышения эффективности правоприменения и содействия защите прав человека.

Ценность исследования заключается в восполнении пробелов в существующей литературе и предложении рекомендаций по совершенствованию правоприменительной практики в Казахстане. Практическое применение результатов исследования заключается в возможности их использования судьями, адвокатами и другими лицами, практикующими в области уголовного права.

Ключевые слова: нормативные постановления Верховного суда, нормативный правовой акт, сфера уголовного права, правовой институт, понятие нормативного постановления.

Introduction

According to Article 81 of the Constitution of Kazakhstan, "the Supreme Court is the highest judicial body in all civil, criminal, administrative, and other cases within its jurisdiction arising out of local courts. When required by law it reviews cases brought before its jurisdiction as well as provides clarifications regarding issues of judicial practice." (https://www.akorda.kz/en/constitution-of-the-republic-of-kazakhstan-50912)

Given Kazakhstan's rapid progress of criminal law development, Supreme Court decisions play a pivotal role in shaping law enforcement practice. Thus, this study's topic was chosen with care – although considerable prior research had already been conducted into criminal law and law enforcement, impact analysis regarding regulatory decisions has yet to be thoroughly researched in relation to their impact on judicial practice and criminal legislation development remains lacking.

Relevance of this topic is determined by various factors. First and foremost is its impactful decisions from the Supreme Court on law enforcement practice, providing uniformity and stability when handling criminal cases. Second, Kazakhstan's existing legislative framework needs constant evaluation and adaptation to meet modern conditions, making this research topic especially significant. Thirdly, as part of globalization and integration processes Kazakh-

stan must adhere to international standards and approaches regarding criminal law; for this to occur requires in-depth analyses of regulatory decisions made by its highest judicial body.

This research investigates the normative decisions of the Supreme Court of Kazakhstan in criminal law and their impact and relevance to law enforcement practice.

This study seeks to examine and assess the significance of Supreme Court normative decisions for shaping and developing criminal law practice in Kazakhstan.

Methodologically, this research incorporates both general scientific methods and private scientific practices – such as analysis, synthesis, induction, deduction – as well as comparative legal analysis and the method of legal interpretation.

This study test the hypothesis that normative decisions from Kazakhstan's Supreme Court play an essential role in maintaining uniform and stable law enforcement practice within criminal law, thus contributing to harmonization between national law and international standards.

Scientific articles are valuable because their results can be used in further scientific developments as well as the everyday activities of judges, lawyers and other specialists in criminal law. Thus, an examination of how Supreme Court normative decisions influence criminal law is both timely and significant in contributing to Kazakhstan's theoretical and practical development of criminal law.

Research methodology

This study is grounded on an analysis of regulatory decisions of the Supreme Court of Kazakhstan in criminal law. To facilitate our research, materials examined include texts published as resolutions in official sources over two decades – an approach that allows us to gain representative data while assuring reliability of conclusions drawn.

Regulatory decisions of the Supreme Court of Kazakhstan play a vital role in maintaining uniform and stable law enforcement practices related to criminal law, helping ensure harmonization between domestic legislation and international standards.

Content analysis is one of the key methods utilized in this research. It involves conducting an in-depth examination of normative decisions from the Supreme Court of Kazakhstan to identify legal provisions and their changes; using this approach allows scholars to not only detect important legal norms but also monitor their development over time.

Comparative legal analysis was employed to analyze Kazakhstani regulatory decisions within the context of international standards and approaches in criminal law. Using this method enabled us to ascertain the degree to which Kazakhstan's law enforcement conformed with international norms as well as identify areas needing improvement.

Legal interpretation involved interpreting legal norms contained in regulatory decisions to identify their law enforcement significance. This technique allowed for greater insight into how rulings impact judicial practice and any legal consequences they produce.

Statistics were employed to process quantitative data, which enabled law enforcement practitioners to detect trends and patterns within law enforcement practices.

Utilizing an integrative approach and various methods of analysis allowed us to perform an exhaustive examination of the place of normative decisions of the Supreme Court in criminal law. Content analysis, comparative legal method, legal interpretation method and statistical analysis provided an in-depth understanding of the problem under study and allowed us to draw reasonable conclusions about the importance of regulatory decisions for law enforcement practice in Kazakhstan.

This study revealed that regulatory rulings of the Supreme Court of Kazakhstan significantly impact law enforcement practices, providing consistency in interpretation and application of criminal legislation. A comparative analysis has shown that many provisions of Kazakh regulations comply with international standards; however there remain areas that need further harmonization.

Utilising an integrated approach and various methods of analysis enabled a thorough investigation of the place of Supreme Court decisions in criminal law and their relevance for law enforcement practices in Kazakhstan.

Literature review

This article utilized literature by both domestic and foreign authors, making it possible to comprehensively explore its topic of investigation. Key works that examine regulatory rulings' role in law enforcement were considered alongside modern research analyzing practice of issuing rulings under various legal systems.

Domestic sources included works on constitutional and criminal law of Kazakhstan, exploring the role of Supreme Court decisions in upholding

direct effect of the Constitution (Baishev Zh.N., Sapargaliev G.S.), implementation issues related to constitutional implementation as well as procedural and theoretical aspects of legislation interpretation (Kerimov D.A., Abdrasulov E.B.). These sources have made an invaluable contribution towards understanding legal nature and functions of regulatory decisions within Kazakh law.

Foreign sources provided works on legal theory, judicial practice and legal argumentation. These studies provided a theoretical foundation for analyzing court decisions that affected law enforcement, as well as comparison with international standards.

An analysis of literature has revealed that Supreme Court decisions play an essential part in shaping and developing law enforcement practice. Domestic studies underscored their significance as unifying law enforcement efforts while aligning domestic laws with international standards; foreign works also provided valuable methodological approaches and theoretical concepts tailored specifically for Kazakh legal systems.

Discussion and results

Formation and evolution of normative decisions issued by the Supreme Court have resulted from implementation of dramatic reforms to law in our country. While improving laws has taken place in several other nations, our nation-state was unique due to a low level of legal awareness within its population. At the core of these normative decisions are decisions from the Supreme Court. Over time, this activity of the judicial system has grown more reliable; regulatory decisions from the Supreme Court were instituted and provided for resolution of unlimited legal disputes as part of their duties and status as courts. At its heart lies their responsibility of adjudication disputes as their final product of activities undertaken to do so.

The concept of normative resolution by the Supreme Court derives from Article 4 of the Republic of Kazakhstan Constitution, which mandates such decisions among applicable laws in Kazakhstan.

Article 81 of the Constitution also clarifies the activities of the Supreme Court of Kazakhstan with regards to regular judicial practice for criminal, civil and local criminal convictions (Constitution of the Republic of Kazakhstan, 1995, https://www.akorda.kz/en/constitution-of-the-republic-of-kazakhstan-50912)

The Supreme Court of Kazakhstan follows a standard procedure when adopting, amending, terminating or otherwise non-applying normative legal acts issued by it as stipulated by Kazakhstan law on normative legal acts.

According to law, normative decisions of the Supreme Court are recognized as normative legal acts; however, at regulatory legal act level none exist due to an issue outside legal acts established by law – that being that normative legal acts have equal force as those from legislation on which they are interpreted (The Law of the Republic of Kazakhstan «On legal acts», 2016, https://adilet.zan.kz/eng/docs/Z1600000480).

As regards sectoral laws, the second part of Article One of the Criminal Code of Kazakhstan serves as the focal point for crime, administration and civil litigation in Kazakhstan in general. This component can be seen as being integrally tied with criminal, administrative and civil legislation respectively within this field of law.

In this area of law, normative legal acts are implemented through the Supreme Court's Constitutionally mandated normative decisions.

If there are discrepancies when applying the laws as written, their interpretation falls to the Supreme Court automatically. Their decisions take into account public relations on a constitutional basis when making rulings that can help resolve them. According to scholar Zh.N. Baishev, the Supreme Court rejects laws designed to regulate such areas as Parliament through their legal system; their primary focus instead being the application of constitutional norms in that context. Parliament, in turn, handles questions and situations regarding legal disputes with border services and familiarizes itself with international legal acts by developing sectoral norms. If necessary for regulation purposes, legislative bodies can adopt relevant rules of Law to manage disputed relationships (Baishev 2008: 115)

V. M. Lebedev identified normative decisions of the Supreme Court as essential tools for upholding fairness of justice, clarifying judicial decisions when legal norms contain elements of uncertainty, and justifying their fairness of administration (Barak 1999: 142).

Most scientists largely share this viewpoint; however, they oppose normative decisions made by the Supreme Court as normative decisions should remain solely within its purview (Kerimov 2002: 93).

Scientist D. A. Keimov advocates against lawmaking, restricting normative decisions of the Supreme Court to explanatory activities only. Meanwhile, Sapargaliyev G. S. holds similar views but

believes that corrections or distortions to normative decisions exceeding interpretation could constitute new norms that need to be established by court precedents (Sapargaliev 2001a: 117).

One scientist noted that normative decisions of the Supreme Court serve as explanatory tools, despite being labeled normative (Sapargaliev 2002b: 14).

A. S. Pigolkin noted that court decisions are legally binding for everyone; normative decisions from the Supreme Court depend on legal precedent that has been fully discussed and none of their explanations hold legal ground without actual application in practice (Pigolkin 2016)

Domestic scholars agree on one conclusion from domestic scientists' opinions: normative decisions set clear limits to the validity of law, provide full explanations alongside court verdicts, and if an act on which these normative decisions of the Supreme Court are based is repealed, so too are their decisions (Kaudyrov 2020: 93)

Foreign scholars generally hold that Supreme Court normative rulings don't allow for conclusions beyond what's allowed under law; and that he had no personal power to use any ruling as evidence if he so desired (Abdrasulov 2002: 143).

Thus, the primary difference between normative rulings of the Supreme Court and ordinary legal norms lies in their interpretation. Furthermore, this court offers special commentary regarding application of law according to special circumstances and needs. Normative decisions of the Supreme Court contribute to correct differentiation, taking into account all relevant circumstances of pre-trial investigations not only within court cases but also according to criminal law standards.

According to the theory of state and law, one of the powers of judiciary is adjudicatory power; however, many scholars, considering its widespread publicity and common application of normative decisions of the Supreme Court have taken a critical stance against this right by viewing judiciary as the absorption of legislative power by absorption. Their opinions can lead to conflicts of opinions as well as raise suspicion about its Justice.

A.I. Dikhtyar and N. A. Rogozhin argue that the judicial authorities, known as administration of justice, do not accept rights of interpretation, evaluation and comparison beyond what are allowed within their legal system. According to them, normative decisions of the Supreme Court state that commenting without alteration or additions is only available within its contents of laws.

The Supreme Court's normative decision, intended to establish an efficient judicial practice, evaluates and identifies signs of criminality in an exceptional circumstance, distinguishing features apart from legal norms that apply within its application framework.

The Supreme Court's concept of normative legal acts describes concepts not provided for by legal norms (Yurchenko 2009, https://cyberleninka.ru/article/n/o-yuridicheskoy-prirode-normativnyh-postanovleniy-verhovnogo-suda-respubliki-kazahstan-i-ih-prakticheskom-primenenii).

In any legal state, dispute resolution takes into account the practices and views established by courts, as well as scientific work founded on court decisions. All scientific work relies on this judicial practice. Furthermore, legal acts passed by the Supreme Court are essential in correctly distinguishing between facts of offenses by law enforcement officers; due to this act being sent directly to pre-trial investigation and supervisory authorities concerning any breaches with criminal law standards that have led to lower courts rendering decisions against you either amended or annulled altogether.

If the court decision remains unchanged, a pre-trial investigator declares that all norms and requirements have been fulfilled (Ablaeva 2018, https://cyberleninka.ru/article/n/o-edinoobrazii-sudebnoy-praktiki-v-kazahstane-po-nekotorym-delam-vytekayuschim-iz-publichnyh-pravootnosheniy).

The adoption of normative rulings by the Supreme Court bears similarities to precedent law in Anglo-Saxon legal systems. An illustration can be drawn in this regard by looking at what happened during one court session in another court session with similar proceedings.

The Supreme Court stands out among normative legal acts by conducting in-depth interpretations of legal norms that pertain to who, when, and why they occur.

Legal acts issued by the Supreme Court have become a primary source of law. Our Romano-German legal system does not take account of decisions from hearings that took place as such; hence analogy decision-making does not occur during trial proceedings.

However, in order to prevent an incorrect differentiation between criminal law norms and other norms, normative decisions by the Supreme Court provide effective functions in this area.

Criminal Procedure Law incorporates normative decisions by both the Constitutional Court and Supreme Court as core elements.

As we review the history of Supreme Court normative decisions, their topics of adoption become apparent. Since 1995, they have provided insights that address specific types of crime.

At its core, this initiative seeks to ensure correct classification of crimes as specified by articles of the Criminal Code and appropriate actions according to pre-trial Criminal Procedure regulations.

Consider, for instance, the following normative resolution issued by the Supreme Court of Kazakhstan on July 21, 1995 and known as n 4" on judicial practice related to theft of firearms, ammunition, weapons or explosives as well as their illegal carrying, possessing, manufacturing and sale, or careless handling.

At its meeting on June 6, the Supreme Court's purpose was to establish a uniform judicial practice in cases of the highest category; which consisted of 21 parts (Normative Resolutions of the Supreme Court of the Republic of Kazakhstan, 2009: 278)

This resolution must take into account the responsibility of citizens who commit weapons thefts without informing courts and failing to notify of their transfer in court cases; further, citizens who failed in their investigations, mishandle, and/or commit theft without reporting these instances as crimes of serious concern must also be brought to justice.

Investigation was then undertaken, to assess its nature in terms of weapons used and committed crimes by using weapons as the means. An inventory list was made public; under these conditions the perpetrator expressed regret for their crime.

The Supreme Court normative decision outlines ways of stealing firearms, the mechanism used for criminalizing such theft and how crimes are classified and classified. Furthermore, this decision provides insight into specifics related to crime qualifications (Neshataeva T. N., 2017: 256).

As an example, two forms of embezzlement of weapons are legally recognized as embezzlement of firearms. If, after the theft of a large safe or box, it was discovered that there was a weapon within which was left for protection or other reasons, this crime would be recognized as embezzlement of firearms – however repeated instances do not constitute embezzlement of weapons.

Such comments will allow an investigator to more quickly qualify the case during pre-trial investigation and will contribute to creating consistent practices within relevant cases. It's clear that judges of courts will see such comments as essential components in creating uniform practices in cases under their scrutiny (http://www.zakon.kz/4808524-mozhet-li-normativnoe-postanovlenie.html)

As a result, this enables pre-trial investigations to reach a specific decision on a crime without question from judges, and has produced consistent outcomes in every area of law.

But such an orderly sequence may have negative repercussions in other sectors.

Conclusion

Normative decisions of the Supreme Court hold immense significance and understanding across society. One of the most revered legal acts, among many, are decisions of this Court; their rulings play an invaluable role.

Normative decisions of the Supreme Court carry equal legal force as those based on rule of law, studying this same set of principles. Their role is essential in society.

At present, normative legal acts of the Supreme Court are recognized as effective deterrents against referral of cases without evidence to court, error-prone application of laws on offenses, and practice of negative law in distant courts.

Criminal law systems benefit greatly from having access to a broad framework of law which is easily identifiable via normative rulings of the Supreme Court. Legal assistance plays an integral part in criminal law systems as a preventative measure for cases that return due to systematic errors caused by differentiation and incorrect application of rule of law, prosecutor acquittal or cancellation of court decisions of first instance; increasing investigatory legal awareness from Supreme Court rulings through investigation stages to court proceedings, while creating a single sequence of court decisions during case consideration processes.

As years go by, however, crime-fighting techniques become more sophisticated and rare crimes increase; therefore, normative decisions from the Supreme Court play an essential role as part of criminal law.

Supreme Court decisions of immediate significance in order to address questions and gaps arising in the criminal court system have become indispensable.

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ХАЛЫҚАРАЛЫҚ ҚАТЫНАСТАР ЖӘНЕ ХАЛЫҚАРАЛЫҚ ҚҰҚЫҚ

Section 6

INTERNATIONAL RELATIONSHIPS AND INTERNATIONAL LAW

Раздел 6

МЕЖДУНАРОДНЫЕ ОТНОШЕНИЯ И МЕЖДУНАРОДНОЕ ПРАВО

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THE INSTITUTION OF RECONCILIATION IN TURKISH LAW

According to the legal system currently applied in Turkey, the state initiates a public prosecution against individuals who commit crimes, and these individuals are punished after being tried in judicial courts. While this system has been in use for many years, the reconciliation procedure has recently been adopted in the Turkish legal system. Reflecting the restorative justice system inherent in our culture, the institution of reconciliation has emerged as an alternative path in our criminal justice system. The reconciliation procedure aims to restore the public order disrupted by the crime of the suspect or defendant through the parties' agreement before a court trial, facilitating the reintegration of the offender into society, while also ensuring quick compensation for the victim. The reconciliation institution, applied during the investigation phase, prevents the initiation of criminal proceedings against offenders, thereby alleviating the burden on the judicial prosecution phase. The reconciliation process serves to conclude potential criminal cases by enabling the parties to reach an agreement of their own free will, thus eliminating the threat of criminal investigation and prosecution. The reconciliation procedure concludes more quickly than criminal trials, thereby relieving the offender from prolonged judicial pressure, and if the victim consents to the proposed compensation, their losses are promptly recovered.

Key words: Reconciliation, Fair Trial, Restorative Justice, Criminal Law.

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Түрік құқығындағы батылым институты

Қазіргі уақытта Түркияда қолданылып жүрген заң жүйесіне сәйкес, мемлекет қылмыс жасаған тұлғаларға қарсы қоғамдық айыптауды бастайды және бұл адамдар сот соттарында қаралған соң жазаланады. Бұл жүйе ұзақ жылдар бойы қолданылып келе жатқанымен, жақында ғана Түркияның заң жүйесінде татуластыру процедурасы қабылданды. Мәдениетімізге тән қалпына келтіруші сот төрелігі жүйесін көрсететін татуласу институты қылмыстық сот төрелігі жүйемізде балама жол ретінде пайда болды. Татуласу рәсімі күдіктінің немесе сотталушының қылмысы салдарынан бұзылған қоғамдық тәртіпті сот талқылауына дейін тараптардың келісімі бойынша қалпына келтіруге, қылмыскердің қоғамға қайта бейімделуіне ықпал етуге, сонымен бірге жәбірленушіге келтірілген зиянды тез арада өтеуді қамтамасыз етуге бағытталған. Тергеу сатысында қолданылған татуластыру институты құқық бұзушыларға қатысты қылмыстық іс қозғауды болдырмайды, сол арқылы сотта айыптау сатысына түсетін салмақты жеңілдетеді. Татуласу процесі тараптарға өз еркімен келісімге келуге мүмкіндік беру арқылы ықтимал қылмыстық істерді аяқтауға қызмет етеді, осылайша қылмыстық тергеу мен қудалау қаупін жояды. Татуласу рәсімі қылмыстық істерге қарағанда тезірек аяқталады, осылайша құқық бұзушыны ұзаққа созылған сот қысымынан босатады, ал егер жәбірленуші ұсынылған өтемақыға келісімін берсе, олардың шығыны тез арада өндіріледі.

Түйін сөздер: Татуласу, әділ сот, қалпына келтіретін сот төрелігі, қылмыстық құқық.

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Институт примирения в турецком праве

Согласно правовой системе, действующей в настоящее время в Турции, государство инициирует публичное преследование лиц, совершивших преступления, и эти лица наказываются после суда в судебных органах. Хотя эта система используется уже много лет, процедура примирения была недавно принята в турецкой правовой системе. Отражая систему восстановительного правосудия, присущую нашей культуре, институт примирения появился как альтернативный путь

в нашей системе уголовного правосудия. Процедура примирения направлена на восстановление общественного порядка, нарушенного преступлением подозреваемого или обвиняемого, путем соглашения сторон до судебного разбирательства, что способствует реинтеграции правонарушителя в общество, а также обеспечивает быструю компенсацию для жертвы. Институт примирения, применяемый на этапе расследования, предотвращает возбуждение уголовного дела против правонарушителей, тем самым облегчая нагрузку на этап судебного преследования. Процесс примирения служит для завершения потенциальных уголовных дел, позволяя сторонам достичь соглашения по собственной воле, тем самым устраняя угрозу уголовного расследования и преследования. Процедура примирения завершается быстрее, чем уголовные судебные разбирательства, тем самым освобождая правонарушителя от длительного судебного давления, и если жертва соглашается на предлагаемую компенсацию, ее убытки быстро возмещаются.

Ключевые слова: примирение, справедливое судебное разбирательство, восстановительное правосудие, уголовное право.

Introduction

In accordance with the crime and punishment policies pursued within the national criminal law system in Turkey, significant emphasis has been placed on alternative solutions to resolve criminal disputes outside of the courtroom. In recent years, various alternative dispute resolution methods have been explored. Foremost among these alternative solutions in criminal law is the reconciliation institution, which was comprehensively integrated into the legal system in 2016. Reconciliation, whereby a neutral third party intervenes to facilitate communication between the victim and the offender, is considered one of the oldest and most widespread alternative dispute resolution methods.

In contemporary criminal justice, the protection of the interests of crime victims has become a primary objective, and addressing the harm suffered by victims has become as crucial as punishing the offender. Consequently, within the framework of justice, the reconciliation institution offers numerous benefits, including compensating the victim for the harm caused by the crime, facilitating the reconciliation between the victim and the suspect or defendant to reintegrate the offender into society, and swiftly establishing justice by resolving the dispute before it reaches the courtroom, thereby reducing the caseload of the courts.

This study will first explain the reconciliation institution and then describe its practical implementation. It will assess the benefits of the reconciliation institution, evaluate whether it has been adequately implemented, identify common problems encountered during its application, and propose solutions to enhance the functionality of the reconciliation institution.

1. The concept and purpose of reconciliation

Reconciliation, as an alternative solution in criminal proceedings, is grounded in the concept of restorative justice. The primary objective is to utilize alternative resolution methods outside the courts to swiftly resolve disputes arising from certain types of crimes. In Turkey, the concept of restorative justice began to be discussed with the implementation of the reconciliation institution, which has since been integrated into the criminal justice system as an alternative method (Akdeniz, 2019:2).

Restorative justice recognizes that the commission of a crime not only violates a penal statute but also causes an injustice. Therefore, it is acknowledged that the crime is an act between the offender and the victim, yet the primary victim affected by the crime is society at large. Restorative justice is characterized by practices aimed at ensuring the offender takes responsibility for the crime, facilitating their reintegration into society, and involving the victim actively in the process (Yavuz 2019:95).

Reconciliation is a process wherein a neutral mediator engages with both the victim and the offender to resolve the dispute between the parties in a criminal case or investigation. While “reconciliation” refers to the activity conducted by the mediator, “settlement” denotes the agreement reached at the end of this process (Özbek 2018: 21). In the reconciliation procedure, the damage suffered by the victim or the person harmed by the crime is compensated, thus alleviating their victimization. For the defendant or suspect, the aim is to resolve the dispute through an alternative means other than punishment, thereby achieving social peace.

2. The legal nature of reconciliation

Reconciliation holds significance in substantive criminal law by terminating the penal relationship between the suspect or defendant and the state and protecting the victim of the crime while facilitating the reintegration of the offender into society. However, in cases where reconciliation is required, if criminal proceedings are initiated without undergoing the reconciliation process, the indictment is returned. Similarly, in cases subject to reconciliation, if the reconciliation process is not conducted, the court cannot impose a penalty on the defendant. Thus, it can be said that reconciliation has a mixed legal nature, encompassing both substantive and procedural aspects of criminal law (Kaymaz & Gökcan, 2017:146). The Court of Cassation has also defined reconciliation as an institution with a mixed nature, identifying it as both a procedural institution and a substantive criminal law institution terminating the penal relationship (Court of Cassation 4th Criminal Chamber, 2007/5662).

The mixed nature of reconciliation has two fundamental implications regarding its temporal application and the prohibition of analogy. In terms of temporal application, the principle of immediate application of procedural provisions to crimes committed in the past is fundamental. However, based on the principle of "no crime and no punishment without law," procedural provisions generally cannot be applied retroactively to past crimes. Nonetheless, in the interest of criminal justice, if it is in favor of the offender, substantive criminal law provisions can be applied retroactively to past crimes. Since the reconciliation institution concerns the penal relationship between the offender and the state, a norm expanding the scope of reconciliation, being in favor of the offender, can also be applied to past crimes. Regarding the prohibition of analogy, while analogy is permitted in criminal procedure law, it is prohibited in criminal law. Consequently, the scope of reconciliation cannot be expanded or restricted through analogy, but procedural provisions related to how reconciliation processes should be conducted can be interpreted analogously (Özbek, 2018:25).

3. The fundamental principles of reconciliation

Reconciliation, which involves compensating the victim for the harm caused by the crime committed by the suspect or defendant and the state refraining from punishing the offender for the crime, is subject to strict formal requirements and rules (Regulation on Reconciliation in Criminal Procedure). In this regard, Article 5 of the Regulation on Reconciliation in Criminal Procedure includes provisions related to fundamental principles. These are outlined below.

3.1. Based on the Free Will of the Parties

Reconciliation is carried out by the parties' acceptance of reconciliation and their decision to settle of their own free will. The parties have the right to change their minds until the reconciliation report is signed (Yenisey & Nuhoğlu, 2016:835). During this process, the mediator must not exhibit coercive or irrelevant behaviors that might influence the parties' wills. The assigned neutral mediator provides the parties with legal and procedural information related to the reconciliation process and informs them about the consequences of reconciliation, ensuring that their decisions are made based on the information they have obtained of their own free will.

The mediator's task of informing the parties must take into account their ages, maturity, education, and social and economic conditions. The public prosecutor or judge approves the report prepared by the mediator if they conclude that the obligation to be fulfilled has been prepared in accordance with the law and based on the parties' free will. This procedural act by the public prosecutor or judge also ensures a control mechanism regarding the parties' free will.

3.2. Protection of the Basic Rights and Freedoms of the Parties

Reconciliation procedures are carried out in accordance with fundamental rights and freedoms, emphasizing the protection of the interests of the parties (Regulation on Reconciliation in Criminal Procedure, Art. 5/2). During the reconciliation process, both the victim or the person harmed by the crime and the suspect or defendant will benefit from the constitutional rights and the rights provided by the criminal procedure law. Both the victim and the offender have the right to complete the reconciliation process voluntarily, as well as the right to terminate the process (Court of Cassation 15th Criminal Chamber, 2017/7517 Case, 2019/3719 Decision). Exercising the right to withdraw from the process does not affect the right to a fair trial (Çetintürk, 2017:70).

3.3. Ensuring the Basic Safeguards Granted by the Criminal Procedure Law for the Parties and Their Legal Representatives

The parties and their legal representatives participating in the reconciliation procedures have the

rights and safeguards provided in Articles 147 to 156 of the Criminal Procedure Code No. 5271 (Özbek, 2018:34). Throughout the reconciliation process, the dignity of the parties must be respected, and their fundamental rights as enshrined in the constitution and criminal procedure law must be protected.

3.4. Assignment of a Translator for Parties Who Do Not Speak Turkish

If any of the parties do not speak Turkish, a translator must be assigned to ensure the free will of the parties is manifested. The cost of the assigned translator will not be considered part of the legal expenses and will be covered by the treasury.

3.5. Sufficient Information of the Parties Regarding the Reconciliation Procedures

The mediator must inform the parties about the legal consequences of reconciliation before starting the reconciliation procedures. After the mediator's briefing, if the parties agree to begin the process based on their free will, they must be informed that starting the reconciliation procedures does not imply an admission of guilt by the suspect or defendant, nor does it mean that the victim waives their rights. The parties must also be informed that they can withdraw from the reconciliation process until the reconciliation report is prepared.

3.6. Continuation of the Process Considering Differences Between the Parties

After being assigned, the mediator can access information about the parties from the provided documents. Once the mediator has detailed information about the parties, they must form an approach on how to deal with the parties and conduct the reconciliation process correctly.

3.7. Confidentiality of Information and Documents

The mediator is responsible for maintaining the confidentiality of the information and documents provided to them after being assigned (Regulation on Reconciliation in Criminal Procedure, Art. 5/7). Without the consent of the parties or unless necessary, the mediator cannot disclose any information to anyone. Confidentiality is essential throughout the reconciliation process.

3.8. Taking Appropriate Measures to Ensure Reconciliation

The mediator's communication with the parties and efforts to persuade them during the reconciliation process will ensure the success of the reconciliation procedures. At the end of the process, the mediator will take appropriate measures to facilitate the parties' reconciliation if they reach an agreement.

4. The conditions for reconciliation

For crimes subject to reconciliation, such as threats, disturbing the peace and tranquility of individuals, theft, or simple fraud, certain conditions must be met to carry out reconciliation procedures. These conditions are outlined below.

4.1. Presence of Procedural Conditions Related to the Committed Crime

For the reconciliation process to be carried out, the act must be investigable or prosecutable (Özbek 2018:3). The execution of investigation or prosecution procedures depends on certain conditions or the absence of obstacles, referred to as procedural conditions. The presence of procedural conditions includes the necessity of a complaint, obtaining permission, a request, or a decision. The absence of procedural conditions prevents the accusation, initiation, progression, and adjudication of the case.

A complaint is defined as a request by individuals with the right to complain to the competent authorities for the investigation and prosecution of the crime (Öztürk 2015: 5). The failure to file a complaint by those with the right to complain or the failure of such individuals to withdraw the complaint requires the annulment of the decision. For instance, if the father of an abducted child files a complaint in a child abduction case, but the decision is based solely on the child's withdrawal of the complaint, the decision is unlawful. The father of the child must also withdraw the complaint (Court of Cassation 14th Criminal Chamber, 2016/7386 Case, 2016/7526 Decision).

4.2. The Legal Capacity of the Suspect or Defendant

For reconciliation procedures to be conducted, the suspect or defendant must be punishable. In cases where the person's culpability is nullified, only security measures can be applied instead of punishment (Özgenç 2015: 51). The reconciliation procedure cannot be applied to individuals without legal capacity. However, in cases of reduced criminal responsibility, such as minority or mental illness, reconciliation provisions can be applied.

4.3. The Victim or the Person Harmed by the Crime Must Be a Natural Person or a Private Law Legal Entity

Reconciliation can only be applied in crimes where the victim or the person harmed by the crime is a natural person or a private law legal entity.

4.4. The Committed Crime Must Be Among the Crimes Subject to Reconciliation

According to Article 73 of the Turkish Penal Code No. 5237, reconciliation can be applied to crimes that are subject to investigation and prosecution upon complaint. For crimes not subject to complaint, it must be explicitly stated in the law that the crime is subject to reconciliation. The procedure for reconciliation is regulated in Articles 253 and subsequent articles of the Criminal Procedure Code.

If multiple crimes are committed by the same offender, separate reconciliation procedures are conducted for each crime if the crimes are committed with unity of place and time or with the same intent, provided that all the crimes are subject to reconciliation. If a crime subject to reconciliation is committed alongside another crime not subject to reconciliation, reconciliation provisions will not apply (Court of Cassation 11th Criminal Chamber, 2021/32877 Case, 2024/6224 Decision).

4.5. Sufficient Suspicion That the Crime Has Been Committed

In a case subject to reconciliation, if the public prosecutor reaches sufficient evidence that the suspect committed the crime as a result of the investigation, the file is sent to the reconciliation office. If there is insufficient suspicion to initiate a case, a decision of non-prosecution is made. In such cases, reconciliation cannot be pursued (Yenisey & Nuhoğlu, 2016:824).

5. The reconciliation process

The institution of reconciliation is separately regulated for the investigation and prosecution phases in criminal procedure. Reconciliation during the investigation phase is regulated in Article 253 of the Criminal Procedure Code (CMK) and Articles 9 to 21 of the Regulation on Reconciliation in Criminal Procedure. Reconciliation during the prosecution phase is regulated in Article 254 of the CMK and Articles 22 to 27 of the Regulation on Reconciliation in Criminal Procedure. Reconciliation procedures during both investigation and prosecution phases are conducted by the reconciliation office and carried out through a mediator.

5.1. Reconciliation Procedure During the Investigation Phase

Reconciliation is primarily regulated during the investigation phase. However, it may also occur during the prosecution phase in exceptional cases. The investigation phase refers to the period from the discovery of the suspicion of a crime until the acceptance of the indictment (Öztürk 2015: 370). If an indictment is prepared without resorting to reconciliation for crimes subject to reconciliation, it is returned to the Chief Public Prosecutor's Office by the court. The public prosecutor will decide to send the file to the reconciliation office to prepare the indictment.

For crimes subject to reconciliation, if there is sufficient suspicion, the public prosecutor evaluates the legal qualification of the incident and the evidence and sends the file to the reconciliation office. The public prosecutor does not have discretion regarding crimes subject to reconciliation, as reconciliation is a procedural condition (Aşkın 2020: 122). Once the file reaches the reconciliation office, the authorized public prosecutor reviews whether the file is subject to reconciliation and whether there is sufficient suspicion to initiate a case. Then, a mediator is appointed. Mediators are assigned automatically by the office staff based on the principle of automatic distribution. The mediator is reminded to act in accordance with the confidentiality of the investigation (Soyaslan 2015: 347). After the file is handed over to the mediator, the parties are notified by phone or email.

The mediator must complete the reconciliation procedures within thirty days after being appointed. If this is not possible, the mediator may request an extension, not exceeding twenty days each time, for a maximum of two times, by submitting a petition explaining the situation to the office. The mediator must complete the reconciliation procedures within a maximum of seventy days (Yıldırım 2020: 99).

The mediator makes a reconciliation offer to either party. The offer must be made directly to the parties, although there is no obstacle to them conveying their response through their defense counsels or legal representatives. If one of the parties is a minor or under guardianship, or if the victim or the person harmed by the crime lacks the capacity to discern, the reconciliation offer must be made to the legal representatives. In the case of a child driven to crime who was at least twelve but under fifteen years old at the time of the offense, or if the victim of the crime is a minor, the reconciliation offer must be made to the legal representative, even if they have the capacity to understand. If any party rejects the offer, the reconciliation procedures are concluded without entering into reconciliation negotiations. If the parties accept the reconciliation offer, the negotiation process begins. During this process, the parties decide how to compensate for their damages. After compensating for the material or moral dam-

ages determined by the parties, the reconciliation procedures proceed to the conclusion stage.

After concluding the reconciliation procedures, the mediator must prepare a reconciliation report. The mediator must personally prepare the report (Yıldırım 2020: 99). The mediator submits the report to the reconciliation office. If the reconciliation procedures fail, the report must explain this situation in detail. After the mediator submits the reconciliation report to the office, the public prosecutor reviews it. Based on the reconciliation report, the public prosecutor will issue a "Decision of Non-Prosecution" for the files of the reconciled parties. If reconciliation is not achieved, an indictment will be prepared.

5.2. Reconciliation Procedure During the Prosecution Phase

The prosecution phase begins with the acceptance of the indictment and continues until the judgment becomes final. Reconciliation during the prosecution phase depends on the nature of the crime changing, the indictment prepared without resorting to reconciliation during the investigation phase being accepted, the case being initiated with a document replacing the indictment, and the crime falling within the scope of reconciliation being recognized during the prosecution phase (Akbulut & Aksan 2019:145).

During the prosecution phase, the file related to the crime subject to reconciliation is sent to the reconciliation office established by the Chief Public Prosecutor's Office for the necessary procedures, where it is registered and assigned a number. For the file sent to the reconciliation office, the public prosecutor appoints a mediator. The reconciliation process during the prosecution phase operates in the same manner as during the investigation phase. The reconciliation report prepared by the mediator is reviewed and accepted by the court.

6. The benefits of the reconciliation process

The proper implementation of the reconciliation institution offers several benefits to the victim, the offender, and society.

6.1. Benefits of Reconciliation for the Victim

During the reconciliation process, the face-to-face meeting between the victim and the offender allows the offender to see the negative impact of their crime on the victim (Yenisey 2005: 205). The victim may feel a greater sense of satisfaction from the reconciliation process compared to the outcome of a trial.

6.2. Benefits of Reconciliation for the Offender

The reconciliation institution allows the offender to remedy the harm caused by their crime rather than being punished. The offender, in a setting where they face the victim, will attempt to make amends for their wrongdoing (Erdem 2015: 21). Instead of having the offense recorded in the offender's criminal record, reconciliation gives the offender the opportunity to compensate for the harm they caused and thus be reintegrated into society.

6.3. Benefits of Reconciliation for Society

The greatest benefit of reconciliation for society is the restoration of peace by mending the damaged relationships between the parties. This benefit significantly contributes to preventing future hostilities and crimes between the parties. By including the offender in the process, reconciliation prevents the isolation of the offender from society and helps the offender feel like a part of the community (Yenisey 2005: 207). Additionally, it strengthens public confidence in the justice system, contributing to a peaceful and harmonious society. Moreover, it significantly reduces the courts' caseload, ensuring that other cases are resolved in a timely manner and preventing violations of the right to a fair trial.

7. Criticisms of the reconciliation institution

One criticism of the reconciliation institution is the lack of a legal regulation preventing suspects or defendants from benefiting from reconciliation multiple times. The reconciliation institution, which provides an opportunity to resolve the criminal dispute between the victim and the suspect/defendant through settlement, should be applied appropriately and correctly, with measures in place to prevent abuse. There should be a limit on how many times the same offender can benefit from reconciliation for the same offense. If the same offender commits the same crime again, they should face a criminal penalty. This would increase public trust in justice.

Another frequent issue in practice is that the reconciliation institution is generally applied during the investigation phase, with its application during the prosecution phase being exceptional. Reconciliation during the prosecution phase can only occur in the situations regulated by Article 22 of the Reconciliation Regulation. If the legal nature of the offense changes in an ongoing case, revealing that the act is a crime subject to reconciliation, reconciliation procedures can be carried out during the prosecution phase. If the legal nature of the crime does not change, but it is first realized during

the prosecution phase that reconciliation should have been applied during the investigation phase, reconciliation can still be conducted. However, if the parties were offered reconciliation during the investigation phase and they did not agree, they cannot seek reconciliation during the prosecution phase as per the regulation (Ertuğrul 2020: 132). This limitation contradicts the main purpose of the reconciliation institution, which is to restore peace between the parties.

There are some inconsistencies between the types of crimes excluded from reconciliation and the purpose of the reconciliation institution. Given that the reconciliation institution is designed with the restorative justice concept and the aim of establishing social peace, the exclusion of crimes such as simple assault committed against family members, descendants, ascendants, siblings, or former spouses from reconciliation is criticized, as there is a greater need for reconciliation in such cases within the criminal justice system and society.

The inconsistency within the system arises when considering the penal severity of crimes subject to reconciliation; some serious crimes are included while much simpler crimes are not.

Another issue highlighted by the legislation and practice is the disparity between the crimes subject to reconciliation and the prohibition on detention. Some crimes subject to reconciliation are exempt from detention, while others are not. Including suspects or defendants who are detained for a crime without a detention prohibition in the reconciliation process might compel them to accept terms they normally would not agree to, simply to end their detention, thus negatively affecting their free will. Crimes subject to reconciliation should include a prohibition on detention.

According to the Criminal Procedure Code, reconciliation cannot be applied if a crime subject to reconciliation is committed alongside a crime not subject to reconciliation. To expand the use of reconciliation, this provision of the law needs to be amended.

Conclusion

The institution of reconciliation is a relatively new concept within the legal system. With the introduction of reconciliation, there has been a shift in the traditional understanding of the criminal justice system. The inclusion of reconciliation in the criminal system primarily aims to establish social peace by resolving disputes between parties through the assistance of neutral third parties and the voluntary will of the parties involved to address the victimization caused by the crime. However, it is not yet possible to assert that the reconciliation institution is fully functional today.

The legislator needs to introduce several new regulations. Although the scope of crimes included under reconciliation has been expanded, it is still insufficient. Considering the severity of the crimes currently included in reconciliation, it is evident that simple crimes are still not covered, and offenders can still be detained for crimes under reconciliation. Addressing such inconsistencies that affect the public's perception of justice will enhance trust in justice and make the reconciliation institution more effective and functional.

Periodic training should be provided to mediators to ensure they are aware of their responsibilities and can effectively reach and persuade the parties involved. This will help mediators carry out their roles more efficiently and contribute to the success of the reconciliation process.

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DIGITAL ASSETS IN INTERNATIONAL PRIVATE LAW

Cryptocurrency is an intangible digital asset which has a cryptographic identity and uses a decentralized system. The intangibility and cryptographic identity will tie the existence of cryptocurrency and the encryption key which is used to produce a digital signature that is later used to conduct a transaction. In general, an intangible asset will seek how a legal system regulates the existence, transfer, and transaction of the asset. In this case, it shall apply the principle of lex rei sitae. This Latin phrase means the law of the land where the asset is situated. As for cryptocurrency, the digital asset is situated in a certain place on a server which is owned by the owner of the asset or a third party. The destination and transfer of that asset will be governed by the law where the asset is situated. This is an application of private international law which will determine the fundamental law or general principle law of some countries in relation to foreign law and legal-based decisions on a case regarding the legal interest between private parties that come from different countries and different country laws. The existence of the asset, transfer, transaction, and the possible dispute between the parties will be determined by the law that applies to the owner of the asset. If the owner is domiciled in a country with a different law than the asset is situated, it is possible to change the place or apply the law of the owner's country. This is called renvoi. This is a very complex law application, especially for the global scope of cryptocurrency transactions, so it is necessary to further discuss the application of it to the dispute involving the foreign party. This work does not cover various legal issues related to cryptocurrencies but considers only private international law aspects. It is based on the assumption that cryptocurrencies have the potential to evidence intangible assets and can be subject to proprietary rights.

Key words: private international law, virtual assets, digital assets, Unidroit, conflict of laws.

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Халықаралық жеке құқықтағы цифрлық активтер

Криптовалюта-бұл криптографиялық сәйкестігі бар және орталықтандырылмаған жүйені пайдаланатын материалдық емес цифрлық актив. Материалдық емес және криптографиялық сәйкестік криптовалютаның болуын және кейінірек транзакцияны жүзеге асыру үшін пайдаланылатын цифрлық қолтаңбаны жасау үшін пайдаланылатын шифрлау кілтін байланыстырады. Жалпы алғанда, материалдық емес актив құқықтық жүйенің активтің болуын, берілуін және мәмілесін қалай реттейтінін іздейді. Бұл жағдайда ол lex rei sitae принципін қолдануы керек. Бұл латын сөз тіркесі актив орналасқан жердің заңын білдіреді. Криптовалютаға келетін болсақ, цифрлық актив актив иесіне немесе үшінші тарапқа тиесілі серверде белгілі бір жерде орналасқан. Бұл активті тағайындау және беру актив орналасқан заңмен реттеледі. Бұл халықаралық жеке құқықтың қолданылуы, ол кейбір елдердің шетелдік құқыққа қатысты негізгі заңын немесе жалпы принциптік заңын және жеке тараптар арасындағы құқықтық мүдделерге қатысты іс бойынша құқықтық негізделген шешімдерді анықтайтын болады, әр түрлі елдерден және әр түрлі елдердің заңдарынан келеді. Активтің болуы, аударымы, мәмілесі және тараптар арасындағы ықтимал дау актив иесіне қолданылатын заңмен анықталады. Егер меншік иесі активтің орналасқан жерінен басқа заңы бар елде тұрса, оның орнын өзгертуге немесе меншік иесінің елінің заңын қолдануға болады. Бұл қайта тіркелу деп аталады. Бұл өте күрделі заңды қолдану, әсіресе криптовалюта операцияларының жаһандық ауқымы үшін, сондықтан оны шетелдік тарапқа қатысты дауға қолдануды одан әрі талқылау қажет. Бұл жұмыс криптовалюталарға қатысты әртүрлі құқықтық мәселелерді қамтымайды, тек халықаралық құқықтың жеке аспектілерін ғана қарастырады. Ол криптовалюталардың материалдық емес активтерді дәлелдеу мүмкіндігі бар және меншікті құқықтарға бағынуы мүмкін деген болжамға негізделген.

Түйін сөздер: халықаралық жеке құқық, виртуалды активтер, цифрлық активтер, УНИДРУА,

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Цифровые активы в международном частном праве

Криптовалюта – это нематериальный цифровой актив, который имеет криптографическую идентификацию и использует децентрализованную систему. Нематериальность и криптографическая идентификация связывают существование криптовалюты и ключа шифрования, который используется для создания цифровой подписи, которая впоследствии используется для проведения транзакции. Как правило, при оценке нематериального актива необходимо учитывать, каким образом правовая система регулирует существование, передачу и операции с активом. В этом случае применяется принцип lex rei sitae. Эта латинская фраза означает закон страны, в которой находится актив. Что касается криптовалюты, то цифровой актив находится в определенном месте на сервере, который принадлежит владельцу актива или третьей стороне. Назначение и передача этого актива будут регулироваться законодательством страны, где находится актив. Это применение международного частного права, которое будет определять основополагающий закон или общее принципиальное право некоторых стран по отношению к иностранному праву и юридически обоснованные решения по делу, касающемуся законных интересов частных лиц из разных стран и законов разных стран. Существование актива, передача, транзакция и возможный спор между сторонами будут определяться законом, который применяется к владельцу актива. Если домициль владельца находится в стране, законодательство которой отличается от законодательства, в котором находится актив, можно изменить место нахождения или применить законодательство страны владельца. Это называется повторной регистрацией. Это очень сложное правоприменение, особенно для глобального масштаба криптовалютных транзакций, поэтому необходимо дополнительно обсудить его применение к спору с участием иностранной стороны. Эта работа не охватывает различные юридические вопросы, связанные с криптовалютами, а рассматривает только аспекты международного частного права. Она основана на предположении, что криптовалюты потенциально могут быть нематериальными активами и могут быть объектом прав собственности.

Ключевые слова: международное частное право, виртуальные активы, цифровые активы, УНИДРУА, коллизионное право.

Introduction

Digital assets are frequently stored in and transmitted through global networks such as the internet and private or virtual networks. Rapid advancement in technology also increases the use of digital assets to store and transmit data between jurisdictions. The advancement of technology is beneficial because it would provide a fast, secure, and cheap way to store and transmit information across borders. This would be advantageous to the party who wishes to enforce foreign law to the digital assets, such as a creditor who obtains judgment to a debt and wishes to satisfy it with the debtor's assets. But the same would not apply to the party whose digital assets are being targeted by an opponent because information that it was done through cross-border data could cause concern to the validity and enforceability of foreign law to the digital assets as it has yet to provide a connection with the law and assets, and there is a possibility that the law chosen by the party won't actually be the law at that particular time. Transmission of digital assets through cross-border also causes threats because it could be subject to seizure by public authorities or involvement of private persons acting in aid of an enforcement or debt collection proceeding, and the data could be stored at the location where the enforcement activity and/or the insolvency or debtor's assets are situated. This could hinder the choice of law process of the party that wishes to avoid or escape from a particular law to the digital asset.

Modern interface digital assets in international private law happen through electronic media and are also referred to as "digital data." For example, the International Institute for the Unification of Private Law (UNIDROIT) has defined a digital asset as "an electronic record which is capable of being subject to control" under Principle 2(2) of the draft UNIDROIT Principles on Digital Assets and Private Law (https://www.unidroit.org/wp-content/uploads/2024/01/Principles-on-Digital-Assets-and-Private-Law-linked.pdf). This definition of digital assets may resolve the issues on completely electronic form of data like audio, video, or multimedia recordings, and also non-electronic form of data which would be converted into electronic data in the future. Current examples of audio and video record-

ing are copies of voice recorded conversation and copies of interviews or presentations. An example of data which would be converted into electronic form in the future is an agreement to sell shares in a joint venture from both companies where the joint venture is located overseas. At the moment, the agreement is still in non-electronic form, but inevitably it would be converted into electronic data when it is adopted and stored as a record for the future. So it can be seen that the variety and form of digital asset is almost unlimited, from simple text and data to very complex information stored in a multimedia format. Despite these various forms of digital assets, in essence, it is information and the environment in which it is stored and transmitted offer both opportunities and threats to the choice of law process in international private law.

Challenges that can arise with digital assets on death or loss of capacity include:

1) Whether a digital asset has been lost on death or loss of capacity may be unknown. This can lead to family members and attorneys not being aware of the asset's existence or its significance (e.g., sentimental value or a photo stored online).

2) Difficulty accessing the asset due to the need for a password or the service provider requiring the account holder to be still living before them to release the asset.

3) Conflict of laws issues arising from the intangible nature of digital assets and conflicting terms of services which might stipulate the applicable law to determine ownership.

Concepts such as "secured virtual asset", "digital certificate", "crypto asset", "electronic record of transferred rights", "crypto securities", etc. They can denote the same type of digital assets in different states. Also, depending on the specific characteristics, from 2 to 5 types of tokens are allocated in the legislations of different states. So as, Kuzmenkov M.Y proposed to use the classification of digital assets into three types, which is emerging in the legal doctrine, namely: utility tokens, payment tokens and asset tokens (Kuzmenkov 2022).

Digital assets are web contents that are accessible through a web address (URL) and have no physical existence. They include a person's Flickr account, weblog, YouTube account, and content in social media. As internet presence becomes increasingly significant for everyone, regardless of their location, digital assets are becoming more important to their owners and their families. Hence, it becomes crucial to understand how they would be dealt with on death or loss of capacity and whether the mechanisms for dealing with traditional forms of wealth are sufficient to deal with these assets.

The type of analysis required to advance the domains of property law into the digital age is the same for all legal systems, despite differences in theory and pedagogy. In this way they activate the characteristics of the object in question that distinguish the characteristics as "normal" information or data, which everyone agrees should not be subject to property rights. In our view, the courts should be able to use the positive aspects of cryptoassets to determine what constitutes cryptocurrency, not the type of information in the permitted uses even if it is a "creature" (Alen 2022).

Materials and methods

The system of general scientific methods consists of: analysis, synthesis, analogy. The comparative legal method was used in the study of the legislation of various states. The method of legal modeling was used in the development of rules for choosing the applicable law to relations arising over digital assets and rules for resolving a preliminary conflict of laws issue.

This article examines the current position of cryptocurrencies in the regulatory field of practice of other jurisdictions on the basis of the historical, comparative legal method, the method of dialectical connection between logical and historical ways of knowledge, the concept of a systematic and comprehensive research. The used research methods are a system of philosophical, general scientific and special legal means and methods of knowledge that provide objectivity, historicism and comparativism of the study of international law and the law of integration associations.

Results and discussion

Digital assets are created or stored in digital form. These assets can be categorized as (i) data, including personal data; (ii) content, such as books, images or multimedia; (iii) information systems, like software and databases; or (iv) virtual items, such as music stored on an MP3 player or items in an online game. These assets can be intangible, such as data, or have a physical form as well. It is important to emphasize at the outset that digital assets are a form of property. This is somewhat obscured by the intangibility of many digital assets, in contrast with traditional belongings. Accordingly, there is often a lack of awareness as to the property-like nature of

digital assets and the fact that these are capable of being owned, transferred, and burdened by rights.

The depletion in price of data storage and processing technology has led to an increase in the volume and variety of digital assets held and the rate at which these are produced. It is perhaps difficult to imagine any person in the developed world who does not create, store, manipulate, or transmit some form of digital asset on a regular basis. This has extended to the realization of digital assets as an aspect of a person's estate and the burden of devising or disposing of these assets now falls upon a broad spectrum of society. This commonly includes objectives such as preservation of personal digital content for the benefit of loved ones or the exclusion of certain individuals from digital content. On a larger scale, businesses and other organizations rely on digital assets to an extent that is often far greater than the reliance on tangible assets.

The resolution of disputes involving digital assets often turns on questions of jurisdiction. As noted by Anurag Bana and Ammar Osmanourtashi: "Traditional conflict of laws may seem outdated in relation to DLT systems as the principles of PIL, such as lex rei sitae, have been created for transactions in goods and services where the parties to the transactions are identifiable. Furthermore, the fact that digital currencies are accessed through keys, and are not actually in the possession of an individual or entity per se, means that the location of property on the blockchain is effectively impossible." (https://www.ibanet.org/bli-may-2023-blockchain-private-international-law)

In a world where assets can be transferred across the globe with the click of a mouse, and replicated in a matter of seconds, these words have never been truer than they are today. Globalization of commerce, and the ever-increasing use of the internet as a forum for trade, demand that we give greater consideration to the choice of law and the forum in which disputes will be resolved. Failing to do so can leave successful parties without a remedy, and unsuccessful parties without an enforcement mechanism, leading to a result where the asset in question ends up in the hands of the party who took it, with no legal entitlement to do so.

There are numerous situations where a person's legal rights in regard to a digital asset can be infringed, causing a loss that may be recoverable through legal action. For example, let us consider the case of a person who operates a website selling software to a global market. If another person were to access and copy the software, and then use it as his own to undercut the selling price, the website operator may have a claim for breach of copyright against the infringing party. The operator's cause of action is an intangible right classified as a 'chose in action', and the subject matter of the infringement is the software, which is also a chose in action. An action to enforce a right in intangible property or for a breach of contract is always a proceeding founded on rights, which are defined, created, or arise in relation to a specific piece of legislation or a common law principle. The software operator will want to know under which law can he define and enforce his rights, and where can he obtain the most effective relief against the infringing party.

The lex situs of a cryptoasset is the place where the person or company who owns it is domiciled. That is an analysis which is supported by Professor Andrew Dickinson (Andrew 2019). In Andrew Dickinson's chapter essentially argues that cryptoassets can be seen as benefits to participants in a blockchain network that can be similar to other forms of intangible assets (e.g. such as goodwill) for the purpose of the dispute and that intangible assets are subject to " law of the place of residence or business of the participant with which that participation is most closely connected".

Regarding the role of cryptocurrencies as a store of value, under the traditional ownership model, this is the law governing ownership, determined by the relevant clause on conflicts of laws – in principle lex situs –, determines whether one exists or not. The specific "thing" can be the subject of property rights, the nature of this thing as immovable or movable (or other thing), as well as the types and content of these rights, i.e. the rights of the person who "holds" that thing. However, when it comes to intangible assets and especially digital assets, the effectiveness of such a model has largely been tested, primarily due to the difficulty, even impossibility, of locating practical wisdom for them, even if not only because of this objective question (Villata 2023).

Physical location of the parties involved.

Factors influencing jurisdiction in digital asset disputes are essential to outline, and they differ from a traditional analysis. Jurisdiction refers to the authority of a party to make legal decisions in a certain location in reference to the subject matter of the dispute. In order for a judge to make a legal decision, it is important that they have jurisdiction first. It is generally agreed that a judgment on the merits will not be recognized unless the rendering court had jurisdiction. Legal systems have a variety of ways of determining jurisdiction, but these generally involve

showing that there is some link between the defendant and the forum state. Subject to due process and the defendant's will being involved, the plaintiff must find a "forum" where they can sue the defendant. With national boundaries, these are more convenient, but it becomes harder to determine jurisdiction on the internet – a system with no boundaries.

The seminal case of Yahoo! Inc. v La Ligue Contre Le Racisme Et L'Antisemitisme tried to test the boundaries of these principles. Yahoo! Inc., a US registered company providing an online auction service, was taken to court in France by several French organisations alleging that the auction of Nazi memorabilia on Yahoo's website breached French laws prohibiting the display and sale of racist material. In an attempt to circumvent this litigation, Yahoo! brought a declaratory action in the US seeking a ruling that the French court lacked personal jurisdiction over it (https://law.justia.com/cases/federal/district-courts/FSupp2/169/1181/2423974/). Aware that enforcement of its laws against an American company would be complex and controversial, the French organisations sought to block this move by notifying Yahoo! that they would initiate enforcement proceedings if the US court found in Yahoo's favour. Yahoo! then amended its claim, seeking a declaration that any judgment issued by the US court would be unenforceable. The presiding judge declared that any enforcement proceedings commenced by the French organisations would presumptively violate US law, which would constitute an impermissible extraterritorial application of French law. The judge therefore issued a permanent injunction barring the organisations from commencing enforcement proceedings. This decision was affirmed on appeal. The case is interesting because although it did not specifically concern digital assets, it illustrates the difficulties in traditional litigation and the reluctance of national courts to cede jurisdiction. The fact that the case involved numerous hearings and appeals, both in the USA and in France, and consumed several years and large amounts of money is hardly a testament to the efficiency of the modern legal process.

If traditional legal principles are applied to determining jurisdiction in a digital context, a critical place to start is to examine the physical location of the parties involved. The reason this is so important is that one of the basic and enduring precepts of international, and indeed domestic, law is that a state has authority over people and property within its territory. Subject to certain qualifications, one state should not interfere with matters within the jurisdiction of another state. This concept is deeply ingrained in the notion of sovereignty, and though the growth of public international law has in some ways mitigated the strict application of these principles, they remain very much alive and relevant to jurisdiction in the digital world.

Location of the digital asset servers

Factors to be considered in deciding the location of the digital asset servers include the physical location of the servers, the nature of the rights in the digital assets, and the digital asset ownership. The physical location of digital asset servers will not always be decisive in determining jurisdiction. The standard private international law approach to the location of intangible property by equating it with the location of the relevant servers is unconvincing in a borderless digital environment because it fails to recognize that digital assets can be moved or copied rapidly at negligible cost. This factor is relevant to the extent that it provides a connection to a particular jurisdiction and creates an additional cost of relocating the servers. The territoriality of rights in digital assets and the ownership of those digital assets (as between creditors, liquidators, etc.) will be more important in fixing the location of the servers as this will determine where the rights of the parties can actually be enforced. For example, if a secured creditor has the right to take possession of an item of digital asset property in satisfaction of a debt, the creditor will want the servers to be located in a jurisdiction where it can exercise that right. The creditor's ability to control the location of the servers in order to create a "digital asset haven" favoring enforcement of its rights will lead to forum shopping by various parties with competing rights in the same digital assets.

The first step in understanding the private international law issues of any transaction is identifying the relevant legal system. This is because it is the basis of further judgments about jurisdiction, recognition and enforcement. The concept of 'applicable law' determines when a legal system has the authority to regulate an aspect of a particular transaction. This step is complicated in relation to cryptocurrency transactions because the use of a borderless digital asset challenges the traditional concepts of territoriality and conflicts of law.

Both parties to a cryptocurrency transaction could be domiciled in the same country or in different countries, therefore creating a domestic or international transaction. A party could also be sitting in front of their computer in one country and sending the cryptocurrency to another country. The

location of the computer server that the party is using could also be in a different country than where the party is domiciled. This situation involves the choice between pre-existing conflict of laws rules or the application of legislative reforms. If it is determined that conflict of laws rules are to be used, the next step is identifying the different connecting factors to the transaction and the relative timing of those connecting factors. In many cases, confusion about applicable law could lead to costly and time-consuming jurisdictional disputes. An understanding of conflicts of law rules as well as a methodical analysis of the transaction and its connecting factors will help parties to avoid jurisdictional disputes and will be the most beneficial approach for identifying applicable law.

Applicable laws and regulations

The applicable laws and regulations in determining jurisdiction in digital asset disputes provide a central factor. Governing laws that are pertinent or relevant to the cause of action will be a strong determinant for the location of the trial. The more significant the digital asset in dispute, the more likely a party will be encouraged to seek a jurisdiction with laws that are favorable to the enforcement of a judgment involving the satisfaction through the digital asset itself. The enforcement of judgments involving specific performance or injunctive relief can also be a significant consideration for a party when assessing a jurisdiction for a digital asset dispute. Specific performance or injunctive relief involving digital assets may not be possible in a jurisdiction that does not effectively allow for enforcement of judgments involving foreign assets. Parties will also have to consider the likelihood of the governing laws providing an outcome that is favorable to them.

One of the complexities in determining the location of trial relating to applicable laws and regulations is the fact that it may change over the course of the dispute. For example, a party seeking to move their digital asset to avoid it being seized may require a declaration from the trial judge that the movement of the asset was not in breach of any laws or regulations. This would then provide a strong motive to select a jurisdiction in which that party believes the laws regarding the specific declaration are in their favor. An additional example is a party that is involved in an ongoing contractual dispute involving a digital asset with terms for an arbitration clause. The party will need to consider whether the arbitration will be more effective in a location relevant to the laws and enforcement of an arbitration judgment that is favorable to that party. This may lead to a bifurcation of proceedings before a court in the location satisfying the terms of the arbitration agreement and the laws relevant to the enforcement of the judgment on the arbitration award.

At the most basic level, jurisdiction is defined as the authority of a court to make and enforce a legal judgment. When courts are faced with a conflict of laws issue, they must first determine whether they have jurisdiction over the matter. This decision is made by reference to the private international law of the forum. In cross-border cases, a court may have to decide whether it can assert jurisdiction over a defendant located in a foreign state or where a cause of action that occurred (or was felt) in multiple jurisdictions should be tried. This can prove to be a difficult and complex task. With digital assets held on a global network, it may be said that the asset is located everywhere and nowhere. This is because, unlike a tangible asset, there is no physical location in cyberspace. The location of the asset may be relevant to the application of substantive law and the ability of a court to enforce a judgment. However, this does not determine the status of the asset for jurisdiction. A court's ability to assert jurisdiction over the contested asset will depend on the rules regarding the recognition and enforcement of foreign judgments in the jurisdiction where the holder of the asset is located. In circumstances where a cause of action may have occurred in multiple jurisdictions, a court may have to engage in a choice of law analysis to determine which jurisdiction's law should be applied. This is another difficult and complex task with no clear answer in instances where laws between jurisdictions conflict.

When the internet was still in its infancy, law professor Joel Reidenberg wrote an article addressing the challenges of applying national laws to the global internet. More than a decade later, he stated, "The challenge of applying territorial-based laws to a borderless global network in a way that respects local norms and the rule of law at the international level remains one of the greatest challenges to the future growth and potential of the global digital economy" (Reidenberg 2005). His observation highlights the legal challenges that courts face in attempting to assert jurisdiction over digital assets during cross-border disputes. These challenges are largely a result of conflicting laws between jurisdictions, the lack of an international legal framework relating to digital assets, and jurisdictional disputes.

International jurisdictional disputes are difficult at the best of times. Ascertaining which countries'

courts have jurisdiction over a dispute is a complex and uncertain area of law. In the context of transnational cryptocurrency fraud, the task of determining the applicable forum is made all the more difficult by the unique features of the technology and the relative inexperience of the courts with it. A cryptocurrency is a decentralized digital currency which uses encryption techniques to regulate the generation of units of currency and to verify the transfer of funds. Bitcoin is the archetypal example of this kind of currency. The currency operates independently of a central bank and is transferred person to person via the internet without the need for a trusted third party. Transactions are recorded in a "public ledger" called a blockchain. Cryptocurrencies are traded on various online exchanges into various traditional currencies. Apart from the traditionally global nature of internet-based technologies, the unique features of cryptocurrencies, the potential for anonymity, the variation across jurisdictions in how they are treated (property, currency, security, etc.) and the potential for regulation by self-code make disputes about cryptocurrency fraud highly uncertain when it comes to ascertaining what body of rules should be applied and which courts are best placed to deal with it.

The uncertainties inherent in ascertaining the jurisdiction in any common law nation, along with the costs associated with litigation, have led to a growth in alternative dispute resolution. This is echoed in the online world whereby traditional methods of enforcing judgments are often impractical and the global nature of the technologies and assets at issue give rise to increased inter-jurisdictional conflict. It is therefore important to consider methods of dispute resolution as well as the courts that would otherwise determine the relevant law and give judgment.

The UNIDROIT Principles

At the pre-conference to the 87th General Assembly of UNIDROIT, it was stated that the primary purpose of the Principles is to create a coherent and progressive statement of the law aimed at giving the appropriate legal infrastructure to the development of digital assets whilst not hindering the advance of technology. As with any new technology, the law struggles to keep pace and this often results in legislation that is outdated and inappropriate. Although the UNIDROIT Governing Council recognized that it would take more than a set of legal principles to reach the desired legal infrastructure, it was acknowledged that it is a necessary first step for the legal community to have a map of where it needs to go.

Universality was stated as another primary aim of the UNIDROIT Principles. With the increasing influence of soft law on domestic systems, the need for a unifying set of international principles on digital assets has never been greater. In a globalized world, with business transcending national boundaries and legal systems, it is important to avoid conflict of laws and provide an internationally acceptable set of rules. The recent scandals involving conflicted court decisions on whether digital assets are considered property.

An oft-overlooked major goal of legislative projects is uncertainty reduction. In the 2006 Guide to Enactment of the Model Law on Cross Border Insolvency, it was stated that the guide would assist in recognizing and interpreting the Model law and that any failure to do so is an obstacle to the insolvency proceeding. Similarly, the UNIDROIT Principles are a tool of interpretation, intended for use by legislators, judges, lawyers, and practitioners. By providing a clear and concise set of rules, it is hoped that there will be less need for expensive litigation to determine the rules of the law.

Implementation and Enforcement of the UNIDROIT Principles

Compliance and monitoring mechanisms.

Parties to digital asset transactions are more likely to comply with legal principles if they have an effective means of internalizing and managing legal risk. This will require the development by the private sector of compliance and risk management mechanisms that reflect the UNIDROIT principles. To aid compliance by the wider community, it may be necessary to develop education programs and supportive interpretive guidelines. Measures could also be taken to prevent the abuse of digital assets for unlawful or dishonest purposes. This would include the development of industry self-regulation and the adaptation of existing legal principles relating to the tracing and freezing of assets.

Role of governments and regulatory bodies.

Governments and regulatory bodies will continue to face the challenge of regulating digital asset transactions. Many governments have enacted rules which purport to regulate digital assets, for example by considering them to be intangible property for the purpose of enforcement of a judgment. Others have sought to ban or restrict digital asset transactions by applying rules designed for the securities market. Such approaches may create legal uncertainty, increase cross-border regulatory conflicts, and reduce the effectiveness of transnational digital asset trans-

actions. The objective of any regulation should be to facilitate digital asset transactions through providing legal certainty without increasing transaction costs or affecting the substantive legal rights and obligations of the parties. Regulation should be technologically neutral, principles-based, and capable of flexible application to take account of the rapid pace of technological change in this area.

The legal regulation of digital assets in Poland and Kazakhstan

The legal regulation of issuance and circulation of cryptocurrency or tokens of any sort in any system of decentralized control is related to a variety of existing and future provisions of Polish and EU law regulations. Pursuing such activity might interfere with such fields as: provisions on issuance and circulation of money and acceptable means of payment, financial intermediary laws, laws on trading, provisions on payment services, securities laws and others. Due to the fact that cryptocurrency in wide sense can be a universal substitute for money or eligible for issuance of a specific value, regulation in this area must be based on the broad and specific characteristics of individual cryptocurrency and is strictly connected to accurately defined taxation. The changes in regulations are to be introduced to reflect technological progress in line with the predictions of future significant growth of activity related to cryptocurrency in Poland.

KNF specified the definition of cryptocurrency in the context of an interpretation of the Act on electronic services dated 18th July 2002, when they issued a public statement on the conditions under which banks and electronic money institutions can provide services related to cryptocurrencies [9]. The purpose of the statement was to clarify the doubts of organizations supervised by KNF providing payment services in the scope of maintaining bank accounts and execution of domestic and foreign wire transfers. The KNF indicated that cryptocurrency is an alternative to national currencies, not a tool for executing payment orders denominated in traditional currency. In implication, considering the aforementioned activities, cryptocurrencies cannot be an object for execution of payment orders.

The term "cryptocurrency" is not defined in the legal. However, the Polish Financial Supervision Commission (KNF) in public statements gave a definition of the notion. Cryptocurrency is identified with virtual "currency" used for the exchange of goods and services from its own issuer and usually accepted by a defined group of people or legal persons in and outside the internet. It is based on the technology of decentralized distributed ledgers and is not issued or guaranteed by any central bank. Cryptocurrency's peculiar features are: no physical form, and reliance on decentralized control as opposed to centralized electronic money and central banking systems. Cryptocurrencies might take a form substituting money (cryptocurrencies in narrow sense) or might be used to issue an IT based "token" of some real and potential value (cryptocurrency in broad sense). It must be underlined that in the light of current regulations, cryptocurrency is not legally qualified as "money" and does not fall under the definition of e-money.

The primary oversight for virtual currencies is derived from a warning from the financial regulatory authority in 2007 that dwells on the pitfalls of speculative investing. Ultimately, future law will be dictated under a directive of the European Parliament and of the Council which is amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC. This directive, commonly known as AMLD5, brings a broad definition for virtual currencies and proposes that all member states should require virtual currency exchanges and wallet providers to register with their competent authorities. This ultimately should be then administered by each authority notifying its specific requirements. Whether or not these requirements will apply to miners and other service providers is not yet clear.

In Poland, up to this point in time, regulation of cryptocurrency has been largely non-existent. However, in July 2018, new legislation was enacted that incorporates aspects of virtual currencies into the existing act on Counteracting Money Laundering and Terrorism Financing. This means that virtual currency exchanges are now treated in the same way as traditional fiat currency exchanges and are subject to the same regulations, although at the time of writing this legislation is not due to come into effect for another six months.

Applicants who want to become "white" cryptocurrency market participants can apply for necessary authorization from the Polish Financial Supervision Authority (Komisja Nadzoru Finansowego). After the Act on Counteracting Money Laundering and Terrorism Financing (Ustawa o przeciwdziałaniu praniu pieniędzy oraz finansowaniu terroryzmu) of 16 November 2000 is implemented, coroners and

cryptocurrency exchange platforms will have to seek authorization from this institution.

The authority allows to issue various decrees about specific matters and interpretation of laws, therefore to provide exhaustive information about licensing and registration requirements one would have to look on this institution's site or ask for legal opinion. However, there are some general rules outlined in the Act on Trading in Financial Instruments (Ustawa o obrocie instrumentami finansowymi) of 29 July 2005.

Article 30 of aforementioned document states that entity willing to provide investment services or operate regulated markets must seek authorization from KNF. By interpreting information from the Act, one can assume cryptocurrency exchange platform would have to seek specific authorization to trade cryptocurrencies as they are deemed by some to be financial instruments. The Act specifies that legality of specific financial service will be determined based on decree issued by the President of the Republic of Poland. This clarifies that once cryptocurrency is deemed as financial instrument, then the service of exchange platform would be subject to Article 30 mentioned earlier.

To attain specific authorization, cryptocurrency exchange platform would have to undergo complex registration process by submitting an application to KNF. The Act on Trading in Financial Instruments does not explain specific requirements for registration, however, the authority would likely publish relevant information when cryptocurrency authorization matters become significant. If the registration is successful, the entity would have to fulfill numerous obligations imposed by the Act and decrees. Failure to comply may result in sanctions or withdrawal of authorization. On the positive side, cryptocurrency exchange platforms seeking to expand their services to other European countries can benefit from passporting right given by the Act on Trading in Financial Instruments. This states that entity authorized by one Member State, can provide investment services and operate regulated markets on territory of another Member State based on single notification.

Also, the Polish government published a draft act on crypto-assets (the Draft Act) that aims to align the national legal framework with the EU regulation on crypto-assets. The Draft Act transposes the provisions of the EU's Market in Crypto-Assets Regulation (the MiCA) and establishes additional supervisory measures for the crypto-assets market sector.

Conclusion

Disputes over the jurisdiction of digital asset disputes will continue to grow alongside the market for digital assets. However, there are a number of trends and future outlooks for how such disputes will be resolved, which will impact the choice of forum. Although this article has focused largely on the problems and complexities of determining jurisdiction in digital asset disputes, the use of private decentralized international systems which are not controlled by any one national government may render the issue of jurisdiction less important for certain types of digital assets. For example, some foresee that digital commodities futures contracts will be concluded on systems using smart contracts based on cryptographic technology. If these contracts are concluded on systems that automatically shift the commodity into the possession of the buyer upon payment, taking the dispute to a traditional legal forum may be impractical. The same is true for taking physical possession of the commodity and selling it to satisfy a judgment. In such cases, it may be necessary to create a private decentralized dispute resolution system using arbitrators knowledgeable in both the technology used and the subject matter of the contract. This is already happening in the digital asset realm, with various online dispute resolution services and even purely digital arbitration conducted within online games. Such systems will be designed to have the arbitrators interpret the underlying contract and the intentions of the parties and render awards that can be executed within the system, circumventing the need for traditional litigation. Given that such systems will be international in nature, with the arbitrators and parties being located in various countries, the determination of the choice of law and jurisdiction for enforcement of the award will itself be a complex but necessary exercise.

Even though the strategy for deciding the law appropriate to cryptocurrency exchanges can contrast from one gathering to another, all cryptocurrency exchanges beneath the unitary approach will be subject to the same law which is a perfect struggle of law arrangement protecting the coherence of the record or blockchain in its pertinent law. In any case, the unitary approach may not be continuously attainable to apply to permissionless cryptocurrency frameworks such as Bitcoin. Since there's no self-evident substance that possesses or works permissionless frameworks, there would be regularly no choice of law assigned by agreement rules or conventions. Pseudonymity among members

found over the world nearly completely disposes of the plausibility for them to concur upon an applicable law (additionally upon the same pertinent law) (Yüksel 2023).

The possibility of establishing a dispute resolution system based on inter-state cooperation and reciprocity is an important factor when considering international digital asset disputes. Unlike traditional forms of property, digital assets are easily transferable across borders. As a result, an effective system of inter-state cooperation could mitigate conflicting judgments and parallel litigation arising from cross-border asset transfers. It may also provide a mechanism for the enforcement of judgments and awards in a foreign jurisdiction, something which is currently problematic due to issues of cross-border recognition and enforcement. All of these factors are likely to reduce the costs of resolving international digital asset disputes, thus increasing the efficacy of the legal process.

The concept of jurisdiction has long been based on the principles of territoriality and thus originates from the physical location of the subject matter or the parties involved. In an era where an increasing amount of business, social interaction, and asset exchange takes place online, the issue of deciding the location where a given incident occurred has become more complicated. The result is a growing level of uncertainty as to whether a particular dispute falls within the jurisdiction of a given court, commonwealth, or state, and to what extent an order made by a court in one location will be enforceable against assets or persons situated elsewhere. This situation is particularly problematic for common law lawyers whose understanding of jurisdiction has been based largely upon a body of loosely connected precedents with roots in both legislation and international law. Although civil law lawyers may find it easier to adapt and expand their codes on jurisdiction to encompass the digital age, the cross-pollination of common and civil law principles in international agreements means that this issue is of universal significance.

Since digital assets are not confined to a particular geographical location, a dispute will likely have an international element. Parties to a transaction involving cryptocurrency may be based in different countries and subject to different laws. Furthermore, the choice of law and jurisdiction clauses require a method of enforcement should the need arise. As such, it is important to consider the various dispute resolution mechanisms available and their suitability in the context of cryptocurrency transactions.

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АВТОРЛАРҒА АРНАЛҒАН АҚПАРАТ

«ҚазҰУ хабаршысы. Заң сериясында» материалдарды жариялау Open Journal System арқылы, онлайн жіберу жүйесі және сараптамалық бағалауды қолдану арқылы жүзеге асырылады. Тіркелу және жүйеге кіру материалдарды жіберу бөлімінде қол жетімді.

Корреспонденция авторы журналға жариялау үшін ілеспе хат ұсынуға міндетті.

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- Сурет, кесте, графика, диаграмма және т.б. мәтін ішінде нөмір және атаумен белгіленеді. (Мысалы, 1 - сурет – Сурет атауы). Суреттердің, таблица, графика мен диаграммалардың саны мақала көлемінің 20% -нан (кейбір жағдайда 30%) артық болмауы керек.
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Бірінші бет:

- Бірінші жол –ҒТАМР нөмірі (ерекше жағдайда ӘОЖ), мәтін беттің сол жақ шетімен тегістеледі, қаралау шрифт.
- Мақала атауы (Тақырып) мақаланың мәні мен мазмұнын көрсетіп, оқырманның назарын аудару керек. Тақырып қысқа әрі ақпараттық, жаргондар мен Название должно быть кратким, информативным и не содержать жаргонизмов или аббревиатурасыз жазылуы тиіс. Тақырыптың орташа ұзындығы 5-7 сөз (кей жағдайда 10-12 сөз). Мақаланың тақырыбы орыс, қазақ және ағылшын тілдерінде берілуі керек. Тақырып қаралау шрифтті кіші әріптермен, беттің ортасымен тегістеледі.
- Мақала автор(лар)ы – аты-жөнінің бірінші әріптері және тегі, жұмыс істейтін орны (аффилиация), қала, мемлекет, email – орыс, қазақ және ағылшын тілдерінде жазылады. Авторлар туралы ақпарат қалыпты шрифтті кіші әріптермен жазылып, беттің ортасында тегістеледі.
- Аңдатпа көлемі 150 сөз орыс, қазақ, ағылшын тілдерінде жазылады.

- Аңдатпа құрылымында келесі ақпарат МІНДЕТТІ түрде болуы керек:
- Зерттеу тақырыбы бойынша кіріспе сөз.
- Ғылыми зерттеудің мақсаты, негізгі бағыттары мен идеялары.
- Жұмыстың ғылыми және практикалық маңыздылығы бойынша қысқа ақпарат.
- Зерттеу әдістемесі бойынша қысқа ақпарат.
- Ғылыми зерттеудің негізгі нәтижелері, талдау және тұжырымдама.
- Жүргізілген зерттеу жұмысының маңыздылығы (аталған жұмыстың ғылымның сәйкес саласына енгізген үлесі)
- Жұмыс қорытындысының практикалық маңыздылығы.

- Кілт сөздер/сөз тіркестері – орыс, қазақ, ағылшын тілдерінде 3-5 сөз аралығында.

Келесі бет (жаңа бет):

- Кіріспе келесіде берілген негізгі элементтерден тұрады:
- Таңдалған тақырыптың негіздемесі; тақырып өзектілігі мен зерттеу проблемалары. Таңдалған тақырыптың негіздемесінде алдыңғы зерттеушілердің тәжірибелері негізінде проблемалық жағдайдың (зерттеу жұмыстарының жоқтығы, жаңа зерттеу нысанының пайда болғаны және т.б.). бар екендігі айтылады. Тақырыптың өзектілігі аталған зерт-

теу нысанының қойылған сұрақтарға толық жауаптардың болмаған жағдайда, тақырыптың теориялық және практикалық маңыздылығы арқылы дәлелденіп жалпыға ортақ мүдде арқылы анықталады.

• Жұмыстың нысанын, пәнін, мақсаттарын, міндеттерін, тәсілдерін, әдістер, гипотезасын анықтау. Зерттеудің мақсаты тезисті дәлелдеумен, яғни зерттеу тақырыбын автор таңдаған аспектімен көрсетумен байланысты.

• Материал мен әдістер - материалдар мен жұмыс барысының сипаттамасынан, сондай-ақ қолданылатын әдістердің толық сипаттамасынан тұруы керек

Зерттеу материалының сипаттамасы оның сапалық және сандық көрінісін қамтиды. Материалдың сипаттамасы - тұжырымдар мен зерттеу әдістерінің сенімділігін анықтайтын факторлардың бірі.

Бұл бөлімде проблеманың қалай зерттелгені сипатталады: бұрын жарияланған рәсімдеулерді қайталамай егжей-тегжейлер ақпарат беріледі; материалдар мен әдістерді қолдану кезінде міндетті түрде енгізілген жаңалықтар арқылы жабдықты сәйкестендіруді (бағдарламалық жасақтама) және материалдардың сипаттамасы қолданылады.

Ғылыми әдістеме келесілерден тұруы қажет:

- зерттеу сұрақтар(ы);
- алға қойлыға гипотеза (тезис);
- зерттеу кезеңдері;
- зерттеу әдістері;
- зерттеу нәтижелері.

• Әдебиеттерге шолу жасау бөлімінде - зерттеу тақырыбы бойынша ағылшын тілінде шетелдік авторлардың іргелі және жаңа еңбектер (кемінде 15 жұмыс) тізімі, олардың ғылыми мақалаға үлесі түрғысынан талдау, сондай-ақ сіздің мақалаңызда қолданылған деректер беріледі.

• Жұмысқа қатысы жоқ көптеген сілтемелердің болуы немесе сіздің жетістіктеріңіз туралы, алдыңғы жұмыстарыңызды көрсететін сілтемелерді қосуға БОЛМАЙДЫ.

• Нәтижелер мен Талқылау бөлімінде сіздің зерттеу нәтижелеріңізді талдауы және талқылауы беріледі. Зерттеу барысында алынған нәтижелер туралы қорытынды беру арқылы негізгі мәні айқындалады. Бұл мақаланың маңызды бөлімдерінің бірі болып саналады. Онда жұмысыңыздың нәтижелерінің талдауы және алдыңғы жұмыстармен, талдаулармен және тұжырымдамаларымен салыстыру арқылы сәйкес нәтижелерді талқылау беріледі.

• Қорытынды, тұжырымдама – жұмыстың осы кезеңдегі нәтижелерін жалпылау және қорытындылау; автор алға қойған тұжырымның растығын және алынған нәтижелерді ескере отырып, ғылыми білімнің өзгеруі туралы автордың қорытындысын растау. Қорытынды абстрактілі болмауы керек, оларды үсыныстарды немесе одан әрі жасалатын жұмысты сипаттай отырып белгілі бір ғылыми саладағы зерттеу нәтижелерін жалпылау үшін қолдану керек.

Қорытындының құрылымында келесі сұрақтар болуы керек: Зерттеудің мақсаттары мен әдістері қандай? Нәтижелері қандай? Қандай тұжырымдар бар? Зерттемені енгізу, қолдану перспективалары мен мүмкіндіктері қандай?

• Пайдаланылған әдебиеттер тізімі немесе библиографиялық тізім әлеуметтік және гуманитарлық бағыттарға 15 атаулардан тұрады, ал ағылшын тіліндегі жалпы атаулар саны 50% -дан кем болмауы керек. Егер сілтемелер тізімінде кириллицада берілген еңбектер болса, сілтемелер тізімін екі нұсқада үсыну қажет: біріншісі - түпнұсқада, екіншісі - романизацияланған алфавитте (транслитерация - http://www.translit.ru).

Романизацияланған әдебиеттер тізімі келесідей болуы керек: автор (лар) (транслитерация) → (жақшадағы жыл) → транслитерацияланған нұсқадағы мақала тақырыбы [мақала тақырыбының ағылшын тіліндегі аудармасы төрт бұрышты жақшада], орыс тіліндегі дереккөздің атауы (транслитерация немесе бар болған жағдайда ағылшын тілінде), шығыс деректер ағылшын тілінде белгілеулер арқылы жазылады.

Мысалы: Gokhberg L., Kuznetsova T. (2011) Strategiya-2020: novye kontury rossiiskoi innovatsionnoi politiki [Strategy 2020: New Outlines of Innovation Policy]. Foresight-Russia, vol. 5, no 4, pp. 8–30. Пайдаланылған әдебиеттер тізімі алфавиттік тәртіпте және тек мәтінге сілтеме жасалған жұмыстар ҒАНА жазылады.

• Орыс және қазақ тілдеріндегі әдебиеттер тізімінің стилі ГОСТ1-2003 «Библиографиялық жазба. Библиографиялық сипаттама. Жалпы талаптар және құрастыру ережелері» сәйкес жасалады (БҒСБ тізіміне енген басылымдарға қойылатын талап).

• Әлеуметтік және гуманитарлық бағытта романизацияланған әдебиеттер тізімін, ағылшын тіліндегі (басқа шет тіліндегі) дереккөздер рәсімдеу стилі - American Psychological Association (http://www.apastyle.org/).

• Берілген бөлімде төмендегілерді ескеру қажет:

• Ғылымның осы саласында қолданылатын және автордың жұмысы негізделген ғылыми басылымдар, алдыңғы қатарлы зерттеу әдістерінен дәйексөздер келтіріледі.

• Өзіңіздің жұмысыңыздан дәйексөздерді келтіруді шамадан тыс қолданудан аулақ болыңыз.

• Сілтемелерді ТМД / КСРО авторларының басылымдарына шамадан тыс келтіруден аулақ болыңыз, әлемдік тәжірибені қолданыңыз.

• Библиографиялық тізімде мақала тақырыбы бойынша белгілі шетелдік авторлар мен зерттеушілер шығарған іргелі және ең маңызды жұмыстар болуы керек.

Әлеуметтік және гуманитарлы бағыттағы мәтіндерде дәйексөз келтірілген сілтемелер жұмыстың бірінші авторы, шыққан жылы: бет нөмір(лер)і жақша ішінде көрсетіліп беріледі. Мысалы, (Залесский 1991: 25). Әдебиеттер тізімінде бір автордың бір жылда жарық көрген бірнеше жұмысы келтірілген жағдайда, шыққан жылдың түсына «а», «б» және т.б. әріптерді қосып жазу керек. Мысалы, (Садуова, 2001а: 15), (Садуова, 2001б, 22). Жаратылыстану бағытындағы мақалаларда сілтемелер сілтеме жасалған жұмыстардың мақала мәтінінде кездесетін кезеңіне байланысты нөмірленіп тік жақшада беріледі.

Библиографиялық сілтемелерді рәсімдеу үшін Mendeley Reference Manager құралын пайдалана аласыз.

Төлем мақаланы жариялауға және редакцияның хабарламасына қабылдағаннан кейін ғана жүргізіледі.
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ИНФОРМАЦИЯ ДЛЯ АВТОРОВ

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Автор для корреспонденции обязан предоставить сопроводительное письмо на публикацию в журнале.

Тематические направления журнала

Материалы журнала освещают широкий круг актуальных проблем юридической науки, теории государства и права, а также всех отраслей казахстанской и международной юриспруденции.

Статьи публикуются по следующим разделам юридической науки

- Теория и история государства и права.
- Конституционное и административное право.
- Гражданское право и трудовое право.
- Природо-ресурсовое и экологическое право.
- Уголовное право и процесс, криминалистика.
- Международное отношение и международное право.

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- Редакционная коллегия принимает ранее неопубликованные статьи по научным направлениям журнала. Статья представляется в электронном формате (в форматах .doc, .docx, .rtf) ТОЛЬКО посредством ее загрузки через функционал сайта журнала (Open Journal System).
- Кегль шрифта – 12 (аннотация, ключевые слова, литература - 10, текст таблиц – 9-11), шрифт – Times New Roman, выравнивание – по ширине текста, интервал – одинарный, абзацный отступ – 0,8 см, поля: верхнее и нижнее – 2 см, левое и правое – 2 см.
- Рисунки, таблицы, графики, диаграммы и др. представляются непосредственно в тексте с указанием нумерации и заглавия (Например, Рис. 1 – Название рисунка). Количество рисунков, таблиц, графиков и диаграмм не должно превышать 20% от всего объема статьи (в некоторых случаях до 30%).
- Объем статьи (без учета названия, сведений об авторах, аннотации, ключевых слов, библиографического списка) должен составлять не менее 3 000 слов и не превышать 7 000 слов для социогуманитарных направлений.
- Авторы в ОБЯЗАТЕЛЬНОМ порядке должны указать в сопроводительном письме в системе Open Journal System или Editorial Manager о том, что направляемая статья/рукопись нигде ранее не публиковалась, и что в статье отсутствуют заимствованные фрагменты текста из других работ без ссылок на них.

Структура статьи (для оформления статьи используйте ШАБЛОН):

Первая страница:

- Первая строка – номер МРНТИ (в исключительных случаях УДК), выравнивание – по левому краю, шрифт – полужирный.
- Название статьи (Заголовок) должно отражать суть и содержание статьи и привлекать внимание читателя. Название должно быть кратким, информативным и не содержать жаргонизмов или аббревиатур. Оптимальная длина заголовка – 5-7 слов (в некоторых случаях 10-12 слов). Название статьи должно быть представлено на русском, казахском и английском языках. Название статьи представляется полужирным шрифтом строчными буквами, выравнивание – по центру.
- Автор(ы) статьи – Инициалы и фамилия, места работы (аффилиация), город, страна, email – на русском, казахском и английском языках. Сведения об авторах представляются обычным шрифтом строчными буквами, выравнивание – по центру.
- Аннотация объемом не менее 150 слов на русском, казахском и английском языках.

Структура аннотации включает в себя следующие ОБЯЗАТЕЛЬНЫЕ пункты:

- Вступительное слово о теме исследования.
- Цель, основные направления и идеи научного исследования.
- Краткое описание научной и практической значимости работы.
- Краткое описание методологии исследования.
- Основные результаты и анализ, выводы исследовательской работы.
- Ценность проведенного исследования (внесенный вклад данной работы в соответствующую область знаний).
- Практическое значение итогов работы.
- Ключевые слова/словосочетания – количеством 3-5 на русском, казахском и английском языках.

Последующая страница (новая):

Введение состоит из следующих основных элементов:

- Обоснование выбора темы; актуальность темы или проблемы. В обосновании выбора темы на основе описания опыта предшественников сообщается о наличии проблемной ситуации (отсутствие каких-либо исследований, появление нового

объекта и т.д.). Актуальность темы определяется общим интересом к изученности данного объекта, но отсутствием исчерпывающих ответов на имеющиеся вопросы, она доказывается теоретической или практической значимостью темы.

• Определение объекта, предмета, целей, задач, методов, подходов, гипотезы и значения вашей работы. Цель исследования связана с доказательством тезиса, то есть представлением предмета исследования в избранном автором аспекте.

• Материал и Методы – должны состоять из описания материалов и хода работы, а также полного описания использованных методов.

Характеристика или описание материала исследования включает его представление в качественном и количественном отношении. Характеристика материала – один из факторов, определяющий достоверность выводов и методов исследования.

В этом разделе описывается, как проблема была изучена: подробная информация без повторения ранее опубликованных установленных процедур; используется идентификация оборудования (программного обеспечения) и описание материалов, с обязательным внесением новизны при использовании материалов и методов.

Научная методология должна включать в себя:

- исследовательский вопрос(-ы);
- выдвигаемую гипотезу (тезис);
- этапы исследования;
- методы исследования;
- результаты исследования.

• В секции обзор литературы – должны быть охвачены фундаментальные и новые труды по исследуемой тематике зарубежных авторов на английском языке (не менее 15 трудов), анализ данных трудов с точки зрения их научного вклада, а также пробелы в исследовании, которые Вы дополняете в своей статье.

• НЕДОПУСТИМО наличие множества ссылок, не имеющих отношения к работе, или неуместные суждения о ваших собственных достижениях, ссылки на Ваши предыдущие работы.

• В разделе Результаты и Обсуждение – приводится анализ и обсуждение полученных вами результатов исследования. Приводятся выводу по полученным в ходе исследования результатам, раскрывается основная суть. И это один из самых важных разделов статьи. В нем необходимо провести анализ результатов своей работы и обсуждение соответствующих результатов в сравнении с предыдущими работами, анализами и выводами.

• Заключение, выводы – обобщение и подведение итогов работы на данном этапе; подтверждение истинности выдвигаемого утверждения, высказанного автором, и заключение автора об изменении научного знания с учетом полученных результатов. Выводы не должны быть абстрактными, они должны быть использованы для обобщения результатов исследования в той или иной научной области, с описанием предложений или возможностей дальнейшей работы.

Структура заключения должна содержать следующие вопросы: Каковы цели и методы исследования? Какие результаты получены? Каковы выводы? Каковы перспективы и возможности внедрения, применения разработки?

• Список используемой литературы, или Библиографический список состоит из 15 наименований для социогуманитарных направлений, и из общего числа наименований на английском языке должно быть не менее 50%. В случае наличия в списке литературы работ, представленных на кириллице, необходимо представить список литературы в двух вариантах: первый – в оригинале, второй – романизированным алфавитом (транслитерация - http://www.translit.ru).

Романизированный список литературы должен выглядеть в следующем виде: автор(-ы) (транслитерация) (год в круглых скобках) название статьи в транслитерированном варианте [перевод названия статьи на английский язык в квадратных скобках], название русскоязычного источника (транслитерация, либо английское название – если есть), выходные данные с обозначениями на английском языке.

Например: Gokhberg L., Kuznetsova T. (2011) Strategiya-2020: novye kontury rossiiskoi innovatsionnoi politiki [Strategy 2020: New Outlines of Innovation Policy]. Foresight-Russia, vol. 5, no 4, pp. 8–30. Список литературы представляется в алфавитном порядке, и ТОЛЬКО те работы, которые цитируются в тексте.

• Стиль оформления списка литературы на русском и казахском языке согласно ГОСТ 7.1-2003 «Библиографическая запись. Библиографическое описание. Общие требования и правила составления» (требование к изданиям, входящих в перечень КОКСОН).

• Стиль оформления Романизированного списка литературы, а также источников на английском (другом иностранном) языке для социогуманитарных направлений - American Psychological Association (http://www.apastyle.org/).

• В данном разделе необходимо учесть:

• Цитируются основные научные публикации, передовые методы исследования, которые применяются в данной области науки и на которых основана работа автора.

• Избегайте чрезмерных самоцитирований.

• Избегайте чрезмерных ссылок на публикации авторов СНГ/СССР, используйте мировой опыт.

• Библиографический список должен содержать фундаментальные и наиболее актуальные труды, опубликованные известными зарубежными авторами и исследователями по теме статьи.

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